

Enforcement of Planning Control
Enforcement Item for Consideration: Land at North End, Thurlton
Report by Head of Development Management in consultation with the Solicitor

Summary: This report concerns non-compliance with an Enforcement Notice regarding the use of land for storage of non-agricultural scrap and other items.

Recommendation: That authority is given to institute direct action against the land owner for failing to comply with the requirements of an Enforcement Notice as specified in section 171C(2) and (3) of the Town and Country Planning Act 1990.

Location: Land at North End, Thurlton

1 Description of site

- 1.1 The site which is the subject of this report comprises a parcel of land of approximately 1.2 hectares located within the parish of Thorpe-next-Haddiscoe, but which is known as North End, Thurlton. The site is situated to the north-east of the public road (Low Road), from which it is separated by a hedge of varying densities, and the land beyond to the north, east and west is open grazing marshes from which there are long views across to the New Cut and beyond. There are some farm buildings on land to the south-west and the nearest residential property is approximately 300m to the southwest.
- 1.2 The site comprises agricultural land. It is bounded to the south by a hedge and to the north by a drainage dyke; there is a farm access track to the west and further agricultural land to the east.

2 Background and Description of Unauthorised Development

- 2.1 In April 2010 an amount of non-agricultural equipment and material was brought on to the site, comprising two cars, one large trailer, one small trailer and a forklift. A Temporary Stop Notice was served and discussions held with the landowner regarding their intentions for the site.
- 2.2 In the autumn of 2010 further material was brought on to the site, including additional vehicles (including scrap vehicles), commercial scrap bins and a caravan; in addition a 2m high metal fence was erected around the site. The effect of the fence is to screen the unauthorised development contained within the fenced area.

- 2.3 The consequences of the above is that there has been a material change of use of the site from agricultural land to a mixed use of agriculture and commercial use. The harm that results from this is the harm to the protected landscape of the Broads as well as the introduction of an inappropriate commercial use in an unsustainable location. Furthermore, the unauthorised change of use has led to a need for fencing to screen that use and this fencing is harmful to the visual amenity of the area.

3 Site History

- 3.1 This is a site where there has been a history of planning enforcement. The site was formerly in the ownership of Mr David Page, who had undertaken an unauthorised change of use to storage of non-agricultural items and equipment. The Local Planning Authority served a number of Enforcement Notices and prosecuted the landowner for non-compliance with those Enforcement Notices. Following an RTPI managed mediation process and significant and intensive efforts by the Local Planning Authority the site was finally cleared in April 2010. The site was then sold to the current landowner in April 2010.
- 3.2 In February 2011 a Stop Notice and Enforcement Notice were served requiring the cessation of all non-agricultural activities on the land, plus the cessation of the unauthorised storage. Concurrent to this the Environment Agency investigated and prosecuted the landowner for unauthorised scrapyards activities on a number of sites, including this one at North End.
- 3.3 During 2011 discussions were held with the landowner regarding their intentions for the site. An invalid planning application was submitted for the retention of a container on the site for storage in association with a smallholding use, however the application was not progressed and was later withdrawn; there is no smallholding use on the site.
- 3.4 Following continued failure to comply with the Enforcement Notice and to clear the site, in March 2012 a Conditional Caution was issued. The effect of a Conditional Caution is to allow the LPA to obtain an admission of an offence through a declaration of such by the landowner and allows a further period for compliance which, if compliance is achieved, saves the need for a full prosecution. Further to service of the Conditional Caution, the landowner contacted the LPA to advise that compliance had been achieved.
- 3.5 Subsequent site visits, including an onsite meeting with the landowner's representatives, show that full compliance has not been achieved, although most of the vehicles previously on-site had been removed. The material on site at the meeting in May 2012 included containers, concrete mixer, digger, forklift, caravan, trampoline, swings and rubble, plus a large pile of wood with equipment to suggest that a commercial logging operation is being undertaken from the site.

4 Policies

- 4.1 Adopted Core Strategy (2007)
[Core Strategy \(Adopted Sept 2007\).pdf](#)

CS1.

- 4.2 Adopted Development Management Policies DPD (2011)
[DMP DPD - Adoption version.pdf](#)

DP2
DP4.

5 Action Proposed

- 5.1 There has been no meaningful progress towards full compliance here and whilst some of the unauthorised material (particularly vehicles) has been removed, it has been replaced by other non-agricultural material. It is important to note that, in legal terms, there is no position of 'partial compliance'.
- 5.2 Much of the harm to the protected landscape as a consequence of the unauthorised development comes from the siting of the metal screening fence, which is unsightly and incongruous in this rural location. There is no doubt that the purpose of the fence is to screen the unauthorised development to the rear and consequently, due to the functional link between these, the fence can be treated as part of the unauthorised development even though in other circumstances it would be treated as permitted development.
- 5.3 The Local Planning Authority has two options in respect of action to resolve the situation here. Firstly, it could 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. Neither of these would actually achieve compliance. The alternative would be for the Local Planning Authority to take direct action. The direct action could be comprehensive and comprise the total clearance of the site, or partial comprising simply the removal of the metal screening fence on the basis that this would be likely to prompt the removal of the remaining items which are of value to the landowner.
- 5.4 In considering direct action, the Local Planning Authority 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 and that there is a need for a swift or urgent remedy. Furthermore, it must consider the personal circumstances and impact on the individuals of removal. In this case, the harm being perpetuated includes the harm to the protected landscape of the Broads and it is considered that this justifies action. The situation has persisted now for over 2 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 landowner, the forced cessation of the unauthorised uses will likely be, as a minimum, an inconvenience, however the uses are unauthorised, which the landowner has been advised of and therefore any unauthorised uses are at his own risk. It is not understood that the unauthorised use of the site represents the main livelihood or home of the landowner. Overall, it is not considered that the use of direct action would be disproportionate or incapable of justification in this case.

- 5.5 There would be costs associated with either course of action. The costs of the latter course of action are likely to be significantly higher than the former, although direct action is more likely to achieve compliance and in a shorter timescale than through the prosecution route.
- 5.6 Were direct action to be taken, the Local Planning Authority would seek to recover its costs. Initially this would be through a demand for payment from the landowner, but if this were not paid it would need to pursue the matter through the Courts. The process would involve seeking a Judgement and registering a Charge on the land. There is already a known complication, in that the land is still registered with the previous owner (Mr Page), however the current landowner has admitted ownership in response to being served with a statutory notice and this would assist the process. Members should be mindful that the Authority might not recover all the costs of direct action, or that the recovery of these may be protracted.
- 5.7 The above notwithstanding, it is considered that direct action represents the most effective option for securing compliance. It is proposed that the processes for direct action be instigated and competitive quotes be obtained to undertake this work.

6 Financial Implications

- 6.1 There will be costs associated with this course of action which can be funded through Planning Delivery Grant if required.

Background papers: None

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Appendices: APPENDIX 1 – Location Plan

APPENDIX 1

**Land Known As OS 4229, Adjacent To North End, Thurlton
Unauthorised storage of non-agricultural items.**

