

**Enforcement of Planning Control
Enforcement Item for Consideration:
Burgh St Peter: Waveney Inn and River Centre**
Report by Planning Officer (Compliance and Implementation)

Summary: This report concerns the construction and use of a number of yurts at the Waveney River Centre.

Recommendation: Members' views are requested

Location: Waveney Inn and River Centre, Staithe Road, Burgh St Peter

1 Background

- 1.1 The Waveney River Centre (WRC) is an established holiday complex consisting of a boatyard, holiday accommodation, camping and caravan park, public house and associated facilities. Holiday-hire boats and private boats moor up at the centre as well as day boats and the site operates a hire fleet. It is located on the River Waveney approximately 11.2 km downstream of Beccles in a fairly remote and rural location.
- 1.2 Set within the central area of the WRC is an area measuring approximately 1 hectare which is used for camping. A Certificate of Lawful Use was issued for the use of this land for standing of touring caravans and pitching of tents in 1997 and this authorises this use (reference 97/0093). In 2013 a part-retrospective application was submitted for the construction and use of six camping pods to the north-west of the camping area; this was considered by Planning Committee at their meeting on 8 November 2013 and planning permission subsequently issued (BA/2013/0310).
- 1.3 On 22 June 2017 a scheduled monitoring visit was undertaken at the WRC and officers noted that three timber platforms had been constructed in the camping area. These were being used as bases for tents (described as yurts), which were affixed to the platforms and connected to electricity and equipped with woodburning stoves, beds and other furniture. In an email on 7 July further to the visit the landowner was advised:

“These new additions are within the area where the use of the land is covered by a Lawful Development Certificate for the pitching of tents (BA/1997/7082/HISTAP). By virtue of the raised timber platforms, their fixing to the platforms, scale and likely presence on site for the greater part of the year, these are considered to be operational development and thus require planning permission”.

The landowner was asked to submit a retrospective planning application by 31 August 2017.

2 Subsequent correspondence

2.1 There has been considerable correspondence on this matter between the Local Planning Authority (LPA) and the operator since the initial email on 7 July. It is not necessary to set out all of the correspondence, but the following covers the salient points:

- 10 July: The landowner advises that the 'yurts' are covered by the Lawful Development Certificate and are a lawful (ie permitted) use within the site.
- 18 July: LPA advised that case law on yurts is not unequivocal and requested specific information in order to determine whether or not the yurts are operational development. The list of information requested is attached at Appendix B. [NB The LPA had sought legal advice from NPLaw on the legal position and this advice informed the content of the email].
- 21 July: Landowner reiterates his advice that the yurts are not operational development, but frame tents are covered by the Lawful Development Certificate for tents.
- 21 July: LPA advises that it is looking at whether or not the yurts are operational development and reiterates the request for information. (Notes that LPA can require the information through a formal PCN).
- 23 July: Landowner reiterates his view that there has been no operational development. Advises that LPA should not use a PCN for "investigative trawls" but must have reasonable grounds to suspect a planning breach.
- 26 July: LPA reiterate that case law is mixed, there are various factors to consider and it is simply trying to establish whether operational development has occurred. Explains that it is trying to obtain information voluntarily, but may have to consider PCN if not provided.
- 1 August: Landowner asks what the various factors are. States that LPA is "trawling for information" to try to find unauthorised development and that the site is being targeted for enforcement action. Action is disproportionate and BA is wasting public money.
- 7 August: LPA advises factors are as set out in questions raised on 18 July. States that the yurts are present, case law is complex and LPA is simply trying to determine the matter of operational

development. Advises that considering taking the matter to Planning Committee for a steer.

- 8 August: Landowner outlines national advice on enforcement, reiterating view that the LPA is “fishing for information” to try to find a breach of planning control. Advises that he will not submit an application.
- 10 August: LPA replies that it is simply seeking to determine whether or not the yurts, which are unquestionably present, are operational development. Advises that if he refuses to provide the information the matter will be referred to Planning Committee.
- 11 August: Landowner again reiterates his advice that the yurts are not operational development and are within an authorised area, therefore there is no breach. He questions need to take the matter before Planning Committee.
- 21 August: LPA advises that as information has not been provided it has been unable to make an assessment, nor has the landowner’s independent planning advice been shown to the LPA. Advises that the LPA has “a legal duty to investigate suspected breaches of planning control and have discretion over whether to pursue when it is concluded there has been a breach, having assessed the expediency of doing so. Given that you are a Member of the Navigation Committee this decision needs to be transparent so we need to take it to the Planning Committee so the discussion on this is transparent”
- 23 August: Landowner reiterates his advice that no operational development has taken place. With regard to Planning Committee he states “The fact that I am a member of the navigation committee has no bearing on enforcement matters. If you feel that enforcement action is required then you would need to take it to committee regardless of my status as a member. If you do not feel that enforcement action is expedient then the case should be closed, in accordance with your normal practice.”

2.2 It is clear from the above that an impasse has been reached. The landowner has repeatedly failed to provide the requested information. He has also indicated that he does not, in any event, intend to submit a planning application if one is required.

3 Investigating unauthorised development

3.1 Prior to considering how best to proceed, it is worth noting the usual sequence of events in a situation like this where the LPA has observed development which may need planning permission. The LPA would first obtain the information it needed in order to determine whether or not what had

taken place constituted development. This might be obtained through asking questions of the landowner (as has happened here), or of other parties or agencies or the LPA might undertake an inspection. Having obtained this information it would then be able to make an assessment of whether or not the works constitutes development.

- 3.2 If it was determined that no development had taken place, the matter would be closed. If it was determined that development had taken place, an assessment would be made of the acceptability of that development and whether or not it would be likely to get planning permission.
- 3.3 If it was determined that it was acceptable and would be likely to get planning permission, the usual process would be for the landowner to be asked to submit a retrospective application to regularise the matter. Members will recall having previously seen retrospective applications that have arisen through this process, both at Planning Committee and on the monthly report on delegated decisions. For example, the retrospective application for change of use to holiday let at Point House, Yarmouth Road, Thorpe St Andrew (2017/0051/CU) was reported to the August meeting (*under delegated decisions*). If it was determined that the development was not acceptable (and could not be made acceptable), the usual process would be for officers to commence discussions with the landowner around remedying the breach by removing the development. Members will be aware that this latter process can be lengthy. For example, the removal of the unauthorised fencing and storage use on agricultural land at Thurlton, which was finally concluded through direct action, took almost 5 years.
- 3.4 There are situations which arise where a development has taken place without planning permission and although the landowner is advised that it is acceptable and would get planning permission, he declines to submit a retrospective application. In such cases, in deciding how to progress the matter the LPA has to make an assessment of 'expediency'. The issue of 'expediency' is a key principle of planning enforcement and the adopted Local Enforcement Plan explains it as follows:

"[Expediency]... may be explained as an assessment of the harm that is being caused by the breach. Harm may arise through a range or combination of factors, for example:

- Adverse impact on visual amenity due to poor design or materials;
- Adverse impact on neighbouring amenity due to noise, overlooking or loss of privacy;
- Inappropriate or conspicuous development that has an adverse impact on a protected landscape or Conservation Area;
- Loss of protected trees."

- 3.5 The Local Enforcement Plan notes that the more harm that is being caused then the more likely it is that it will be expedient to take enforcement action due to the necessity to stop the harm; conversely, if there is little harm it may not be expedient to pursue the matter. On this basis, if the unauthorised

development for which the landowner will not submit a retrospective planning application is acceptable (ie it would get planning permission) then clearly it would not be expedient to pursue the matter and the file would be closed.

- 3.6 In this case, regrettably, the LPA has not proceeded past the initial information gathering stage and is still not in a position to determine whether or not the works that have taken place constitute development.

4 Next steps

- 4.1 As outlined at 3.1 above, the usual sequence of events would result in the LPA having sufficient information in order to determine whether or not development had taken place. This has not been provided by the landowner, however the LPA could do one of the following to obtain this:

- a) Undertake a site inspection to ascertain the degree of permanence of the structures, their method of fixing and the ease with which they can be dismantled; or
- b) Serve a Planning Contravention Notice (PCN) on the landowner requiring answers to the questions initially posed on 7 July. It should be noted that failure to respond to a PCN is a criminal offence and attracts a fine of up to £1,000 on summary conviction, whilst the provision of deliberately false information attracts a fine of up to £5,000.

- 4.2 It is noted that (a) is likely to be disruptive to any users occupying the yurts, whilst in considering the serving of a PCN (b), the LPA should be clear on how it would pursue this should the landowner continue to decline to respond.

- 4.3 In order to progress the matter in accordance with the usual procedure, further information is required. The LPA has been seeking to obtain this in the usual way, but has been unsuccessful to date and cannot make an unequivocal determination of whether or not development has taken place without it.

- 4.4 There is an alternative approach, which is simply to move to the assessment stage and consider whether or not the works which has taken place is appropriate and would get planning permission. This does not accord with the usual sequence of events, but does move the matter on. This does not directly address the question of whether or not the works are development, but for all practical purposes this only becomes an issue if the works are unacceptable.

- 4.5 If, following such an assessment, it were to be considered that the development is acceptable, the usual procedure would be to request a retrospective application in order that it can be regularised. In this case, the landowner has indicated that he will not submit an application so it would be necessary to move to the assessment of the expediency of action, as set out at 3.4 above. Again, this does not accord with the usual sequence of events,

but would move the matter on. If it were considered that it was not expedient to pursue the matter the case would be closed.

5 Summary and conclusion

5.1 The LPA has been seeking to obtain information in respect of potential development at WRC. The LPA is aware that the structures in question exist as a matter of fact and is investigating them, as it is lawfully entitled to do and as it would do in any such case. The landowner has repeatedly declined to provide the requested information.

5.2 There are two courses of action which the LPA could take:

1. The LPA proceed with its usual process and seek to obtain the necessary information through either a site inspection or the service of a PCN; or
2. The LPA move straight to an assessment of the acceptability of the development.

6 Financial Implications

6.1 There may be legal costs associated with option 1, depending on the actions of the landowner.

7 Recommendation

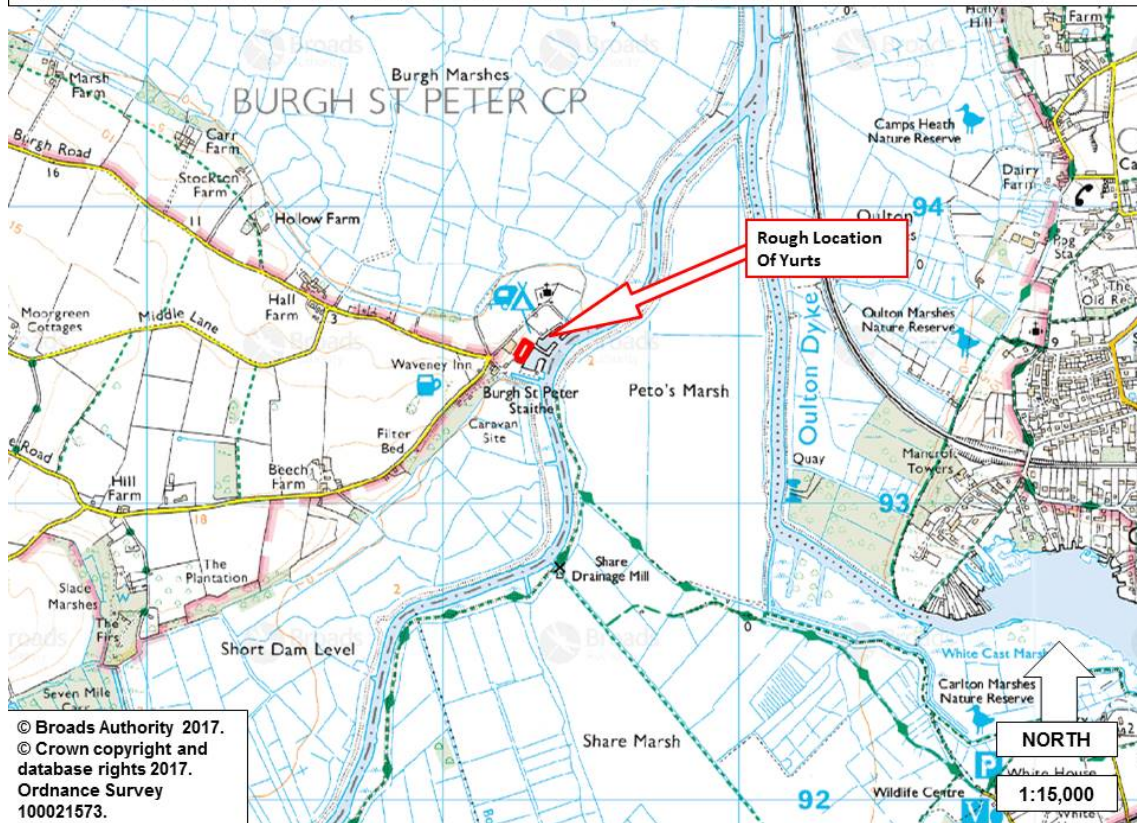
7.1 Members views are requested.

Author: Tony Risebrow
Date of report: 24 August 2017

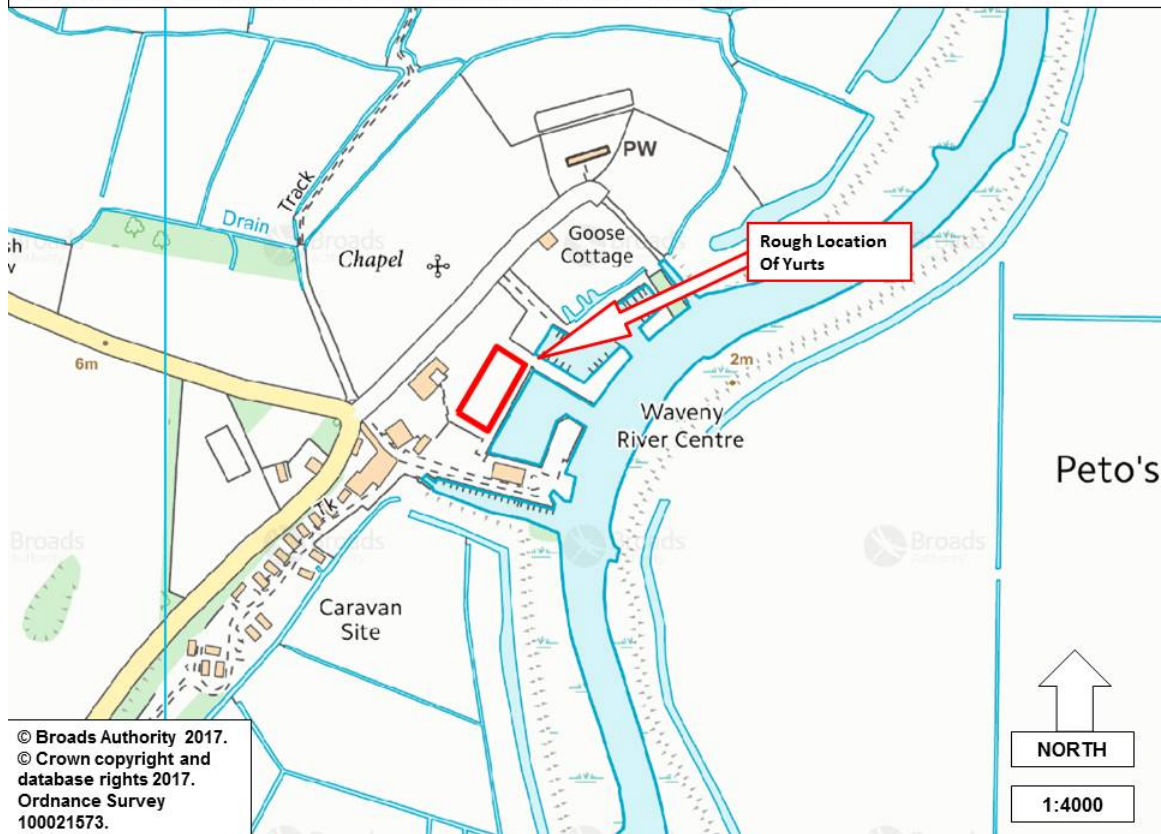
Appendices: Appendix A Site plan
Appendix B Extract from email 18 July 2017

APPENDIX A

BA/2016/0356/COND - Waveney Inn And River Centre , Staithe Road, Burgh St Peter, NR34 0BT



BA/2016/0356/COND - Waveney Inn And River Centre , Staithe Road, Burgh St Peter, NR34 0BT



Extract from email 18 July 2017

“There is some case law on this matter which is helpful in identifying whether yurts are operational development or not, however it is not unequivocal. I would therefore be grateful if you could answer each of the following questions:

- What are the dimensions of each yurt?
- What the dimensions of each timber platform?
- How are the yurts assembled? How long does this take? How many people does it require?
- How are the yurts fixed to the timber platforms? How is the floor within the yurts fixed?
- You have said the timber platforms are not fixed to the ground, what do they sit on? What is beneath them? Is there are any form of anchor into the ground or support on the ground?
- How are the timber platforms assembled? How long does this take? How many people does it require? How are they moved?
- I note they use an electrical connection, are they plumbed in?

Your answers to these questions will help us conclude whether there has been operational development”