

Planning Committee

08 January 2021

Agenda item number 8.1

BA/2017/0035/ENF – Enforcement at Brograve marshes, Coast Road, Waxham NR12 0EB

Report by Head of Planning

Summary

Unauthorised development has taken place comprising the excavation of a scrape on land at Brograve marshes. An appeal against the refusal of planning permission to retain the scrape has been dismissed and the site will need to be restored. An Enforcement Notice should be served in order to prevent the scrape becoming immune from enforcement action before this work is complete.

Recommendation

To serve an Enforcement Notice.

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1. Site location

- 1.1. The site is located within the Brograve marshes area, between Hickling Broad and the coast at Horsey Corner. It is to the immediate east of Waxham New Cut, on the opposite bank to the grade 2 listed Brograve Mill. Land to the north-west comprises an extensive dyke network used predominantly as grazing marsh, land to the south-west is an area of open marsh known as Brayden Marshes and the land to the south-east is mainly arable farmland.

- 1.2. The Brayden marshes area and Horsey Mere, which is located around 1km to the south, are designated as Ramsar Sites, Special Protection Areas, Special Areas of Conservation and Sites of Special Scientific Interest.
- 1.3. The site is within the North Norfolk Area of Outstanding Natural Beauty (AONB).

2. The unauthorised development

- 2.1. The development comprises an excavated scrape of approximately 91m x 33m in size and approximately 0.5m in depth. It is roughly rectangular in shape and with a small promontory to one end and two evenly spaced islands of approximately 17m diameter each beyond that. This water body is fed by a channel that links to the dyke running along the edge of the grazing marsh.
- 2.2. The scrape was dug as a feature within the marshes to attract wildfowl. Some of the spoil which was excavated has been spread on the marshes, while some has been used to create shallow bunds.

3. The planning issues

- 3.1. The scrape is understood to have been dug at some point in late 2017. The Broads Authority became aware of in November of that year and discussions were held during 2018 about how to resolve the matter. A planning application to retain the feature was submitted in November 2018 and discussions about what might be an acceptable landform continued through 2019. The landowner had prolonged discussions with the Internal Drainage Board (IDB) about whether or not he could retain the connection to the IDB drain and this delayed the determination of the application.
- 3.2. The planning application was refused on three grounds relating to the landscape impact in February 2020. An appeal against the refusal was submitted in July 2020.
- 3.3. The decision dismissing the appeal was received on 8 December 2020. In his decision, the Planning Inspector stated:

“... (this) unnatural, engineered feature causes a significant degree of harm to the intrinsic character of the Broads landscape. Notwithstanding the presence locally of other flight ponds, such a feature clearly conflicts with policies SP7 and DM16 of the Local Plan, as well as paragraph 172 of the Framework, insofar as these seek proposals be both appropriate to, and conserve and enhance, the landscape character of the Broads.”

4. Enforcement action

- 4.1. The Broads Authority has a Local Enforcement Plan, which was adopted on 8 July 2016 and sets out its approach to dealing with enforcement matters. At paragraph 3.7 it states that “...Whilst the law gives a Local Planning Authority strong legal powers to deal with breaches of planning control, in most cases the first choice of approach is to

use negotiation to reach a satisfactory resolution in a timely manner. The negotiations would aim to achieve one of the following outcomes:

- To apply for retrospective planning permission if the development is acceptable and would have got planning permission in the first place; or
- To amend the development so it is acceptable and then apply for retrospective planning permission if the development is capable of being acceptable; or
- To amend the development so it is in accordance with the approved plans if the amendments are acceptable; or
- To remove the unauthorised development or cease the unauthorised use if the development is unacceptable and incapable of being made acceptable”

- 4.2. In this case, the development was considered at the outset to be unacceptable. The negotiations during 2018 were aimed at trying to resolve the situation informally, with these discussions continuing in 2019 after the submission of the retrospective application. The application was refused in February 2020 when it became clear that there was no prospect of a negotiated resolution.
- 4.3. The appeal decision supports the view taken by officers that the development is unacceptable.
- 4.4. It is now necessary to remedy the breach by the removal of the unauthorised feature. This is in accordance with the Local Enforcement Plan, which requires the removal of an unauthorised development “if it is unacceptable and incapable of being made acceptable” and is required to correct the landscape impact.
- 4.5. Remedying the breach will involve the infilling of the scrape. This is not going to be straightforward as the marsh is wet until late in the year and care will need to be taken to avoid breeding birds and not to compromise the soil structure. In correspondence, the agent for the landowner has indicated that this cannot be undertaken until May 2021 at the earliest. Officers will discuss a timescale with the agent and/or the landowner and will be mindful of the constraints, but the breach needs to be remedied and within a reasonable period.
- 4.6. Planning law says that if unauthorised operational development persists for four years without any formal action being taken against it, it becomes immune from enforcement action. This is set out in section 171B of the Town and Country Planning Act 1990. Should restoration be delayed, therefore, for whatever reason, there is a risk that the development will become immune from enforcement action simply by the passage of time. The deadline for this is late 2021. This risk can, however, be addressed by the serving of an Enforcement Notice which will ‘stop the clock’.
- 4.7. Prior to serving an Enforcement Notice the Local Planning Authority (LPA) must be satisfied that, first, the development being enforced against is unacceptable and,

second, that enforcement action is expedient having regard to harm, proportionality and consistency.

- 4.8. In terms of the acceptability of the development, the appeal decision has confirmed the LPA's view that it is unacceptable and the comments of the Planning Inspector have been noted.
- 4.9. Considering expediency, the 'significant degree of harm to the intrinsic character of the Broads landscape' has already been noted, so it is not the case that a simple remedy such as an Enforcement Notice – which will require the restoration of the site to its former condition – is a disproportionate approach to address significant harm. This is also consistent with the approach taken in similar cases, such as recently at Thorpe next Haddiscoe where the objective was to remedy landscape harm.
- 4.10. Finally, as is noted in the Local Enforcement Plan, whilst the law gives an LPA strong legal powers to deal with unauthorised development, the preferred approach is always to seek to negotiate a solution. As has been set out above, there was a long period both prior to and during the consideration of the application when discussions took place, but no resolution was achieved. Overall, it is considered that enforcement action in the form of an Enforcement Notice can be justified.

5. Financial implications

- 5.1. The service of Enforcement Notices will require officer time; any costs associated with administration will be met from the existing planning service budget
- 5.2. If compliance is not achieved voluntarily there will be costs associated with enforcing this. Members will be advised of progress through the regular update to Planning Committee, so there will be the opportunity to consider any additional costs.

6. Conclusion

- 6.1. The unauthorised development at the site is unacceptable and an appeal against a refusal of planning permission has already been dismissed. There is no prospect of a negotiated solution.
- 6.2. This is also a case which has been characterised by delay and negotiations which achieve no resolution. There is a risk that the unauthorised development will become immune from enforcement action by the passage of time if there is any delay to the restoration so it is recommended that an Enforcement Notice is served. This will set out what is required to be done to remedy the breach, so will be a useful schedule for the landowner, and will have the effect of 'stopping the clock'. It is recommended that a compliance deadline of 31 August 2021 be set.

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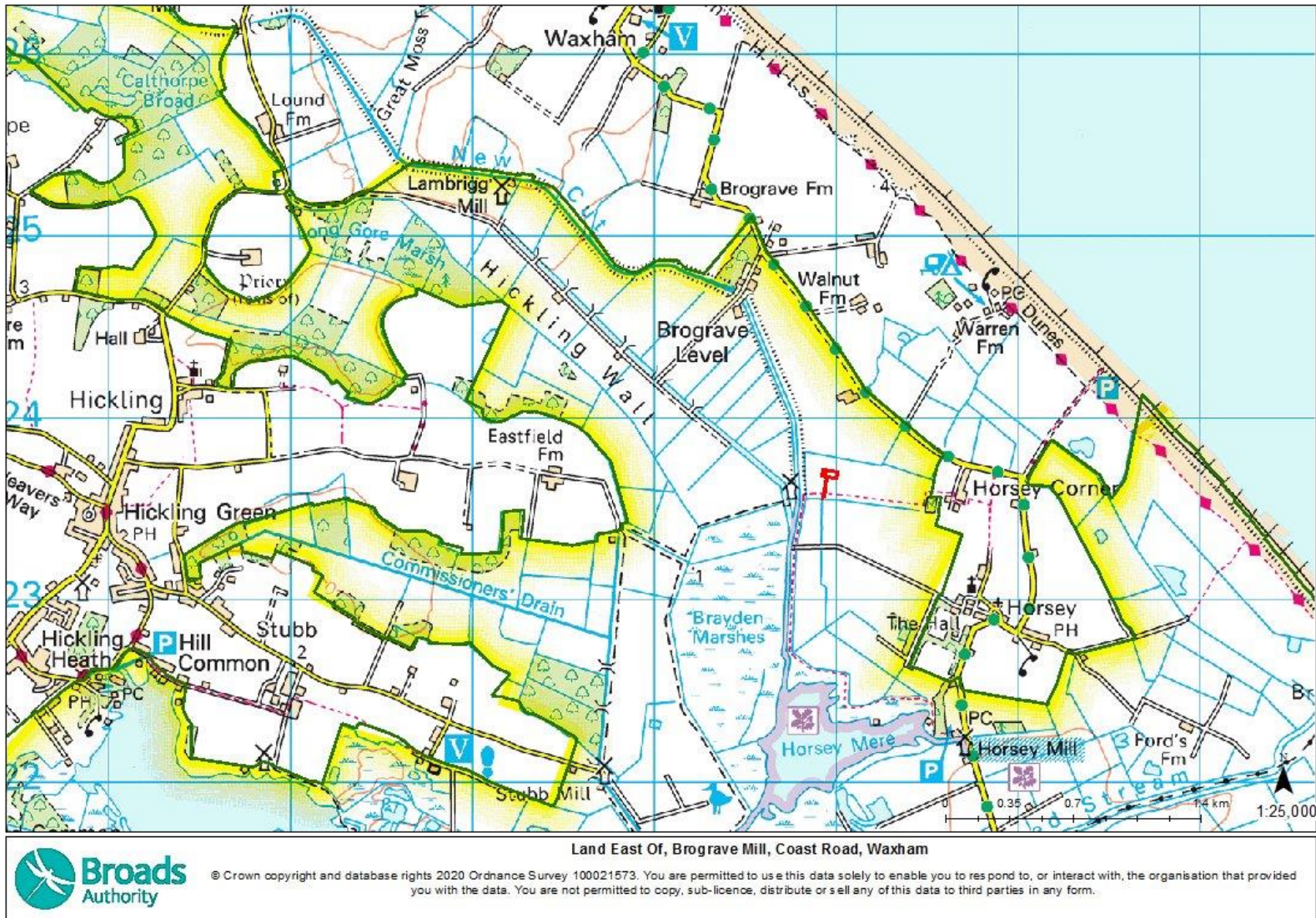
Date of report: 11 December 2020

Background papers: Enforcement file BA/2017/0035/ENF, planning file BA/2018/0463/FUL and appeal file BA/2020/0004/REF

Appendix 1 – Location map

Appendix 2 – Appeal decision

Appendix 1 – Location map





Appeal Decision

Site visit made on 28 October 2020

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Appeal Ref: APP/E9505/W/20/3256122

Land adjacent to Brograve Farmhouse, Coast Road, Waxham, Norfolk NR12 0EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Harvey against the decision of the Broads Authority.
 - The application Ref BA/2018/0463/FUL, dated 1 November 2018, was refused by notice dated 5 February 2020.
 - The development proposed is to retain a scrape which has already been dug on land to the east of Brograve Farmhouse, Coast Road, Waxham, Norfolk NR12 0EB.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The scrape in place appears to be as shown in the submitted plans, although the water levels at the time of my visit were high, covering the dug edges.

Main Issue

3. The effect the scrape has on the landscape character of the area.

Reasons

4. The site is within an Area of Outstanding Natural Beauty (AONB), as well as that of the Broads Authority. The scrape is within a marsh currently used to keep cattle. Such grazing marshes, which are drained by networks of straight dykes, comprise a characteristic wetland feature of the Broads landscape. Paragraph 172 of the National Planning Policy Framework (the Framework) requires that great weight should be given to conserving and enhancing landscape and scenic beauty in the Broads and AONBs which, along with National Parks, have the highest status of protection in relation to these issues.
5. The scrape is roughly rectangular in shape, with straight edges and rounded corners, and has a small promontory to one end and two evenly spaced islands beyond that. This water body is fed by a channel that links to the dyke running along the edge of the grazing marsh. As a man-made feature, this particular arrangement differs from the prevailing context of a mainly empty marsh landscape, traversed by a lattice of drainage dykes. In this context, the scrape comprises a somewhat alien feature. Whilst other water bodies in this area of the Broads might historically also relate to human works, these generally have irregular shapes and more naturalised, less well-defined edges.

6. Unlike more visually prominent man-made features, such as the modern farm-buildings which also dot this Broads landscape, above water level the scrape is a two-dimensional feature. Within an expansive, mainly very flat landscape, it is not prominent in views other than in positions quite near to its edges. From such close quarters, the overall form of the scrape is less perceptible, appearing not quite as discordant than as viewed on plan.
7. Nevertheless, despite the reduced visual accessibility, such an unnatural, engineered feature causes a significant degree of harm to the intrinsic character of the Broads landscape. Notwithstanding the presence locally of other flight ponds, such a feature clearly conflicts with policies SP7 and DM16 of the Local Plan¹, as well as paragraph 172 of the Framework, insofar as these seek proposals be both appropriate to, and conserve and enhance, the landscape character of the Broads.
8. Planning law requires that this appeal be determined in accordance with the development plan, unless material considerations indicate otherwise. The scrape and connecting channel include measures to reinstate land drainage mechanisms and drinking places for livestock, although neither of these farming benefits require the scale and shape of water body that has been dug. The scrape could provide some benefit to wildlife, through the additional water space provided. However, the design is less than optimal for nature conservation, for example by lacking the shallow fringes that might benefit wading birds, and so any such benefits are likely to be relatively small.
9. The scrape occupies a grazing marsh adjacent to a Natura 2000 site covered by overlaying designations providing protection through the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). As a flight pond, and by potentially focusing and intensifying wildfowling in this location, the scrape could likely have, indirectly, a significant effect on the adjacent Special Protection Area, through shooting disturbing wintering wildfowl. However, reaching a firm conclusion on this matter would require more information than is provided with this appeal. As competent authority under the Habitats Regulations, it would also require me to seek further advice from Natural England.
10. In this case, there is not the need to reach a conclusion as to whether or not this development satisfies the Habitats Regulations. This is because the farming and possible nature conservation benefits identified would not amount to material considerations of such weight as to indicate my decision be made otherwise than in accordance with the development plan, with which clear conflict is found.

Conclusion

11. For the reasons set out above, having taken into account all other matters raised, I therefore conclude that the appeal should be dismissed.

Jonathan Price

Inspector

¹ Local Plan for the Broads 2015-2036 adopted 17 May 2019.