

# Planning Committee

08 November 2019

Agenda item number 9

## Enforcement of planning control: Blackgate Farm, High Mill Road, Cobholm, Great Yarmouth

Report by Head of Planning

---

### Summary

Unauthorised development has taken place at Blackgate Farm comprising the surfacing of the site, the installation of services and the standing and use of 5 static caravan units for residential use for the purposes of a private travellers' site.

### Recommendation

That an Enforcement Notice be served.

---

## Contents

1.	Site location	1
2.	The unauthorised development	2
3.	The planning issues	3
	The acceptability of the development	3
	The expediency of enforcement action	5
4.	Material considerations	7
5.	Human Rights	8
6.	Conclusion and recommendation	9

### 1. Site location

- 1.1. The site is located to the west of Great Yarmouth, immediately north of the Gapton Hall Retail Park and to the west of the A47 (formerly A12). The land to the north of the site is known as Cobholm Island and is divided into multiple plots with a variety of uses, including commercial (including scrapyards), residential, grazing land and allotments. To the immediate west is a small marsh and beyond this the landscape opens out to the

marshes which border Breydon Water to the north. Directly across the A47 to the east is a small area of open ground, with the Tesco superstore further to the north.

- 1.2. The site comprises a residential plot known as Blackgate Farm which measures approximately 50m wide x 130m long and is bounded by 2m high tall boundary walls and fences. The entire plot has been laid to asphalt. A large, detached chalet bungalow occupies the northern part of the plot with an area for private amenity space adjacent to the bungalow separated from the remainder of the plot by 2m tall fencing.
- 1.3. The site is accessed via an unmade road off of Gapton Hall Road which is located 40m south of the Gapton Hall roundabout. The Gapton Hall Road provides access to the Gapton Hall Retail Park and the eponymous industrial estate. The unmade road which accesses the subject site runs parallel to the A47 and also accesses the land and properties at Cobholm Island.
- 1.4. The site is identified on the Environment Agency's Flood Risk Maps as being in Flood Risk Zone 3. It is outside of any development boundary. It is not in a Conservation Area.

## 2. The unauthorised development

- 2.1. Blackgate Farm is a residential property with a substantial curtilage. This curtilage can be used for purposes incidental to the enjoyment of the property by its occupiers, but under planning law there is no other lawful use.
- 2.2. The curtilage has been entirely laid to asphalt and provision made to subdivide it to create up to 14 plots for the standing of static caravans for residential use. These plots would be located along the western and southern boundaries of the site, with 5 along the west and 9 proposed along the south. Services comprising electricity, water and sewerage have been installed to each of the plots, along with provision for bottled gas. Space for vehicle parking is laid out beside and/or in front of each plot. A number of plots are separated by low fencing.
- 2.3. Since 2017 a number of static caravans have been installed on the site. At the most recent site visit there were 5 static units installed along the western boundary and a further 2 statics and 1 tourer on the southern boundary. Of these, 5 were in residential use and 1 was being refurbished pending residential use. The landowner has advised that it is his intention to develop the site for 14 units; the infrastructure for the full complement of 14 units is in place.
- 2.4. It is the case that there has been a material change of use of the residential curtilage of the chalet bungalow on the site from ancillary residential use to the use of the land as a site for the standing and use of caravans for residential purposes. This is development which requires planning permission and no planning permission has either been sought or granted. An agent on behalf of the landowner has previously and repeatedly advised that a planning application seeking retrospective consent would be submitted, but nothing has been received.

- 2.5. It is also the case that operational development which requires planning permission has taken place, in the form of the laying of the asphalt. The Town and Country Planning (General Permitted Development) (England) Order 2015 allows the provision of hard surfacing for any purpose “incidental to the enjoyment of the dwellinghouse”, but this is subject to conditions including that where this exceeds 5 sqm it must be either porous or drain to a porous surface elsewhere within the curtilage. This has not been achieved here, so the surfacing does not benefit from permitted development rights and planning permission is required. No planning permission has either been sought or granted.

### 3. The planning issues

- 3.1. 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”

- 3.2. In determining how to take this matter forward, the Local Planning Authority (LPA) must, therefore, first consider whether the unauthorised development is acceptable in planning terms, whether it is capable of being made acceptable, or whether it is unacceptable. If the unauthorised development is not and cannot be made acceptable, then the LPA must consider the expediency of enforcement action.

#### The acceptability of the development

- 3.3. Looking first at the acceptability of the existing unauthorised development, which comprises the change of use to a site for the standing and use of currently 5 caravans for residential purposes. Policy DM35 of the Adopted Local Plan for the Broads (2019) seeks to locate all new residential development within settlements and states:

“New residential development will only be permitted within defined development boundaries, and must be compatible with other policies of the Development Plan”.

3.4. In this case, the site is outside of any development boundary, so does not meet the first part of the policy.

3.5. The development plan also contains a strategic policy which sets out, amongst other matters, a broad spatial strategy for residential development, which includes the promotion of the development boundary approach. This policy, SP15, indicates that housing development will be located in such a way as to promote sustainable patterns of development. In this case, whilst there are some facilities locally, specifically at the retail development at Gapton Hall, these are not sufficient in either scale or variety to make the site either sustainable or suitable for further residential development. This reinforces the in-principle conflict with DM35.

3.6. The site is located within an area identified on the Environment Agency's Flood Risk Maps as being in Flood Risk Zone 3. Policy DM5 of the Adopted Local Plan for the Broads (2019) states:

“Development with the Environment Agency's flood risk zones will be acceptable only when:

- i. It is compatible with national policy and when the sequential and the exception test, where applicable, have been satisfied....”

3.7. National policy on flood risk is set out in the National Planning Policy Framework (NPPF) and seeks to steer new development to areas with the lowest probability of flooding. Guidance on the implementation of the policy is set out in the Technical Guidance to the NPPF, which identifies Flood Risk Zones (FRZs) according to the probability of river and sea flooding (without taking into account the presence of defences), with FRZ1 being the lowest risk area and FRZ3 the highest risk area. It then identifies which types of development are suitable for which FRZ, with the calculation based on vulnerability to risk. Uses classified as “Highly vulnerable” to flood risk are identified as not appropriate types of development in FRZ3. Caravans, mobile homes and park homes intended for permanent residential use are identified as highly vulnerable uses.

3.8. Policy DM23 of the Adopted Local Plan for the Broads (2019) states:

“Development proposals that need to be accessed by land shall:

- (a) Be assessed in terms of their impact upon the highway network in respect of traffic capacity, highway safety and environmental impact of generated traffic. As appropriate, mitigation will be required including off-site works, points of access, visibility and turning facilities; ...”.

As detailed at 1.3 above, access to this site is via an unmade access off Gapton Hall Road, which itself links to the trunk road network at Gapton Hall roundabout. It should be noted that the roundabout itself is under the jurisdiction of Highways England. The potential for development on this site has previously been considered by Norfolk County Council as the Local Highways Authority. Concerns were raised regarding the intensification of the use of the unmade access as this would require a right-turn off

Gapton Hall Road close to the roundabout, which is already very sensitive in terms of traffic movements and partially operated by traffic signal to aid capacity and movement issues. They advise that mitigation might be achievable, for example in the form of yellow box marking. However, they question the likely effectiveness of this given the existing traffic issues here. On the basis of the above, an objection on highways grounds would be anticipated in the event of an application being submitted and it is considered that there is conflict with policy DM23.

- 3.9. Due to conflict with policies SP15, DM5 and DM23 the unauthorised development at Blackgate Farm does not comply with the second part of policy DM35 above and is unacceptable. As it is unacceptable it is not appropriate to seek a retrospective application. It is also the case that the conflicts with development plan policy are fundamental and could not be overcome by amendments to the development, so there is no basis for requesting these. The LPA must, therefore, proceed on the basis that as the development is unacceptable and cannot be made acceptable, the next step is to consider the expediency of enforcement action.

#### The expediency of enforcement action

- 3.10. When a breach of planning control has taken place and the LPA is considering what action is appropriate it will need to look carefully at a number of factors. The first factor is expediency. This 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; and/or
  - Risk to human life.
- 3.11. In considering expediency it is also necessary to take account of the impacts and costs of taking action, which would include the resources required to do this, as well as what is likely to be achieved. 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 need to stop the harm. Conversely, if there is little harm it may not be expedient to pursue the matter, particularly if the costs are high.
- 3.12. There are two types of harm that result from this particular unauthorised development and these may be characterised as generic and site specific. The generic harm arises from allowing development which is unsustainable in policy terms to remain – not only is it intrinsically unsustainable, but it undermines the locational strategy and the policies in the development plan as well as the principles of the NPPF and NPPG. In undermining these, the retention of the non-compliant development would undermine the integrity of the planning system and the protection of this system is a valid and

justifiable objective. In terms of site-specific harm, there are significant risks to both existing and future occupiers from the location of the units within the functional flood plain, which could result in harm to health or loss of life; there are also significant risks to the public from the increased use of the access, which could result in reduced highway safety, congestion and accidents. Overall it is considered that the harm resulting from the development is significant. There will be costs associated with enforcement action, however, when balanced against the need to ensure, amongst other matters, public safety, enforcement action is likely to be expedient given the benefits of securing a cessation of the development.

- 3.13. The second test is one of proportionality; enforcement action should always be proportionate to the seriousness of the harm being caused. As detailed above, the harm occurring here includes risks to the safety and wellbeing of occupiers of the units as they are located in highly vulnerable structures within an area of high flood risk. This is significant harm. The effect of enforcement action would also be significant for the current occupiers, as it would result in the cessation of the unauthorised residential use and the need for the affected individuals to find alternative accommodation or locations. Whilst it is recognised that the impact for the residents is significant, the personal impact does not justify retaining units in an unsafe location where planning permission could not be granted. Put simply, the planning system should not be allowing such uses in such an area despite the fact that people are prepared to live there. When looking at proportionality, consideration must also be given to the public harm (in terms of reduced highway safety) resulting from the use of the access and whether the public benefits resulting from enforcement action (in terms of improved highways safety) are proportionate to the impacts which would be experienced by the occupiers. Overall it is considered that the private benefits should not override the public benefits and that enforcement action to secure the cessation of the unauthorised development is proportionate.
- 3.14. The Local Enforcement Plan identifies the need to ensure consistency so that a similar approach is taken in similar circumstances to achieve similar outcomes. This third test is somewhat harder to apply as there has previously been no similar case. The principle of the approach taken, as outlined at 3.1 and 3.2 above, is however, consistent with both the Local Enforcement Plan and the approach taken on other cases so consistency can be demonstrated.
- 3.15. Finally, it is noted in the Local Enforcement Plan that 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 and the fourth test considers whether this approach has been applied. In negotiating a solution, the outcome will either be that the development is (or is made) acceptable and planning permission is granted, or, where the development is not and cannot be made acceptable, that the breach is stopped. In this case, for the reasons outlined at 3.3 – 3.9 above, the development cannot be made acceptable and there is no prospect of planning permission being granted. The solution will therefore require the cessation of the development.

3.16. The LPA has sought to engage with the landowner and his representative to discuss the site. These approaches have been both formal and informal. There has been no response to recent requests for discussion and there has been no reply in response to the service of a Planning Contravention Notices (PCN) in May 2019. A PCN is served to obtain information on a site and suspected unauthorised development as a formal precursor to enforcement action and there is a legal duty to respond; to fail to do so is a criminal offence. Given the landowner's failure to engage it is considered unlikely that compliance could be achieved by negotiation.

## 4. Material considerations

4.1. It is important when making planning decisions to establish whether there are any material considerations which should be taken into account, and what weight should be given to these.

4.2. In this case, it is noted that the landowner is a traveller and that his intention in undertaking the unauthorised development has been to provide a site for his family to use as, effectively, a private traveller facility. He has explained this to officers in person.

4.3. There is a requirement for an LPA to undertake a housing needs assessment for traveller accommodation and this is set out in the NPPF at para 61, with full details provided in Planning Policy for Traveller Sites. Accordingly, a Gypsy and Traveller Accommodation Needs Assessment was carried out on behalf of the LPA in 2017 as part of the Local Plan for the Broads. This found that there is no identified need for sites or pitches in the Broads area.

4.4. The Government's Planning Policy for Traveller Sites states that "where there is no identified need, criteria-based policies should be included to provide a basis for decisions in case applications nevertheless come forward...". A policy was therefore included in the Adopted Local Plan for the Broads and DM36 states:

"Development proposals for the provision of permanent or transit accommodation, or temporary stopping places, to meet the needs of Gypsies and Travellers and Travelling Show People will be supported where they meet an identified need....

Where there is a proven need, appropriate development will be allowed where the following criteria are met:

(b) Well related to existing settlements, services and facilities and do not harm the character and appearance of the area; ....

(d) there are no sever residual impacts to the safe and efficient operation of the highway network; ...

(n) Due regard has been given to all types of flood risk; ..."

4.5. The development does not meet the first test of the policy, as there is no proven need. However, it is necessary (in accordance with the Planning Policy for Traveller Sites

document) to nonetheless consider the scheme against the criteria. In this case, due to the unsustainable location of the site, the impact on the highways network as detailed at 3.8 above and the high flood risk it is concluded that the development does not meet the criteria of the policy. Therefore, whilst the ethnicity of the landowner and the purpose of the development is a material consideration, it cannot be accorded significant weight due to the outstanding constraints of the site.

## 5. Human Rights

- 5.1 The provisions of the European Convention on Human Rights (ECHR) need to be considered as an integral part of the LPA's decision-making in cases such as this. Here, it is necessary to consider the consequences of taking enforcement action on the rights of the individuals concerned and whether it is necessary and proportionate in the circumstances.
- 5.2 Article 8 of the ECHR provides for the following:
- “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”
- 5.3 It can be seen from this that the rights of an individual (or a group of individuals) under Article 8 do not override the need to comply with national legislation, including planning law, and the obligation on public authorities to act compatibly with Convention rights does not give travellers a right to establish sites in contravention of planning control. What is important is that in determining what action to take the LPA considers whether the action proposed is necessary and proportionate in the circumstances.
- 5.4 In this case, it is considered that the site is not suitable for residential use for reasons of vulnerability to flood risk, access to services and impact on the highways network. These considerations are fundamental and cannot realistically be overcome. The site is therefore not suitable for the proposed use and the LPA cannot reasonably and justifiably permit the use to continue; to do so would undermine its own and national planning policies and place individuals at risk. It is considered therefore that the action proposed is both necessary and proportionate.
- 5.5 If the recommendation to take enforcement action is accepted the LPA will liaise with the Housing Authority and the traveller service at the relevant local authorities to secure alternative accommodation for those affected.



## 6. Conclusion and recommendation

- 6.1. The unauthorised development at Blackgate Farm seeks to provide a facility primarily for the use of the landowner's family. While the LPA is mindful of the difficulty of providing suitable sites for traveller use, it is not the case that if an individual is happy to provide one then this obviates the need to comply with planning policy. It is necessary, as with all development proposals, to assess the relevant planning considerations and judge the scheme against the development plan. In this case, whilst the site does not have a significantly detrimental impact on either the character or appearance of the Broads, there are concerns around the adverse impact on the highways network resulting from the use of the access to the site, whilst the location within the highest flood risk zone precludes against residential development. Furthermore, the site is not in a sustainable location for residential use and is outside of any development boundary. It is not a location suitable for residential development.
- 6.2. The Local Enforcement Plan explains that where an unauthorised development is unacceptable and cannot be made acceptable, the LPA should seek to negotiate a solution. There is no realistic prospect of a negotiated solution here and it is recommended that an Enforcement Notice is served requiring the cessation of any residential use of the units, the removal of the units and the services which render them capable of independent habitation, the removal of the hard standings and the reversion of the plot to a residential curtilage. A compliance period of 6 months would be appropriate, to avoid immediate hardship to the current occupants.

Author: Cally Smith

Date of report: 25 October 2019

Background papers: enforcement file. Planning Policy for Traveller Sites. Gypsy and Traveller Accommodation Needs Assessment (2017)