

## **DECISION STATEMENT**

### **ABSTRACTION/IMPOUNDMENT LICENCE APPLICATION**

**Jonathan Sydney Peel, Jean Fulton Peel, Robert Dennis Peel**

**t/a Barton Hall Farms**

**Application number:** NPS/WR/023816

**Licence number:** AN/034/0009/003

**EA Area:** East Anglia

**Date of Application:** 27 December 2017

#### **Applicant details:**

Jonathan Sydney Peel, Jean Fulton Peel, Robert Dennis Peel  
t/a Barton Hall Farms  
Barton Hall  
Barton Turf  
Norwich  
Norfolk NR12 8AS

#### **Summary of the proposal:**

This application is for a new licence on the same terms to replace abstraction licence AN/034/0009/003 that expired 31 March 2018.

Due to the location of this abstraction being within the Ant Broads and Marshes screening area the application was placed on hold pending the outcome of the Restoring Sustainable Abstraction (RSA) investigations and was granted Limited Extension of Validity (LEV) to enable them to continue to abstract under the terms of their expired licence until the determination of this application.

This proposal is located in the Broadland abstraction licensing strategy area and allows the applicant to abstract water from underground strata at Barton Hall Farm for the purpose of spray irrigation. Abstraction takes place from a borehole at TG 35103 21674 (see map below) during the months April to October.

#### **Source of supply:**

Groundwater (wellpoints into sands and gravels) at Barton Hall, Barton Turf, Norwich

#### **Points of abstraction quantities:**

NGR: TG 35103 21674

58.68m<sup>3</sup>/hr.

700m<sup>3</sup>/d.

55,000m<sup>3</sup>/yr.  
16.3l/s

**Means of abstraction:**

20 wellpoints not exceeding 10 metres in depth and 50 millimetres in diameter and PVC lined with the bottom 3 metres slotted.

**Purpose of abstraction (abstraction only):**

Spray irrigation

**Abstraction period (abstraction only):**

01 April to 31 October (inclusive)

**Case history:**

19 September 2000	New licence issued 7/34/09/*G/0137, with no expiry date. Superseded by 7/34/09/*G/0147.
August 2003	7/34/09/*G/0147 – expired 31 March 2006, replaced by version 7/34/09/*G/0147/A.
30 March 2006	7/34/09/*G/0147A – expired 30 September 2008
20/11/2008	Renewal - Licence 7/34/09/*G/0147B issued with an expiry date of 31 March 2010
28/04/2010	Renewal - Licence AN/034/0009/003 issued with an expiry date of 31 March 2018
18/12/2017	Application received to renew licence AN/034/0009/003 on the same terms
17/01/2018	Renewal application formally accepted with a determination date of 17 April 2018. This was immediately extended to 30/09/2018 due to ongoing work with the Ant Broads and Marshes RSA investigation.
21/01/2019	Letter to applicant regarding upcoming charges, requirement for returns and confirmation of continued application of LEV
23/02/2019	Meeting with Barton Hall (Robert Peel and Nick Deane) with Environment Agency colleagues. This meeting was regarding licences that look to be a key part of the Restoring Sustainable Abstraction (RSA) solution (currently being developed) for the Ant Broads & Marshes SSSI (ABM) and neighbouring SSSIs in the Ant Valley.
23/06/2021	Letter sent to the licence holder confirming that their licence cannot be renewed
16/08/2021	Meeting with Barton Hall (Robert Peel and Nick Deane) with Environment Agency colleagues. Discussion about concerns with not renewing this licence, looking for alternative sources of water and next steps.

5/10/2023

We wrote by email to ask the applicant if they wished to withdraw their application as we were looking at refusal of the application, but they declined.

**Justification of quantities:**

Under Section 38(3)(b) Water Resources Act 1991, we have a duty to consider the requirements of the licence holder, in so far as they are reasonable. In the case of applications made to renew historic existing licences, this consideration will be to look at historic uptake of the licence and any future plans that the licence will be used for.

Justification of requirements was assessed when the licence was originally issued. In addition, following our assessment under the RSA programme, we are unable to renew the licence on sustainability grounds.

The applicant provided details of irrigation depth requirements for each crop, and this was confirmed using the Optimum Use guide. Requirements are as follows:

Crop type	Area of land (ha)	Irrigation depth (mm)	Conversion Factor	Crop Requirement (m <sup>3</sup> )
Potatoes	16	200	10	32,000
Sugar beet	32	75	10	24,000

Total Requirement = 56,000

The returns since 2010 are shown in the table below and give a good indication of the usage of the licence.

Abstraction Month	04	05	06	07	08	09	10
Abstraction Year	Return Qty	Return Qty	Return Qty	Return Qty	Return Qty	Return Qty	Return Qty
2010	0	0	3234	10684	2300	5436	3094
2011	0	9951	5344	1660	0	590	0
2012	0	0	0	0	0	0	0
2013	0	0	1526	3590	4664	328	0
2014	0	0	4664	638	2846	0	0
2015	0	0	3670	8265	1189	0	0
2016	0	0	0	5376	10972	4537	0
2017	0	0	7280	2745	662	0	0
2018	0						

The maximum abstraction over the period for which we have returns was 24,748 cubic meters per year in 2010, just under half the licensed volume. They have been asked for, but have not provided any returns since 2018. This shows that the application to renew the existing licensed annual

quantity of 55,000m<sup>3</sup> (incorrect figure entered on application form of 56,000m<sup>3</sup>) is not justified on grounds of previous maximum use.

However, as the application is being refused, further justification of need is not being considered in this case.

**Resource assessment:**

No water available. According to the Broadland Rivers Abstraction Licensing Strategy, the confined chalk groundwater in the Broadland area is fully committed and no further consumptive abstraction can be considered. As this is a licence renewal we must follow the renewals approach as detailed in the Broadland ALS.

It states that some time-limited licence renewals may capping to reflect historic annual usage to manage the risk of deterioration to the environment. However, for this application, there is a potential for it to impact a designated site.

Section 3.5 of the Broadland ALS also refers to protected areas such as Special Areas of Conservation (SAC), Special Protection Areas (SPA), Ramsars and Sites of Special Scientific Interest (SSSIs). This states that if the proposal falls or is relevant to one of these areas, such as is the case with this application, that they will be dealt with on a case-by-case basis with specific requirements of the protected site being applied where necessary

**Impact assessment of proposal:**

Using the Batched Abstraction Modelling (BAM) methodology, impact assessments were carried out for each application within the Ant, Bure and Thurne (ABT) area which determined the potential reduction in groundwater levels in the shallow groundwater table as a result of the abstraction. Using these data it was determined whether adverse effect could be concluded by the abstraction on designated sites.

**Statutory consultation:**

As the application was not advertised, it was not necessary to notify any statutory bodies other than Natural England.

**External representations:**

No representations were received as the application was not advertised.

**Protected rights:**

As this is application is for a same terms renewal we would not expect any additional impact on existing protected rights or lawful uses.

**Conservation issues:**

The abstraction subject to this application has the potential to impact The Broads SAC, Broadland SPA, and Broadland Ramsar and we were unable to conclude no likely significant effect when assessing its implications for the sites in combination with other plans, permissions and projects.

We therefore completed an Appendix 4 and joint Habitats Regulations Assessments Stage 1 and 2 (HRA1 and 2) appropriate assessment which concluded that an alone and in combination adverse effect cannot be ruled out or avoided, even with conditions or restrictions. Therefore, we are refusing the application.

Natural England responded on 20 October 2023 and confirmed that they agree with our conclusion of adverse effect.

### **Biodiversity and sustainable development:**

We have considered whether additional requirements should be imposed in relation to our principal aim of contributing to attaining the objective of sustainable development under section 4 of the Environment Act 1995, the existing requirements are sufficient in this regard and no other appropriate requirements have been identified.

We have had regard to Government guidance issued under section 4(2) of the Act, namely 'The Environment Agency's Objectives and Contribution to Sustainable Development: Statutory Guidance (December 2002)'.

Regarding the exercise of our water resources functions, we are required:

'To plan to secure the proper use of water resources by using strategic planning and effective resource management which takes into account environmental, social and economic considerations, and in particular:'

'To ensure that the abstraction of water is sustainable, and provides the right amount of water for people, agriculture, commerce and industry and an improved water-related environment; and to develop and maintain a framework of integrated water resources planning for the Agency and water users.' The principles of sustainable development and biodiversity have been considered as part of our refusal of this application.

The principles of sustainable development and biodiversity have been considered as part of our refusal of this application.

### **Social and economic welfare of rural communities:**

We have carefully considered the effects on economic and social wellbeing of local communities in rural areas under section 7(1)(c)(iii) Environment Act 1995 but given the obligation to determine a licence application so as to ensure no adverse effect on integrity of European sites in combination with other plans, permissions and projects, we have refused the application to meet that obligation having had regard to effects on rural communities.

We have taken into account the statutory requirement in our regulatory decision to have regard to the Regulators' Code and considered the impacts of the decision on the applicant. However, this requirement does not over-

ride our other statutory duties and in particular our duties under the Conservation of Habitats and Species Regulations 2017 to ensure a conclusion of no adverse effect on site integrity.

We have considered whether it is proportionate to refuse this application recognising the impact of the refusal on the applicant's business and concluded that it is in the general interest to refuse the application in order to ensure no adverse effect on European sites.

**Costs/ Benefits:**

We have taken into account the likely costs and benefits of our decision on this licence application ('costs' being defined as including costs to the environment as well as financial costs of the decision) as required by section 39 Environment Act 1995. We have considered this duty against the obligation to meet Habitats Regulations and Water Environment (Water Framework Directive) Regulations requirements but note the duty to take account of costs and benefits does not affect our obligation to discharge any duties, comply with any requirements, or pursue any objectives, imposed upon us under these Regulations [section 39(2) Environment Act 1995].

We considered the information the applicant provided regarding impacts to their business as a result of refusing their licence renewal application. These issues have been taken into account however these considerations do not override our statutory duties which include those under Regulation 63 of the Habitats Regulations to assess effects of abstraction on the integrity of European sites and which prevents licences being issued when there is a link between abstraction and adverse effects on the European sites.

This refusal has been deemed necessary for the purposes of protecting the environment, and, in particular, removing the contribution that this abstraction has to the potential adverse effects identified within The Broads Special Area of Conservation (SAC), Broadland Special Protection Area (SPA) and Broadland Ramsar.

**Conclusion and recommendation:**

It is recommended that the application is refused for the following reason:

It is not possible to ascertain that this abstraction is not having an adverse in combination effect on Alderfen Broad SSSI components of the European sites (The Broads SAC, Broadland SPA and Broadland Ramsar).

It is not possible to ascertain that this abstraction is not having an adverse effect in combination on Ant Broads & Marshes SSSI, components of the European sites (The Broads SAC, Broadland SPA and Broadland Ramsar).

Applying the requirements of the Habitats Regulations, we cannot consider renewing abstraction under this licence.

**Contact the Environment Agency:**

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