

Planning Committee

21 September 2022

Agenda item number 9.1

Enforcement- Loddon Marina

Report by Head of Planning

Summary

There are two static caravans being used as permanent residential dwellings without planning permission on land at Loddon Marina. This development is contrary to planning policy and permission could not be granted.

Recommendation

To serve an Enforcement Notice.

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1. Site location and description

- 1.1. Loddon Marina is located on the north-eastern side of Loddon to the south of the River Chet and some 100m downstream of the 24-hour moorings in Loddon Basin run by the Broads Authority. Accessed via a partly unmade track off Bridge Street, the overall site covers approximately 1.5 hectares. It is bounded to the north by the river, to the east by the grazing marshes which extend to Pyes Mill and it abuts gardens to residential properties to the south and west. There are views into the site from the river and from the land to the north, but it is fairly well screened by trees and hedges on the east, south and west boundaries.

- 1.2. There are a number of commercial operations taking place on the site. The northern part of the site operates as a boatyard, with a 20 berth (approximately) mooring basin located directly off the river, a 35m x 7m workshop, an office building and areas of hardstanding and parking. The southern part of the site, which covers around 0.75 hectares, is laid to grass and used as a campsite. The facilities are basic, with a small toilet block and water point on the site and two showers in the building behind the marina office. To the east of the site is a detached 3-bedroom dwelling. This was originally permitted as a manager's dwelling (and restricted to such a use by condition), but the restriction was removed in 2015 after the operator demonstrated that there was no longer a need for a manager to be on-site permanently (BA/2015/0182/COND). This dwelling is now used as a holiday let. To the west of the site there is another 35m x 7m workshop building which is used for private storage. Located to the rear of the marina office and north of the campsite there are two static caravans. These caravans are occupied as dwellings and are the subject of this report.

2. The unauthorised development

- 2.1. The static caravans are both standard twin axle units and are located facing each other in an area demarcated by close-board fencing, with car parking between them. They are connected to water and electricity. The Local Planning Authority (LPA) is aware that there has been a caravan located on the northern pitch for some years, however this was not occupied on a permanent basis. There has been a caravan located on the second pitch for around five years and this was previously occupied by a former manager of the site who lived on the boatyard.
- 2.2. In July 2022 the LPA served Planning Contravention Notices (PCNs) on the occupiers and all those with an interest in the site. The information obtained confirmed that both caravans are occupied, the northern one since August 2021 and the southern one since March 2022. Both tenants have Assured Shorthold Tenancy agreements and they are registered for Council Tax.
- 2.3. Whilst the use of land for the standing of a caravan does not necessarily constitute development for which planning permission is needed, where the caravan is occupied this becomes a material change of use. In this case it is a change of use from land ancillary to the boatyard to a mixed-use ancillary to the boatyard and the stationing and residential occupation of static caravans. Planning permission is required and there is no planning permission for this use.

3. The planning issues

- 3.1. The Broads Authority has a Local Enforcement Plan which sets out its approach to dealing with enforcement matters. It was reviewed and updated in July 2022. 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 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, Adopted Local Plan Policy DM35 states:

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

There is no development boundary in Loddon and the development is therefore contrary to DM35.

- 3.4. Adopted Policy DM38 allows for new residential development outside development boundaries where the dwelling is required for a rural worker and sets criteria to be met. Criterion (a) requires that satisfactory evidence has been submitted to demonstrate an essential need for a worker to be available on-site at all times, whilst in cases where a caravan is proposed in order to meet such a need, criterion (m) requires that “The functional need cannot be met by an existing dwelling on the site or nearby.” In this case, the occupier of one of the two caravans does currently work in the boatyard, but indicates in his PCN response that he is intending to move off-site shortly; the occupier of the second caravan has no connection with the business. If there is a functional need, and this would need to be demonstrated, the former manager’s dwelling on the site is the appropriate policy approach to addressing it. The development is contrary to DM38.
- 3.5. Adopted policy DM21 requires that all development provides occupiers with satisfactory level of amenity, including internal accommodation and external amenity space. The caravans are both of poor quality, are unlikely to offer adequate levels of

heating and/or insulation and have no external amenity space. The requirements of DM21 are not met.

- 3.6. Due to conflict with DM35, DM38 and DM21 the unauthorised development 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 (because for example, the location is outside the development boundary), 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

- 3.7. 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. These factors are expediency, proportionality and consistency.

Expediency

- 3.8. 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, and this would be an example of direct harm arising from the unlawful development. There is also the generic harm which arises from a development which is in conflict with adopted policies and which, if it were not addressed, would undermine the policies in the development plan as well as the principles of the NPPF and NPPG. Furthermore, a failure to address non-compliant development would undermine the integrity of the planning system and paragraph 59 of the NPPF emphasises the importance of this when it states “Effective enforcement is important to maintain public confidence in the planning system”, demonstrating that this is a valid objective in itself.
- 3.9. The harm resulting from this development arises from the clear conflict with planning policy, both national and local. It is considered that this harm is significant because the conflict relates to the fundamental principles of the location of new residential development. There will be costs associated with enforcement action, however, when balanced against the need to ensure, amongst other matters, the protection of the planning system it is considered that enforcement action is likely to be expedient given the benefits of securing a cessation of the development.

Proportionality

- 3.10. The second test is one of proportionality; enforcement action should always be proportionate to the seriousness of the harm being caused. In this case, again, the main objection to the development is the ‘in principle’ conflict with the approach to the location of new residential development as set out in the NPPF and adopted planning policies. Where it is accepted that an LPA has a responsibility to protect the planning system in order to maintain public confidence in it, it follows that the extent of the

action should be directly proportionate to the extent of the breach. In this case, as there is a fundamental conflict with planning policy only a full cessation of the unauthorised use can be justified.

- 3.11. It is noted that these caravans are being occupied as dwellings, with the users enjoying the benefits of this, and that the landowner will be deriving a financial benefit from renting them out, however these are private benefits and should not override the public benefits associated with upholding the planning system.
- 3.12. Overall it is considered that enforcement action to secure the cessation of the unauthorised development is proportionate.

Consistency

- 3.13. The third test is consistency and the Local Enforcement Plan identifies the need to ensure consistency so that a similar approach is taken in similar circumstances to achieve similar outcomes.
- 3.14. A similar situation has occurred at the Beauchamp Arms at Carleton St Peter (to the west of Loddon), where two caravans have been installed on land to the rear of the public house premises and these are being used as permanent accommodation. The occupiers of these units also have Assured Shorthold Tenancy agreements, as at Loddon Marina, and the landowner is the same.
- 3.15. In December 2021 an Enforcement Notice was served requiring cessation of the unauthorised residential use and the removal of the caravans. The Enforcement Notice has not been complied with and prosecution proceedings have commenced.
- 3.16. It is considered that enforcement action at Loddon Marina in the form of an Enforcement Notice would be consistent with the approach taken elsewhere and therefore meets the requirements of the Local Enforcement Plan.
- 3.17. 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 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.
- 3.18. The owner of this site has other properties elsewhere in the Broads, including at Beauchamp Arms, and across these sites there is a history of disregard for planning regulations. Previous experience indicates that it is very unlikely that compliance could be achieved by negotiation. Consequently, the LPA has not sought to engage with the landowner on this matter as it is considered that this would not be the best use of resources and is likely only to delay resolution.

- 3.19. 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. In this case, there is significant harm to interests of public importance from development which is intrinsically unacceptable. The service of Enforcement Notices, as a first step, incurs little cost other than officer time; if further action is needed to secure compliance this will need to be considered.
- 3.20. In conclusion, it is considered that the development is unacceptable and enforcement action can be justified as expedient.

4. Financial implications

- 4.1. The service of Enforcement Notices will require officer time; any costs associated with administration will be met from the existing planning service budget.
- 4.2. 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.

5. Conclusion

- 5.1. The unauthorised development at the site is contrary to development plan policy and could not be granted planning permission.
- 5.2. 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 the unauthorised use. A compliance period of four months would be appropriate.

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Date of report: 01 September 2022

Background papers:

Appendix 1 – location map

Appendix 1 – location maps

OS

Loddon Marina, 12 Bridge Street, Loddon

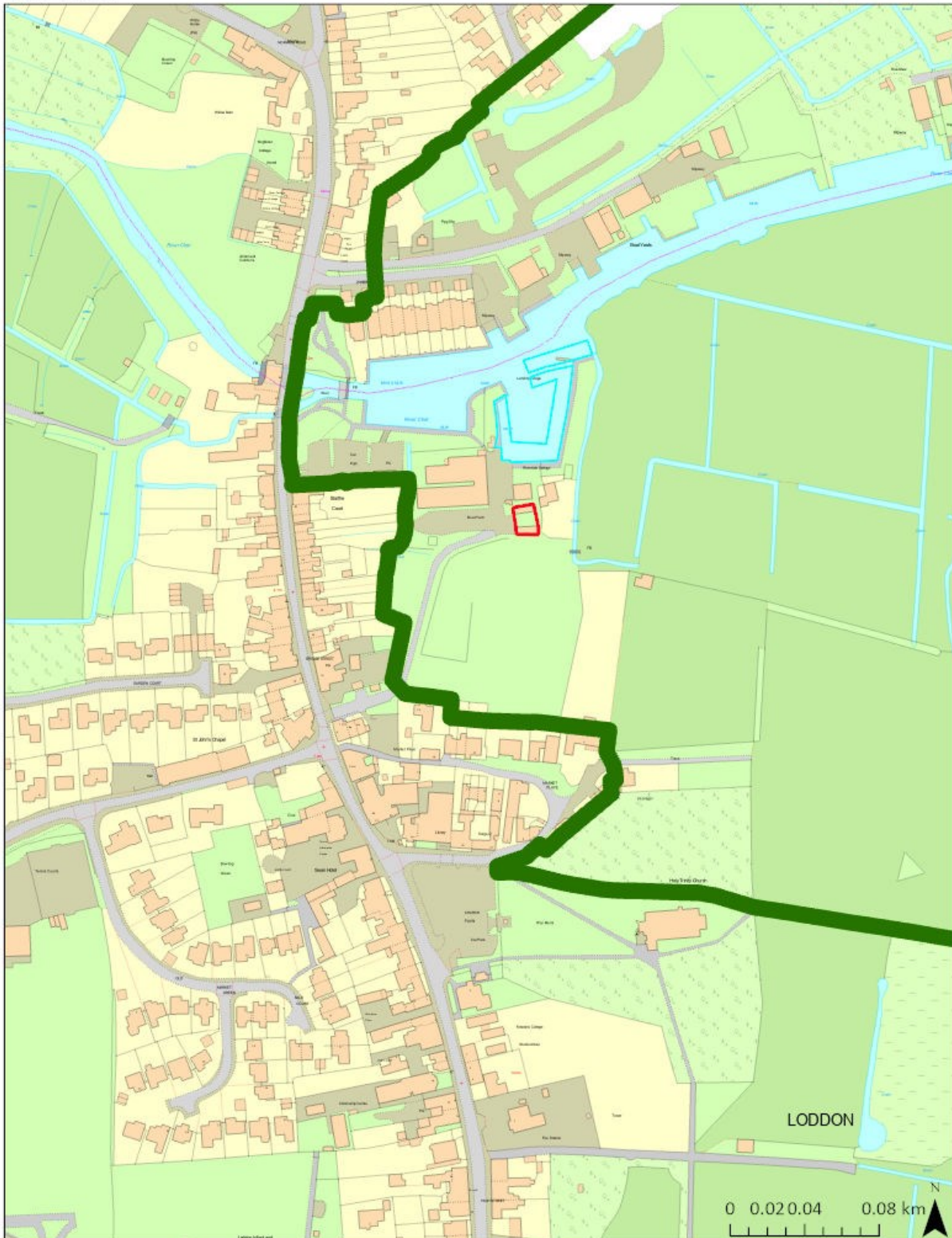
Scale: 1:25,000



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Loddon Marina, 12 Bridge Street, Loddon

Scale: 1:2,500



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