

**Enforcement of Planning Control
Enforcement Item for Consideration:
Horning: The Ferry Inn
Report by Head of Planning**

Summary: This report concerns unauthorised land raising, erection of fence and standing of a refrigerated trailer for storage.

Recommendation: That no further action be taken in respect of the land raising and fencing and that an Enforcement Notice be issued in respect of the trailer.

Location: The Ferry Inn, Ferry Road, Horning

1 Site and Location

- 1.1 Horning is one of the larger Broads villages and is located in the middle part of the River Bure. The centre part of the village falls within the Conservation area, but this does not extend to cover the area of The Ferry Inn.
- 1.2 The Ferry Inn is a large and busy public house and restaurant located downstream of the centre of the village and is bounded to the east by Horning Ferry Marina. It is located riverside and there are views from the river across the pub and its grounds to the boatyard site and the village beyond to the east. Access to The Ferry Inn is via a narrow road which is shared with the marina and a number of holiday properties. The entire site lies within Flood Risk Zone 3.

2 Previous Planning History

- 2.1 In September 2010 a complaint was received that a refrigerated trailer had been positioned on land to the rear of The Ferry Inn, Horning. The tenant landlord of The Ferry Inn advised that the premises were undergoing refurbishment and that the trailer was required for storage of food and kitchen equipment. Investigation at the time concluded that planning permission was not required as the trailer was mobile and was moved off-site periodically for re-stocking. Subsequently, the trailer was connected to services and fenced in, meaning that it was no longer mobile. Planning permission was therefore required.
- 2.2 In October 2010 a complaint was received that a 2m high closeboarded fence had been erected on the boundary between the car park at The Ferry Inn and Ferry marina, Horning. Due to the difference in height between the sites the

fence was over 2m in height on the Ferry Marina side and planning permission was therefore required. Subsequently the landowner installed trellising on top of the fence, increasing the height by a further 0.5m approximately.

- 2.3 In November 2010 a complaint was received that a large amount of soil and hardcore had been imported onto the site and used for land raising of an area to the rear of the car park which suffered periodic flooding. On a smaller scale these works could be considered de minimus or as maintenance, however due to the volume of material imported it constituted an engineering operation for which planning permission is required. In spring 2012 further material was brought on to the site and the land raised further.
- 2.4 In August 2012 Planning Committee authorised enforcement action in respect of the three breaches, following the failure of officers to achieve a negotiated solution with the tenant landlord through discussions in 2011 and 2012. Accordingly Enforcement Notices were served in October 2012 in respect of the trailer and the fence, requiring their removal, and investigations were undertaken in respect of the land raising and the impact of this on local hydrology and flooding.
- 2.5 Shortly after the serving of the Enforcement Notices, the District Councillor (Paul Rice) undertook to mediate between the tenant landlord and the LPA, advising that the tenant landlord was committed to resolving the matter informally and confident that a resolution could be achieved. Accordingly in November 2012 the Enforcement Notices were withdrawn.
- 2.6 Unfortunately, despite a number of site visits, meetings and correspondence, compliance was not achieved, although the height of the fence was reduced by approximately 45cm and the trellis removed from part of it. The imported material remained on site and there was again extensive flooding in Ferry Road in March 2013.
- 2.7 At its meeting on 13 September 2013 the Planning Committee resolved to serve an Enforcement Notice in respect of the trailer. The Committee accepted that the trailer provided essential storage capacity for the business, but it was considered that there were alternative storage options which could be pursued which would be more acceptable so a long compliance period was allowed in order to give time for these to be investigated and implemented. It was also resolved to take no action in respect of the fence and the land raising.
- 2.8 On 25 September 2013 the Enforcement Notice was served. This required the removal of the refrigerated trailer and the fencing surrounding it by 6 November 2015.
- 2.9 Various discussions took place with the tenant landowner in 2014 and 2015 around alternative storage options and/or the erection of a building to house the trailer, but no proposals were put forward, either formally or informally.

2.10 A site visit after the 6 November 2015 showed the trailer still in situ, surrounded by the fence.

3 Planning Breaches

3.1 On 10 December 2015 a site meeting was held with the tenant landlord, his manager and the landowner and the District Councillor. At this meeting the tenant landlord was clear that he was not intending to remove the refrigerated container as it provided essential food storage and he was not prepared to invest in an alternative structure whilst there remained a problem with flooding on the site. This attitude is regrettable, particularly given the long compliance period allowed. He also stated that the fence had been erected for health and safety reasons at the request of North Norfolk District Council.

3.2 During the site visit following the meeting it also became clear that there were other planning breaches, as follows:

a) A portakabin has been installed to the rear of the premises, adjacent to the refrigerated trailer. The tenant landlord stated that North Norfolk District Council had required him to provide this as separate kitchen and eating facilities for his staff who live at the pub.

b) A static caravan has been installed to the rear of the premises, adjacent to the portakabin. The tenant landlord stated that this was used to provide seasonal staff accommodation.

c) A high level of signage at the premises, including highly illuminated signage on the riverfront elevation.

3.3 No planning or advertisement consent applications have been submitted for any of this development, nor have any informal approaches been made.

3.4 It was also noted that land around the pub was being used for the standing of various trucks and a playbus, plus a number of bouncy castles. Whilst these may not constitute 'development', as they are not fixed structures, the incremental increase in the number of structures around the pub is having an impact on its appearance.

3.5 There is also a touring caravan situated next to the static caravan. If this is being used for separate residential purposes it is likely to be a breach of planning control.

4 Planning Policies

4.1 The planning policies below are relevant to the consideration of the above breaches.

4.2 The following Policies have been assessed for consistency with the National Planning Policy Framework (NPPF) and have been found to be consistent and can therefore be afforded full weight in the consideration of this matter.

Adopted Core Strategy (2007)
[Core Strategy Adopted September 2007 pdf](#)

CS1 – Landscape Protection and Enhancement

Adopted Development Management Policies (2011)
[DEVELOPMENTPLANDOCUMENT](#)

DP4 – Design

DP26 – Permanent or temporary dwellings for agricultural, forestry or other workers

DP27 – Visitor and community facilities and services

DP29 - Flood risk

Adopted Site Specific Policies (2014)
[Site-Specific-Policies-Local-Plan-11-July-2014](#)

HOR7 – Ferry Road, Horning

- 4.3 The following Policies have been assessed for consistency with the NPPF and have found to lack full consistency with the NPPF and therefore those aspects of the NPPF may need to be given some weight in the consideration of this matter.

Adopted Core Strategy (2007)
CS20 – Flood risk

Adopted Development Management Policies (2011)
DP28 – Amenity

5 The Planning Breaches and the Next Steps

- 5.1 It is clear from section 3 above that some of the planning breaches on the site have been the subject of previous enforcement action (which has failed to secure compliance), whilst others are more recent. For the sake of clarity it is useful to consider each breach and the options for resolution individually:

The refrigerated trailer

- 5.2 The continued standing and use of the refrigerated trailer is in direct breach of the Enforcement Notice of September 2013. It is clear from his comments and actions that the tenant landlord does not intend to remove it. Failure to comply with an Enforcement Notice is a criminal offence and punishable on conviction by an unlimited fine.
- 5.3 In situations of failure to comply with an Enforcement Notice, there are three main options for securing compliance, namely negotiation, prosecution and direct action. These will each have different timescales and costs, as well as differing prospects for success.

- 5.4 Looking first at negotiation, the tenant landowner has made it clear that he does not intend to remove the container as it provides his main food storage space for the pub, which has a busy restaurant. Given this and the fact that the retention of the container in its current form is not likely to be acceptable to the LPA due to its impact on the character and appearance of the area, there are likely to be fundamental obstacles to securing a mutually acceptable solution.
- 5.5 The second option is to prosecute the landowner for non-compliance with the Enforcement Notice. Non-compliance with an Enforcement Notice is a criminal offence and the landowner would suffer the consequence of this; in addition he would be likely to receive a fine. The timescales for achieving a prosecution are likely to range from six months if the landowner pleads 'guilty' to 18 months if a plea of 'not guilty' is entered and the matter goes to trial. It is estimated that the legal costs would be around £1,400 in the event of a 'guilty' plea, but considerably more if the matter were to go to trial. This is a matter where the defendant could choose to be tried in the magistrates' court or the crown court. The costs of a contested trial would be several thousand pounds and it is likely that junior Counsel would be required to assist. The costs of a trial in the crown court would be significantly greater than one in the magistrates' court but unfortunately no accurate figure of costs is feasible due to the varying factors not all of which are within the prosecution control such as venue choice, whether evidence is agreed or not, number of defence witnesses and suchlike. The prosecution advocate would of course seek to recover costs if successful, however the success of this will depend on unknown factors such as the views of the court on the day and the financial situation of the defendant
- 5.6 It should also be noted that a successful prosecution would still not actually achieve compliance and the LPA would need to pursue the landowner further to have the site cleared, although it is recognised that a pending prosecution can be effective in prompting compliance.
- 5.7 The third option would be for the Local Planning Authority to take direct action under s.178 Town and Country Planning Act 1990 which states; 'S.178(1) Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may – (a) enter the land and take the steps; and (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so'. The direct action would involve the removal of the container.
- 5.8 In considering direct action, the LPA must be mindful that this is an approach of last resort. It must be satisfied that the degree of harm to the interests protected by planning control justifies such action, that the action is required to uphold and enforce planning control embodied in the Enforcement Notice. Furthermore, it must consider the personal circumstances and impact on the individuals of removal.

- 5.9 In this case, the harm being perpetuated includes the harm to the protected landscape of the Broads and it is the case that in principle this would justify such action. The situation has persisted now for over 5 years and there has been no resolution through negotiation, so there is a need to bring the matter to a close both in order to remedy the harm and protect the credibility of the planning system. With regard to the impact on the tenant landlord, however, the forced removal of the refrigerated trailer and the storage it offers would be likely to have a very significant adverse impact on the business in the short time, and an on-going significant adverse impact until alternative storage could be found. Overall, therefore, whilst not wishing to underestimate or diminish the harm being caused to the protected landscape of the Broads by the unauthorised development, it is not considered that the use of direct action would be proportionate or capable of justification in this case at this time.
- 5.10 It is considered in this case that the prosecution route would be most expedient as this would further the LPA's objective of resolving the situation on site, without adversely and disproportionately impacting on the operation of the business at this time. The likelihood of a successful prosecution is high as the question for the Courts is simply a factual one - "Has there or has there not been compliance?". The LPA is also likely to be able to recover the costs of a successful prosecution. If the tenant landlord persists in the refusal to remove the container even after a successful prosecution, the LPA will be better able to justify direct action.

The Portakabin

- 5.11 The portakabin which has been installed is a standard unit measuring approximately 3m x 8m x 3m high. It is located next to the refrigerated container and is understood to provide kitchen and amenity accommodation for staff. It is a wholly utilitarian structure which, whilst partly concealed in longer views by the closeboarded fence on the boundary with Ferry Marina, does not make a positive contribution to the character and appearance of the Conservation Area.
- 5.12 The tenant landlord has advised that he was required to install it by the Environmental Protection team at North Norfolk District Council as the pub is treated as a House in Multiple Occupation (HMO) due to the number of staff who live there. The Environmental Protection team at North Norfolk District Council advise that for reasons of food safety and hygiene the pub staff are not permitted to use the pub kitchen for the cooking of their own meals. They advise that usually one set of separate kitchen facilities is required per 5 staff residents, but they have relaxed this requirement here as the staff do have some meals provided for them. They have not 'required' the facility (which offers only a microwave and a seating area in any case) to be located in the portakabin and there is no reason it could not be provided within the main building, indeed there was formerly a kitchen on the first floor but this has been converted to a bedroom.
- 5.13 In considering how to address this particular breach, it is useful to look at the purpose and need for the structure. The tenant landlord has advised that in

the main season he employs up to 40 staff and he needs to provide them with appropriate facilities, including a separate kitchen and eating area. Whilst the staffing requirements and arrangements for a business are not a matter for the planning process, there is a land use dimension where these requirements and arrangements purportedly result in a need for on-site accommodation which can only be provided in separate structures. In the normal process of considering the acceptability of such structures (ie through the planning process on receipt of a planning application), an LPA could reasonably expect to see details of the need for the accommodation, an explanation of what other options had been considered and a justification for the proposed solution. In this sort of situation, where the LPA is dealing with breach of planning control, no such information is available nor has it been presented in any of the discussions.

- 5.14 The Ferry Inn is a substantial building which has undergone extensive internal refurbishment in the last 5 years. On the ground floor it comprises a large main bar with tables and seating, a large separate restaurant/carvery area, a large riverside lounge with further tables and seating and an american style brasserie bar; in total the premises have a floor area of approximately 700 m². The kitchen, service areas and toilets are also on the ground floor. Given the size of the accommodation available, it is considered unlikely that 24m² (the size of the portakabin) of space cannot be made available for the provision of essential staff facilities and it is noted that the former kitchen on the first floor has been converted to a bedroom.
- 5.15 Development plan policies seek to allow extensions to existing facilities where this is required and will support the viability of the community, and, inter alia, where there would be no policy conflict. In this case, it has not been demonstrated that staff facilities cannot be provided within the existing building, nor that this purported need outweighs the adverse impact the structure has on the character and appearance of the Conservation Area. It is recommended that an Enforcement Notice be served to require the removal of the structure.

The static caravan

- 5.16 The static caravan which has been installed is a standard unit measuring approximately 2.5m x 8m x 3m high. It is located next to the Portakabin and is understood to provide additional sleeping accommodation for staff. As with the portakabin, it benefits from the screening provided by the closeboarded fence but overall does not make a positive contribution to the character and appearance of the Conservation Area.
- 5.17 As at 5.13 above, in considering how to address this particular breach, it is useful to look at the use to which the structure is being put. The tenant landlord has advised that in the main season he employs up to 40 staff and he cannot accommodate them all in the pub building, so the static caravan is used as additional staff accommodation.

- 5.18 Development plan policies seek to allow temporary accommodation for rural workers, including in mobile homes, where there is a functional need for a worker to live at or very close to their place of work and this functional need cannot be met either by an existing dwelling on the site or in the locality. In this case, it is apparent that the existing accommodation in the main pub premises is already being used for staff accommodation, so there does not appear to be any functional need for the additional accommodation; additionally, the site is on the edge of Horning village where there is accommodation available for rent or purchase. The standing and use of the static caravan is contrary to the provisions of the development plan and it is recommended that an Enforcement Notice be served to require the removal of the structure.

Signage and lighting

- 5.19 The exterior of the premises are the subject of a high level of signage, including banner signs, fascia lettering and projecting signs. Other than permitted exceptions, the installation of signs requires express consent under The Town and Country Planning (Control of Advertisement) Regulations 2007. These also make it a criminal offence to install signs without the appropriate permissions, however typically LPAs tend not to take action other than against the most intrusive of signs. This is usually for reasons of resources, rather than an acquiescence.
- 5.20 The unlawful signs at The Ferry Inn are not atypical of commercial signs in the Broads. What marks The Ferry Inn out, however, is the high level of illumination of these signs (and the building more generally) which results in a striking neon presence at night, which is visible for some considerable distance.
- 5.21 In considering how to address this particular breach, it is useful to consider what the LPA is seeking to achieve here. Whilst the signs are unlawful, unless the Authority wishes to address all unlawful signs across the whole area, any action here would be seen to be inconsistent and it may be better to address signage on a more comprehensive basis when priorities allow. Very significant improvements, however, could be made to the overall illumination of the premises and this might be best approached through negotiation.

Other issues

- 5.22 Investigations in respect of the position with regard to the standing of vehicles, the playbus, bouncy castles and touring caravan are currently ongoing and Members will be updated verbally.

6 Summary

- 6.1 This is a site where there is a long history of breaches of planning control and where there has been no progress made towards resolution, despite a lot of

engagement and assistance from officers and the District Councillor. On the contrary, the breaches have increased.

- 6.2 Furthermore, the breaches have not been committed in error, but are deliberate. In September 2015 the Government announced their concern about the "harm that is caused where the development of land has been undertaken in advance of obtaining planning permission", introducing a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals.
- 6.3 In this case, it is not considered that the development which has taken place is acceptable and the deliberate nature of the breaches reinforces the justification for seeking to bring the matter to an end.

7 Financial Implications

- 7.1 There are will be legal costs associated directly with this course of action.

8 Recommendation

- 8.1 It is recommended that prosecution proceedings be instigated in respect of the refrigerated trailer and Enforcement Notices be served in respect of the Portakabin and the static caravan.
- 8.2 Members' views on how to progress the matter of the signage and lighting is sought.

Background papers: Enforcement File

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Appendices: APPENDIX 1 - Site plan

APPENDIX 1

BA/2015/0010/BOCP2 - New static caravan, a portakabin, 2x lorry/trucks, bouncy castle and playbus.

