

**Enforcement of planning control: Eagles Nest, Ferry Road, Horning
Unauthorised Use of Boathouse as Holiday Accommodation**
Report by Head of Planning and Planning Officer (Compliance and Implementation)

<p>Summary: Unauthorised use of boathouse as holiday accommodation.</p> <p>Recommendation: That authorisation is granted for the issuing of a Breach of Condition Notice and for prosecution (in consultation with the solicitor) in the event that the Breach of Condition Notice is not complied with.</p>
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Location: Eagles Nest, Ferry Road, Horning

1 Background

- 1.1 A report was prepared for the 24 June 2016 meeting of the Planning Committee outlining a breach of condition at a boathouse on Ferry Road, Horning which was being used as holiday accommodation. This was in conflict with Condition 6 of the permission which stated:

“The boathouse hereby permitted is to be used solely for the mooring of boats and storage of equipment required for a purpose incidental to the use of the boathouse for mooring boat and the utility area shall only be used in connection with the holiday properties of Eagle Cottage and Kingline Cottages.”

- 1.2 In addition to this, it was noted that the boatshed has not been built in accordance with the approved materials. A composite boarding has been used to clad the walls and white UPVC windows have been installed. Timber boarding and windows were approved.
- 1.3 The recommendation was to serve a Breach of Condition Notice in respect of the unauthorised use; no action was proposed in respect of the materials. A copy of the report is attached at Appendix A.
- 1.4 Correspondence was received from the landowner immediately prior to the Planning Committee, and, additionally, two other enforcement items on the agenda were deferred for reasons including the receipt of late correspondence. In order to be consistent across all three items for consideration at the Planning Committee meeting Members resolved to defer consideration of the application.

- 1.5 On 11 July 2016 the landowner submitted an application for a Certificate of Lawful Use, seeking to demonstrate that the use of the boathouse as holiday accommodation had taken place for a sufficient period such as to be immune from enforcement action.
- 1.6 The application and the submitted evidence were considered by the Solicitor, who concluded that the claimed use had not been proven and the application was refused on 10 November 2016.

2 Update

- 2.1 There have been no changes on the site since June 2016 and the property is still being advertised as available for holiday accommodation.
- 2.2 The unauthorised materials remain.

3 Proposed Actions

- 3.1 The situation on the site has not changed and it is considered expedient to proceed as recommended in the 24 June 2016 report.

4 Financial Implications

- 4.1 If action is taken there will be financial implications resulting from the legal input required.

5 Conclusion

- 5.1 It is recommended that the action be taken as set out in the 24 June 2016 report, namely that a Breach of Condition Notice be served in respect of:
- (i) Condition 3 requiring the replacement of the black composite boarding with black feather board finish in timber with a compliance period of 6 months; and
 - (ii) Condition 6 requiring the removal of all fittings facilitating the holiday and/or residential use of the first floor and the cessation of any holiday and/or residential use of the first floor, with a compliance period of 3 months.

Background papers: BA/2015/0013/BOCP3

Author: Sophie Evans/ Cally Smith
Date of report: 23 November 2016

Appendices: Appendix A - Report to Planning Committee 24 June 2016.

**Broads Authority
Planning Committee**
24 June 2016
Agenda Item No 9(ii)

**Enforcement of Planning Control
Enforcement Item for Consideration
Eagles Nest, Ferry Road, Horning
Unauthorised Use of Boathouse as Holiday Accommodation**
Report by Planning Officer (Compliance and Implementation)

Summary: Unauthorised use of boathouse as holiday accommodation.

Recommendation: That authorisation is granted for the issuing of a Breach of Condition Notice and for prosecution (in consultation with the solicitor) in the event that the Breach of Condition Notice is not complied with.

Location: Eagles Nest, Ferry Road, Horning

1 Background

1.1 The site is located between Ferry Road and the River Bure within the village of Horning and comprises a detached wet boathouse sited within the curtilage of Eagle Cottage, a dwelling operated as a holiday-let along with many of the surrounding dwellings. The boathouse is sited within a mooring basin and provides mooring for boats associated with nearby holiday-let properties. These properties – Kingline Cottages – are situated south west of the site and are within the same ownership. The site is outside the development boundary and in flood risk zone 3.

1.2 In 2010 planning permission was granted for the boathouse as a replacement of an existing single storey boathouse (BA/2010/0012/FUL). The replacement boathouse included a utility area at the rear of the wet dock to be used in connection with the holiday-let business. Whilst the height of the building and pitch of the roof gave a large volume of space over the wet dock, no first floor was proposed nor any means of access to the roof space. The approved application followed two refused applications which had proposed a sail loft at first floor level.

1.3 Condition 6 of the permission specifies what the development can be used for:

“The boathouse hereby permitted is to be used solely for the mooring of boats and storage of equipment required for a purpose incidental to the use of the boathouse for mooring boat and the utility area shall only be used in connection with the holiday properties of Eagle Cottage and Kingline Cottages.”

- 1.4 In December 2015 the Authority was made aware that the first floor level of the boathouse was being advertised as holiday accommodation as Eagles Nest in Horning. The landowner was away at the time, but it could be seen from the outside that comfortable accommodation was being provided and a phone call from the owner on his return confirmed that he was using it for holiday accommodation.
- 1.5 In January 2016 Officers visited the owner at the site where he claimed the internal structures of the accommodation were added around the time of the initial build in 2010.
- 1.6 It is also noted the boathouse has not been built in accordance with the approved materials. A composite boarding has been used to clad the walls and white UPVC windows have been installed. Timber boarding and windows were approved.

2 The Planning Breaches

- 2.1 The planning permission for the replacement boathouse did not include a first floor and does not allow for any use other than mooring of boats, storage of equipment and the utility area to serve the existing holiday lets. Use as holiday accommodation is contrary to condition 6.
- 2.2 In the assessment of the proposed boathouse it was noted "*Any intensification of the use of the building above that which is proposed, particularly residential or holiday accommodation would not be considered appropriate. It is therefore considered necessary to restrict the use of the boathouse by means of condition and, subject to this, there is not considered to be any significant adverse impact on residential amenity*".
- 2.3 The application was determined in 2010 when the policies of the 1997 Broads Local Plan applied, including Policy B12 which addressed private boathouses in the curtilage of dwellinghouses. This policy did not allow for the provision of any residential accommodation. Condition 6 was applied in accordance with this policy and in the interests of protecting residential amenity (Local Plan Policy H11). The site is also in flood risk zone 3, where holiday accommodation is unlikely to be acceptable in flood risk terms.
- 2.4 The Local Plan policies which applied to this development have all been superseded by the Development Management Policies and there is no direct replacement of Policy B12. Policy DP14 identifies where new holiday accommodation may be appropriate. Outside development boundaries, sites which are closely associated with, amongst other developments, groups of holiday dwellings are identified as being appropriate locations. Accordingly, as the site is part of the wider Kingline Cottages holiday business, the location may be considered acceptable in principle accordance with Policy DP14.
- 2.5 Whilst the location may be broadly acceptable for holiday accommodation, there are site specific factors which would constrain such a use, including

flood risk, water quality, highway safety and amenity, so the condition remains necessary.

2.6 It is evident that a first floor has been provided, fitted out as residential accommodation and is being let for holiday use. The development is clearly in breach of condition 6.

2.7 With regard to the materials, condition 3 of the permission required:

“Prior to the commencement of the development hereby permitted, precise details of the materials and colours to be used in the construction of the external walls, roof and roller shutter door of the boathouse hereby permitted shall be submitted to and approved by the Local Planning Authority in writing. The development shall then be constructed and retained in full accordance with the approved details in perpetuity.”

2.8 In the assessment of the proposal, the 2010 Committee report noted:

“The previous applications proposed wood effect fibre-cement weatherboarding which was considered to further contribute to the prominence of the large building in the local area. Feather edged timber boarding is now proposed which would weather over time to become more recessive and soften the appearance of the building. The materials are therefore considered to be acceptable.”

2.9 Condition 3 required the precise materials to be agreed prior to commencement to ensure they were acceptable.

2.10 In discharging condition 3 it was agreed the exterior cladding would be black feather board finish (timber) and the windows would be white timber. The development has been constructed with black composite boarding and white UPVC windows; these are not the approved materials. The development is therefore in breach of condition 3.

3 Proposed Next Steps

3.1 The Government recognises the importance of effective planning enforcement. National policy around planning is set out in the National Planning Policy Framework (2012) and in respect of planning enforcement is clear in paragraph 207 that:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so”

- 3.2 Further to this, the Broads Authority has recently prepared a local Enforcement Plan, which sets out its approach to planning enforcement. It outlines the four main principles it will be guided by when looking at unauthorised development – expediency, proportionality, consistency and negotiation. These will be used when deciding whether or not to take any action in respect of a planning breach. It should be noted that enforcement action is not mandatory, but is at the discretion of the Local Planning Authority (LPA) and the LPA must decide whether or not it is expedient to take such action, having regard to the provisions of the development plan and to any other material considerations. In determining expediency, an LPA needs to be mindful of the harm that is being caused by the breach and the acceptability in planning terms of what is being undertaken.
- 3.3 In this case, the conversion of the first floor of the boatshed to holiday accommodation is contrary to development plan policy and would be unlikely to be granted planning permission, were an application to be submitted, for reasons including flood risk and inadequacy of the access and parking arrangements. The deliberate nature of the breach would also be a material consideration in the determination of any application.
- 3.4 The landowner maintains that the holiday accommodation has been in situ since the building was first constructed in 2010, and the use is therefore past the statutory period of four years in which enforcement action can be taken. He has, however, been unable to provide any documentary evidence to support this assertion and the LPA has been separately advised that the conversion works took place in 2015. This is supported by the Council Tax records from North Norfolk District Council and the LPA is satisfied that the breach commenced in 2015.
- 3.5 Given that the development is unacceptable in policy terms, it is necessary to consider the proportionality of any remedy. Clearly it would be inappropriate – and disproportionate – to require the removal of the building as it is acceptable as a storage and ancillary building. A remedy which required the removal of the fittings which facilitate the holiday use would be proportionate and could be justified.
- 3.6 There are no material planning considerations which outweigh the planning policy here, and in terms of over-riding issues of public interest, clearly there is public benefit in upholding public confidence in the planning system. On this basis, it is recommended that formal action be taken against the unauthorised use.
- 3.7 With regard to the materials which have been used, these are not as agreed – with the exterior cladding being black composite boarding instead of a black feather board finish in timber and the windows constructed in white UPVC instead of white timber. Neither material would have been considered acceptable in this prominent location on Ferry Road in Horning had it been proposed in an application, however an assessment must now be made of the

expediency of any remedy, weighing the harm against the benefits of seeking its removal.

- 3.8 Looking first at the windows, there is a preponderance of UPVC windows in the area, of varying styles and qualities. Whilst UPVC is regularly resisted in the Broads, for reasons including its poor inherent sustainability and invariably clumsy profile, there are locations where its use is less undesirable than in others. In this case, the windows are relatively small, of a very plain style and mainly are located on the first floor, where the visual impact is mitigated by distance. Their retention, whilst regrettable, does not conflict significantly with development plan policies around design and their replacement with timber could not, on balance, be justified as expedient or proportionate.
- 3.9 The cladding, however, is a different matter, being visually prominent on the highway elevation and extending across the entire building. The use of composite boarding is firmly resisted in the Broads, indeed a recent application in the immediate area has been amended to show timber boarding instead of composite, so the need for consistency is important in order not to set a precedent or undermine the policy. On this basis, it is considered expedient to enforce the provisions of condition 3 with regard to the boarding.
- 3.10 There has been a clear and deliberate breach of planning control and it is proposed to serve Breach of Condition Notices in respect of each matter.

4 Financial implications

- 4.1 There will be financial implications resulting from the legal input required.

5 Recommendation

- 5.1 It is recommended that a Breach of Condition Notice be served in respect of:
- (i) Condition 3 requiring the replacement of the black composite boarding with black feather board finish in timber with a compliance period of 6 months; and
 - (ii) Condition 6 requiring the removal of all fittings facilitating the holiday and/or residential use of the first floor and the cessation of any holiday and/or residential use of the first floor, with a compliance period of 3 months.

Background papers: BA/2015/0013/BOCP3

Sophie Evans

Date of report: 12 June 2016

Appendices: APPENDIX 1 - Site plan

APPENDIX 1

BA/2015/0013/BOCP3 - Use of Boathouse as Holiday Accommodation.

