POWELL & YOUNG SOLICITORS

THIS DEED is made the 30th day of June 2003 by **GARTH SYLVESTER** and **ANGELA SYLVESTER** both of 49 Riverside Estate Brundall Norwich NR13 5PU ("the Owners") and **THE BROADS AUTHORITY** of Thomas Harvey House, Colegate, Norwich, NR3 1BQ("the Authority")

WHEREAS-

1. The Owners are the owners ofthe property 49 Riverside Estate Brundall Norwich NR13 5PU ("the Land")

2. By a Decision dated 2 September 1997 (960722) the Planning Authority granted Planning Permission (the Planning Consent) for the construction of single storey chalet style holiday home at the Land subject to a Condition referred to in the Second Schedule hereto

3. The owners have made application for discharge of the said condition to the Authority under reference 20021622 (the Application)

4. The Authority have refused the Application and the Owners have appealed the refusal to the Secretary of State (the Appeal)

NOW THIS DEED WITNESSETH as follows:-

1. **Definitions and Interpretations**

In this Deed

We hereby certify that this is a true copy of the original document
Powell & Young, Solicitors
Pocklington, York YO42 2AQ

1.1. "The Act" means the Town and Country Planning Act 1990

1.2 "The Authority" means The Broads Authority

1.3 "The Planning Obligation" means the obligation specified in the Second Schedule

1.4 Words importing one gender shall be construed as importing any other gender

1.5 Words importing the singular shall be construed as importing the plural and vice versa

1.5 The clause and paragraph headings in the body of this Deed and in the Schedules do not form part of this Deed and shall not be taken into account in it's construction or interpretation

2. **The Planning Obligations**

2.1 The Planning Obligation contained in this deed is a planning obligation for the purposes of Section 106 of the Act

2.2 Subject to the provisions of the Deed The Planning Obligation may be enforced by the Authority

2.3 Any person deriving title from the Owner shall only be bound by the Planning Obligations which are contained this Deed to the extent that such

person has a legal interest in the Land or (part of it) at the time when such obligations arise

3. The Owners covenant that they are the freehold owners of the Land free from all mortgages charges or other encumbrances and that no other person has any interest in the Land

IN WITNESS whereof the Owners have set their hands to this Deed and the Authority have executed as a Deed the day and year first hereinbefore written

THE FIRST SCHEDULE

The Land

49 Riverside Estate Brundall Norwich NR13 5PU as the same is registered at H M Land Registry under Title Number NK130728

SECOND SCHEDULE

That in the event of the Application being granted pursuant to the Appeal Condition 2 of planning consent 960722 should not apply but instead the Land shall only be used as permanent residential accommodation during the lifetime of the Applicant Angela Sylvester and that otherwise it shall not be used for overnight accommodation in the period between 5 January and 6 February in any one year and shall not be occupied by any person for a period exceeding four weeks at any one time

SIGNED as a Deed by
GARTH SYLVESTER
in the presence of

DAVID HILLBURN
2. LACKFORD CLOSE
BRUNDALL. NORWICH NR13 5NG
COMPANY DIRECTOR

SIGNED as a Deed by
ANGELA SYLVESTER
in the presence of

DAVID HILLBURN
2. LACKFORD CLOSE
BRUNDALL. NORWICH. NR13 5NG
COMPANY DIRECTOR

THE COMMON SEAL of
THE BROADS AUTHORITY
was hereunto affixed in the
presence of

SOLICITOR TO THE
BROADS AUTHORITY

BA347

Appeal decision

Site visit made on 8 July 2003

by Mike Croft MA DipTP MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
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Date
25 JUL 2003

Appeal ref APP/E9505/A/03/1113319
49 Riverside Estate, Brundall, Norwich, NR13 5PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission
- The appeal is made by Mr Garth Sylvester and Mrs Angela Sylvester against the decision of The Broads Planning Authority.
- The application (ref 20021622), dated 4 November 2002, was refused by notice dated 7 February 2003.
- The development proposed is the permanent use of a holiday home (personal permission).

Summary of decision: the appeal is allowed and planning permission is granted subject to conditions in the terms set out in the formal decision below.

Preliminary matters

1. The appeal form says the date of the planning application is 27 October 2002. The papers submitted to me do not include a copy of any such application, but they do include a copy of an application dated 4 November 2002. The Authority say that the appellants agreed to the development description above.

2. The basis of the appeal application lies in a planning permission, ref 960722, dated 2 September 1997, for a single storey chalet style holiday home. That holiday home has been built and is the subject of this appeal. The 1997 permission is subject to 5 conditions, no 2 of which states: "The holiday chalet hereby approved shall not be used for overnight accommodation in the period between the 5 January and 6 February in any year. In addition the holiday chalet shall not be occupied by any person for a period exceeding four weeks at any one time." The reason given for the condition was: "The site is not suitable for permanent accommodation."

3. Although I use the agreed description of the development above, the appellants' own description on the application form refers specifically to the continued use of the holiday home without complying with condition no 2. I also note that the 1990 Act, as amended, specifically allows an application to be made for a fresh permission for a development without complying with one or more conditions subject to which a previous permission was granted. The power to grant permission at the application stage is contained in section 73 and at appeal stage in section 79(4), which modifies section 73 to enable the First Secretary of State to exercise the same powers as the local planning authority. I deal with the appeal on that latter basis.

4. The appellants ask for a personal occupancy condition to be substituted for the disputed condition. The reasons for that lie in Mrs Sylvester's disability (suffering from a debilitating

degenerative bone disease), the "wheelchair-friendly" design of the appeal property, and the appellants' contention that their current permanent home is unsuitable for Mrs Sylvester. In addition, the appellants submit a copy of a completed unilateral undertaking under section 106 of the Act. This stipulates in effect that, in the event of permission being granted in the case before me, the land shall only be used as permanent residential accommodation during the lifetime of Mrs Sylvester and that otherwise it shall only be used within the terms of the disputed condition.

Main issue

5. In my opinion, the main issue is whether the disputed condition is necessary, mainly because of the flood risk relating to the appeal property.

Planning policy

6. The development plan for the area includes the Norfolk Structure Plan, adopted in 1999, and the Broads Local Plan, adopted in 1997. Reference is made to several Structure Plan policies, but more precise guidance appears in the Local Plan. Local Plan policy TR12 says the Authority will seek to restrict occupation to holiday use only where residential development for holiday accommodation is to be permitted but is unsuitable for permanent occupation. That policy's supporting text refers to winter flood risk, lack of services, inadequate size or specification of accommodation, and lack of curtilage as examples of reasons for permanent occupation being unsuitable. Local Plan policy BRU1 relates to riverside chalets and mooring plots at Brundall Riverside. It says that permission will not be granted there for permanent dwellings or for use as permanent dwellings of buildings restricted to holiday or day use. Its supporting text refers to the access being narrow in places, the absence of mains sewers, and the proximity of commercial premises. Local Plan policy INF1 says development will not be permitted where it would lead to a significant increase in flood risk to people and property.

7. Reference is also made to Planning Policy Guidance (PPG) 25 *("Development and Flood Risk")* which indicates the Government's policy of reducing flood risks.

Reasons for Inspector's decision

8. The Authority say in effect that the appeal dwelling has been permitted – outside any development boundary – only because of the inclusion of the disputed condition. In their view the condition is justified by policy TR12, the site falls within the scope of policy BRU1, and to remove the disputed condition would be contrary to policy INF1 and to PPG 25.

9. The Authority are supported in their stance by the Environment Agency, who advise that the appeal site falls within an identified tidal flood risk area, indeed in a high risk zone with at least a 0.5% annual probability of a tidal flood associated with the River Yare. However, it seems to me that the positions of both the Authority and the Agency are crucially undermined by the fact that the Agency's statement in their December 2001 consultation response (on an earlier application by the appellants to have the disputed condition removed) that the recommended minimum floor level for Brundall is 1.75 m AOD; by the appellants' statement that the minimum floor level of their dwelling is indeed 1.75 m AOD; and by the absence of any challenge to that particular statement of the appellants. The Agency said in December 2001 that it would be inappropriate to change the occupancy condition if floor levels are below 1.75 m AOD. I take it therefore that it would ***not*** be inappropriate to make such a change with the floor ***not*** being lower than that. I appreciate that floods are more

likely to occur during winter than at other times of the year, ie precisely at the time when there would be additional occupation of the appeal dwelling if this appeal were allowed. But that is of little consequence if the appeal dwelling meets the Agency's recommended floor level, as from the evidence it does. From that evidence, therefore, I am drawn to the conclusion that the concern over flood risk is met.

10. I have considered whether such a conclusion should be modified by any necessity for the condition in relation any of the other elements mentioned in the supporting text to policies TR12 and BRU1. I have no information about any lack of relevant services, and I saw that the accommodation is inadequate in neither size nor specification, and although the curtilage is small this is offset by the outlook over the River Yare. I saw that the access road is indeed narrow, and that results in intermittent inconvenience, but I do not believe that additional occupation for 4½ weeks per annum would result in a material increase in problems. I note the reference to foul drainage difficulties in the supporting text to policy BRU1, but there is no evidence of such problems in relation to this particular property. I saw that the commercial premises nearby referred to by the Authority are closely associated with the river, and I perceive no problem in that in relation to this case. I conclude that the condition is unnecessary.

11. The Authority are concerned that allowing this appeal would set a precedent. However, I judge that the removal or relaxation of the disputed condition – in the specific circumstances which have been put to me – would not be harmful. A repetition of that would not be harmful either.

12. That leaves the question of whether the disputed condition should be removed without any replacement or whether it should be replaced with a different condition. A condition along the lines of the restriction in the undertaking I mention at para 4 above would run counter to the advice in Circular 11/95 para 93 about personal permissions being scarcely ever justified in relation to permanent buildings, because although the appeal dwelling is constructed substantially of wood it is clearly not a temporary building of the sort for which a personal permission might be more appropriate. Although I realise that the appellants have completed the undertaking in response to the Authority's representations, the same consideration means that I give little weight to that particular restriction in the undertaking. But my reasoning in paras 9 and 10 above suggests in any case that the proper course of action is to remove the disputed condition without any replacement.

13. I appreciate that the undertaking will come into effect with the issue of the permission I am granting, but that is a matter over which I have no control.

Conclusion

14. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal decision

15. In exercise of the powers transferred to me, I allow the appeal and grant planning permission for a single storey chalet style holiday home at 49 Riverside Estate, Brundall, Norwich, NR13 5PU, in accordance with application ref 20021622, dated 4 November 2002, without compliance with condition no 2 previously imposed on planning permission ref 960722 dated 2 September 1997 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Further information

16. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.

17. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

18. An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.

INSPECTOR