

Enforcement of Planning Control
Enforcement item for consideration: Staithe 'N' Willow, Horning
Report by Head of Planning

Summary:	This report concerns the erection of fencing without the benefit of the required planning approval.
Recommendation:	That authorisation is granted to serve an Enforcement Notice to secure the removal of the fence and to proceed to prosecution in the event of non-compliance.

Location: Staithe 'N' Willow, 16 Lower Street, Horning, NR12 8AA

1 Background

- 1.1 In early November 2013 the Authority was made aware of a new fence that had been erected at the Staithe 'N' Willow Tea Shop, Lower Street, Horning. The fence measured approximately 2m high, which exceeds the maximum height allowed under the General Permitted Development Order 1995 (GPDO) of 1m where a fence is adjacent to a vehicular highway. The site is within the Horning Conservation Area and detracts from its visual amenity.
- 1.2 During 2014 there was extensive correspondence with the proprietor of Staithe N Willow around the need to remove the fence. In September 2014 a compromise solution was agreed, which would see:
 - a. The reduction of the height to 1m of two of the panels fronting Lower Street; this to be completed by 1 October 2014; and
 - b. Undertake replacement planting to the rear of the newly lowered fence, with species as recommended and agreed on-site with the Broads Authority's arboriculturalist; and
 - c. Fence panels to be removed in their entirety by 30 November 2015.
- 1.3 This compromise solution allows the retention (at their existing height) of the remainder of the fence panels, but sees the ultimate removal of the most prominent of the panels.
- 1.4 A site visit on 29 October 2014 showed that no works had been undertaken and a report was prepared for the 5 December 2014 meeting recommending

that an Enforcement Notice be served to require the removal of the fence. A copy of this report is attached at Appendix A.

- 1.5 A site visit prior to the meeting of the Planning Committee, however, revealed that the actions at (a) and (b) above had been completed and at the meeting Members resolved that the compromise solution was satisfactory, subject to compliance with the final point (c) in due course.

2 Description of site and development

- 2.1 The site is within Horning, which is one of the larger Broadland villages being located on the middle part of the River Bure. The village is an important focus for boating activities and visitors to the Broads. The centre part of the village falls within a Conservation Area.
- 2.2 Staithe 'N' Willow is a tea shop which is located in a prominent position on Lower Street, Horning and falls within the village Conservation Area.
- 2.3 The fence is located right on the road frontage at Lower Street, between the road and the rear elevation of the building. It is a wooden close-boarded fence, with concrete fence posts and gravel boards. It is considered that the height, design and the materials employed in the construction of the fencing are out of character with the surroundings.

3 The Planning breach and action proposed

- 3.1 Since the breach was first identified in November 2013 there has been extensive discussion with the proprietor of the premises, and she has been clear and consistent that she does not want to remove the fence because she considers that it provides privacy and security. At the most recent meeting on 12 November 2015 she advised that she would not remove the fence in its entirety, although she would have been prepared to lower it to 1m in height had the hedge grown up.
- 3.2 The planning issues in this case relate to the impact that the fence has, at either its existing or lowered height, on the character and appearance of the Conservation Area. This part of the Conservation Area is characterised in part by the undemarcated frontages (ie non-private) which give views of buildings (including the rear of buildings) and a sense of openness as well as allowing unobstructed views up the street and glimpses through to the river. The construction of a solid timber fence disrupts this and it is considered that the fence is detrimental to the character and appearance of the Conservation Area.
- 3.3 In considering the appropriate next steps, it is necessary to consider the expediency of enforcement action and weigh the provisions of the development plan and any public benefits of such action against the cost of such action, taking into account any other material considerations and the need to be proportionate. In this case, it is considered that the fence is intrinsically detrimental to the Conservation Area and, if permitted to remain,

would set an undesirable precedent. It is contrary to policies DP4, DP5 and DP28 of the adopted Development Management Policies DPD and paragraphs 131 - 134 of the National Planning Policy Framework (NPPF) which protect Conservation Areas as designated heritage assets. It is also useful to be mindful of the guidance in paragraph 207 of the NPPF which states:

“Effective enforcement is important as a means of maintaining public confidence in the planning system”

- 3.4 With regard to the concerns of the proprietor around security and privacy, this is a very prominent and public location in the centre of the village and not one where a high degree of privacy would be expected. Despite this, the compromise solution offered would have allowed the retention of some of the fencing at 2m in height, to give a secure and private garden space, but she does not want to implement this. It is also the case that a previous hedge, which provided such screening, was actually removed in order to erect the unauthorised fence.
- 3.5 On balance it is considered that enforcement action to protect the Conservation Area is both justified and proportionate. It is recommended that an Enforcement Notice be served to require the removal of the entire fence, with a compliance period of 2 months.

4 Financial Implications

- 4.1 There may be legal costs associated with this course of action.

5 Conclusion

- 5.1 That authority is given for officers to serve an Enforcement Notice in respect of this breach of planning control and to pursue prosecution (in consultation with the solicitor) in the event that compliance is not achieved.

Background papers: None

Author: Cally Smith
Date of Report: 11 December 2015

Appendices APPENDIX A - Report to Planning Committee 5 December 2014

Enforcement of Planning Control
Enforcement item for consideration: Staithe 'N' Willow, Horning
Report by Planning Officer (Compliance and Implementation)

Summary: This report concerns the erection of fencing without the benefit of the required planning approval and the felling of trees in a conservation area.

Recommendation: That authorisation is granted for any necessary enforcement action to secure the removal of the fencing and implementation of an agreed replanting scheme.

Location: Staithe 'N' Willow, 16 Lower Street, Horning, NR12 8AA.

1 Background

- 1.1 In early November 2013 the Authority was made aware of a new fence that had been erected at the Staithe 'N' Willow Tea Shop, Lower Street, Horning. A site visit showed the fence to exceed the maximum height allowed under the General Permitted Development Order 1995 (GPDO) of 1m where a fence is adjacent to a vehicular highway. The erection of the fencing necessitated the removal of a number of trees and shrubs. As the property is located within the Horning Conservation Area consent is required before undertaking any work to trees.
- 1.2 On 8 November 2013 a letter was sent to the operator of the business requiring either the removal of the fencing or a reduction in its height to comply with the requirements of the GPDO. A timescale of 30 days was given for undertaking this work. Following a request from the proprietor this timescale was extended until the New Year.
- 1.3 A site visit made on 23 January 2014 showed the fence to still be in place. A Planning Contravention Notice (PCN) was served on 28 January 2014 seeking information on the property ownership. The PCN required a response from the proprietor within 21 days of the date on which it was served. To date there has been no response to the PCN. Failure to respond to a PCN is a criminal offence.
- 1.4 Following a telephone call from the proprietor a letter was sent on 18 February 2014 detailing why the fencing was unacceptable within the Horning

- Conservation Area. The letter offered a number of areas where the Authority might be prepared to negotiate over the design of the fence.
- 1.5 On the 12 March 2014 a letter was received from the proprietor detailing her concerns about the removal of the fence and the effect it would have on the security and privacy of her property.
 - 1.6 On 15 April 2014 a further letter was sent to the proprietor explaining why the fence was not acceptable in the Horning Conservation Area.
 - 1.7 On the 29 April 2014 the proprietor advised that she had verbally accepted the Authority's compromise.
 - 1.8 A further letter was sent to the proprietor on 13 May 2014 clarifying the need to reduce the height of the unauthorised fencing where it abutted the Highway.
 - 1.9 On 5 June 2014 the Authority's arboricultural consultant met with the proprietor to discuss and recommend a suitable planting scheme which would help mitigate her concerns about security and privacy. The proprietor was asked to confirm that the scheme being proposed was acceptable but no response was received.
 - 1.10 A letter was therefore sent on 1 July 2014 detailing the proposed planting scheme and requesting the proprietor reply by 31 July 2014 with her intentions as to these proposals. No response was received.
 - 1.11 On 3 September 2014 a further letter was sent setting out a timescale for the removal / reduction in height of the fencing and the implementation of a planting scheme. The scheme required the reduction in height of 2 fencing panels which front Lower Street to 1 metre by 1 October 2014 and the completion of the planting scheme by 30 November 2014 and was, in effect, the compromise solution previously agreed.
 - 1.12 A site visit on 29 October 2014 showed that no action had been taken to comply with any of the Authority's requests. The proprietor has been informed in writing that authority is to be sought for the serving of an Enforcement Notice.

2 Description of Site and Development

- 2.1 Horning is one of the larger Broadland villages being located on the middle part of the River Bure. The village is an important focus for boating activities and visitors to the Broads. The centre part of the village falls within a Conservation Area. Much of the village does, however, fall outside the Broads Authority area and is not covered by the Broads Local Plan.
- 2.2 Staithe 'N' Willow is located in a prominent position on Lower Street, Horning and falls within the village Conservation Area. It is considered that the height, design and the materials employed in the construction of the fencing are out of character with the surroundings.

- 2.3 A number of small trees and shrubs were removed in order to erect the fencing. As the property is located within the Horning Conservation Area consent should have been granted before this work was undertaken. None of the trees removed were of a significant value and their loss can be mitigated with the proposed planting scheme. A separate prosecution for the illegal removal of the trees is therefore not considered to be warranted.

3 The Planning Breach

- 3.1 The fence which has been erected is approximately 2 metres in height. It is constructed of close boarded timber with concrete fence posts and gravel boards. The General Permitted Development Order 1995 (GPDO) permits the erection of fencing to a maximum height of 1 metre where it abuts a highway.
- 3.2 The development is contrary to Policy DP28 of the Development Plan.

4 Action Proposed

- 4.1 It is considered that the fencing is inappropriate and contrary to Local Planning Policy and is unlikely to gain retrospective planning permission.
- 4.2 It is proposed to serve an Enforcement Notice in consultation with the solicitor requiring the removal of the fencing. It is proposed that a compliance period of 3 months is given. Authority is also sought to prosecute the owner in the event that the Enforcement Notice is not complied with.

5 Financial Implications

- 5.1 There may be legal costs associated with this course of action.

6 Conclusion

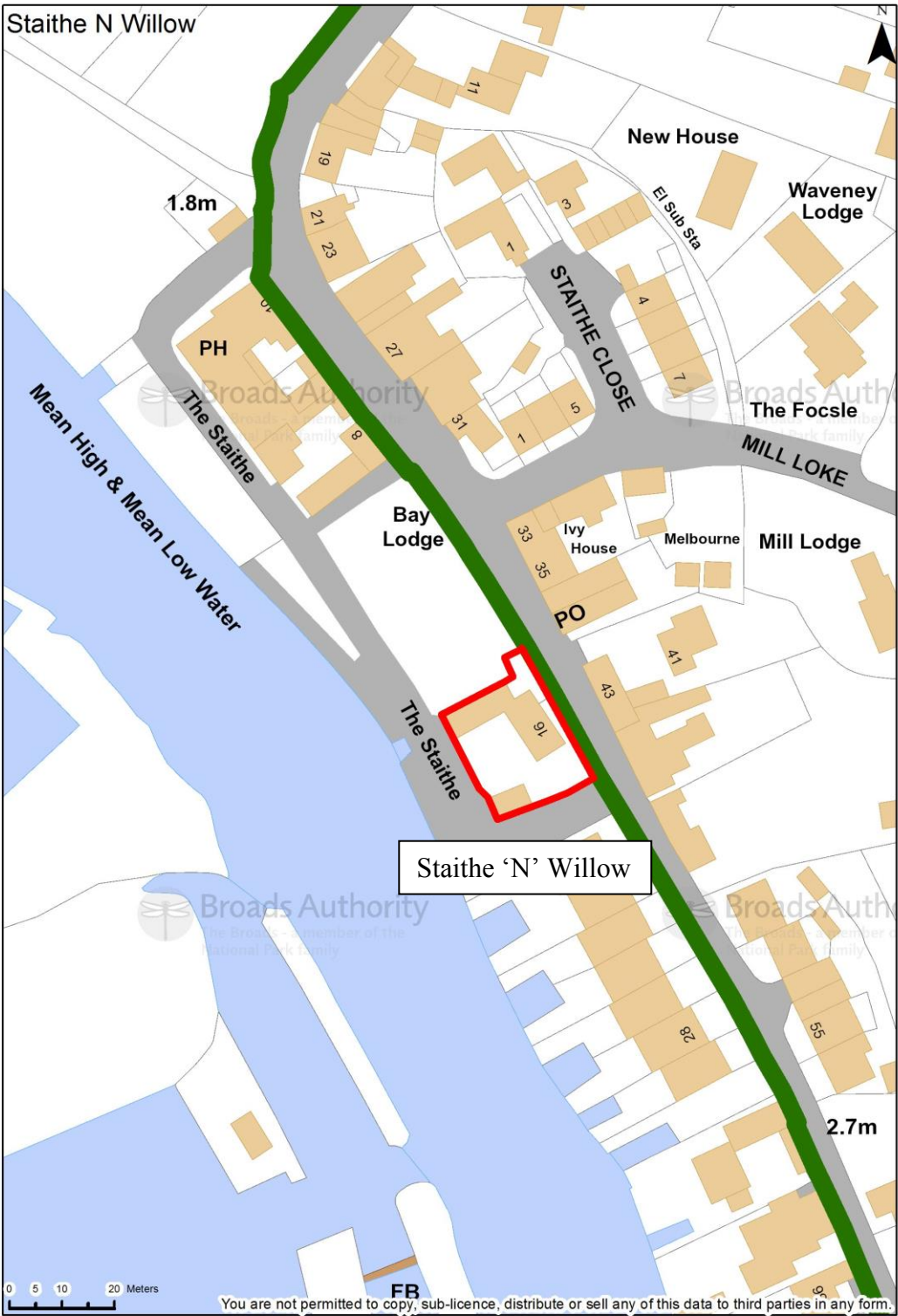
- 6.1 That authority is given for officers to take appropriate enforcement steps in respect of this breach of planning control.

Background Papers: Broads Authority DC Enforcement Files: BA/2013/0046/UNAUP1

Author: Steve Sewell
Date of Report: 18 November 2014

Appendices: APPENDIX 1 – Location Plan

APPENDIX 1



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