

**Enforcement of planning control
Non-compliance with planning condition at
Barnes Brinkcraft, Riverside Estate, Hoveton**
Report by Head of Planning

Summary: Unauthorised development at Barnes Brinkcraft has resulted in encroachment into the navigation area.

Recommendations:

- (1) That the unauthorised development at Barnes Brinkcraft into the navigation area is unacceptable;
- (2) That officers are authorised to negotiate the restriction on the vessel length, an agreed mooring configuration, a scheme of management in respect of the pontoon, and the removal of the build-out.

Location: Barnes Brinkcraft, Riverside Road, Hoveton

1. Background

- 1.1 In July 2017 planning permission was granted at the Barnes Brinkcraft site in Hoveton for works described as 'Replacement of 158m of quay heading, removal of 280 square metres of land, installation of pontoons, widening of access track and removal of storage shed' (BA/2017/0155/FUL). Details of the planning application can be found on the Broads Authority website using the planning application reference number or by this [Link](#) . The works relevant to this report involved the removal of a peninsula of land which ran parallel to the river and enclosed a mooring basin, the effect of which was to turn the mooring basin enclosed on four sides into a mooring bay enclosed on three sides. It was then proposed to bisect this new bay with a pontoon positioned parallel to the river which would facilitate moorings either side via finger pontoons, which would increase the capacity of the site.
- 1.2 The drawings submitted with the application showed the proposed arrangement, including the location of the new pontoon and the mooring layout and it was clear that this would not result in vessels encroaching further into the river than they had done previously. Some Members may recall that a barge had been moored on the riverfront here for a number of years and the outer extent of this (i.e. the river side) was taken as the furthest extent of encroachment into the river.

2. The planning breach

- 2.1 The works to implement the planning permission commenced in September 2017, initially with the clearance of the basin, the removal of the peninsula of land and the renewal of the quay heading. The works have not, however, been completed in accordance with the planning permission as follows:
- a. A spit of land downstream of the basin, which runs perpendicular to the river and separates this mooring basin from another mooring basin, has been extended out into the river by approximately 1.2m; and
 - b. The new pontoon has been located approximately 4.2m closer to the river than proposed on the approved drawing; and
 - c. The configuration of the moorings on the new pontoon is not as shown on the approved drawing.

These are illustrated by the photographs in Appendix 2

- 2.2 The operator has explained in respect of (a) that the land has been restored to a previously existing extent, the former land having been removed at some point in the past by a previous owner. In respect of the pontoon at (b), it should be noted that it is 0.5m narrower than permitted and that the approved drawing shows the guide piles located to the front (riverside) of the pontoon, whilst on site they are located to the rear.
- 2.3 The cumulative effect of the above changes is that the navigation channel has been narrowed, both by the encroachment of the extended land and the encroachment effect of vessels mooring on the new pontoon. The extent of the encroachment by moored vessels will depend on their length, however as the pontoon is approximately 3.7m further forward (taking account of its reduced width) than previously shown, there remains potential for encroachment by vessels of an average length. It should be noted that initially vessels of up to 10.5m in length were being moored on the new pontoon, but when advised of the issues the operator moved these and limited the length to 7.5m.

3. The planning issues

- 3.1 The River Bure immediately downstream of Wroxham Bridge is one of the busiest parts of the navigation area, with hire boat yards, day boat operators, private and commercial moorings and large passenger trip boats all operating from here and sharing the water space. There are also visitor facilities locally and Broads Authority 24 hour moorings, which makes the area attractive to boaters. The navigable width downstream of the entrance to the Broads Tours site to the bend varies from 31m (measured land to land directly opposite the southern end of the Peninsula Cottages development) to 16.4m (measured vessel to vessel directly opposite The Sail Loft holiday

accommodation building). The average width is around 22m and it is noted that the area in question in this report is one of the narrowest sections and the distance between the moored boat on the opposite (Wroxham) bank and previously moored barge was measured at 18.3m. It is also noted that clear passage upstream is constrained by the bridge, which is narrow and not, in any case, passable by all craft at all stages of the tide and this generates turning movements,

- 3.2 In addition to the physical constraints represented by the bridge and river width, and the sheer volume of users here, it is also noted there is a slight bend in the river at the area in question which reduces visibility (particularly upstream) and means that the passenger trip boats need to swing out to manoeuvre. Manoeuvring is already compromised by the moored boats on the Wroxham side of the river, which have increased in number and size over the years. The new pontoon is located at the mid-point of the bend, so any additional encroachment has a particularly significant impact as this creates a pinch point.
- 3.3 Finally, it should also be noted that the nature of the uses here, particularly the three day boat operators within the vicinity of the bridge, means that there is likely at any time to be a high percentage of inexperienced helms manoeuvring.
- 3.4 Given all the above circumstances, the potential for conflict between users is high and the maintenance of a clear navigation is important in reducing and managing these risks.
- 3.5 The matter was referred to the meeting of the Navigation Committee on 14 December 2017 and following discussion their formal comments are:

The Navigation Committee welcomes investment to provide improved mooring provision but has grave reservations about any encroachment on the navigation of the river and that the Planning Committee take this into account when seeking to resolve the matter with the landowner.

- 3.6 The Authority's Head of Ranger Services, who is the Navigation Officer for the Broads, has also made the following comments:

As set out in section 3 'Issues' above, this area is one of the busiest stretches of water on the Broads with the greatest range of craft using the area including trip boats, a range of private craft, yachts, hire boats, day boats along with canoes and paddleboards. This location has a high number of hire craft and while each helm would have undergone an induction by the hire company for many navigating this stretch this will be their first experience of helming a vessel. In addition, the bridge immediately upstream of the location means boats use this area for turning, either waiting to access the bridge or turning to head back downstream.

Due to the high level of traffic in the area and the already narrow channel any encroachment into the river represents a real hazard to those boats navigating. Reduction in the width will lead to bunching of traffic and reduced room for manoeuvrability. Those vessels particularly at risk are smaller unpowered vessels such as canoes or even day boats who could find themselves trapped by larger vessels but smaller collisions and minor injuries are also likely under these conditions.

In addition, the area of new development is situated on a bend in the river. This means that vessels, particularly the larger trip boats, need room to swing out to navigate round the bend. This requires a greater width of river than on a straight section.

4. Options for resolving the planning breach

4.1 The 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, it is clear that the development as built has resulted in an encroachment into the navigation and both the Navigation Committee and the Navigation Officer for the Broads have advised that this is unacceptable and there is clear conflict with development plan policies. In seeking to negotiate a resolution, therefore, it is clear that a retrospective application to regularise the position would not be appropriate, so it is necessary instead to consider whether:

- The development can be amended so it is acceptable and then an application can be made for retrospective planning permission; or
- The development should be amended so it is in accordance with the approved plan; or
- To development needs to be removed as it unacceptable and incapable of being made acceptable.

- 4.3 The encroachment into the navigation results from the pontoon being placed forward (ie closer to the river) than approved, plus the unauthorised build out of the peninsula of land. The impact of the former could be mitigated by the imposition of a restriction on length of vessels permitted to moor to the pontoon; the impact of the latter is harder to mitigate as it is a physical obstruction, but an agreement not to use it for mooring would prevent the situation being worsened (although Members might conclude that it is intrinsically unacceptable). There has been preliminary discussion with the agent for the landowners around the feasibility of a length restriction and Members will be updated verbally of the further comments. Were this to be acceptable the landowners would need to demonstrate to the satisfaction of the Navigation Officer that the moorings and the restriction could be effectively managed (including out of hours) to prevent encroachment.
- 4.4 The encroachment into the navigation results from the incorrect positioning of the pontoon and were it to be relocated to the approved position (ie as shown on the approved planning drawing) this would resolve this issue, although it would not address the matter of the unapproved build-out. It is worth noting that the reason for the relocation of the pontoon forward of the approved position was to create more manoeuvring space in the basin to the rear, so reversion to the approved plan is likely to present problems for the landowner, which may well have repercussions elsewhere. Whilst this is largely a matter for the landowner, it is useful to anticipate consequences and to be mindful that the objective of any action is to seek a resolution of a planning issue and not to punish the landowner. It should also be noted that the planning permission as issued does not specifically restrict the length of any vessel, relying instead on details shown on the approved drawing. Were vessels of over 10m length to be moored to the pontoon in its correct position this would result in encroachment and the Authority would rely on byelaws and the primary legislation to address this.
- 4.5 Finally, looking at the outcomes of options for negotiation in enforcement of planning control, if the development is intrinsically unacceptable and incapable of being made so then the Local Planning Authority (LPA) should be seeking its removal.
- 4.6 When determining which approach to take, at section 3 the Local Enforcement Plan outlines three guiding principles to be taken into account and these are expediency, proportionality and consistency.
- 4.7 In this case, planning officers are of the view that breach of planning control by the location of the pontoon is not so fundamental as to constitute development which is wholly unacceptable and that, conversely (and as noted by Navigation Committee) the investment in the facilities is welcome. The encroachment into the navigation, however, must be addressed and it is considered that this can be satisfactorily achieved through agreement on a maximum vessel length on the new pontoon plus an agreed configuration for

moorings plus a scheme for managing this. This will need to be the subject of discussion between officers and the landowners and/or their agent.

4.8 The matter of the build-out is not so easily remedied and it is likely that this will need to be removed, and this too will need to be the subject of discussion.

4.9 It is considered that this is a proportionate approach relative to the harm being caused, which it seeks to remedy, and an expedient means of achieving the protection of the navigation. Should negotiations not fail to achieve agreement in a timely manner it will be necessary to refer the matter back to the Planning Committee for further consideration.

5. **Conclusion and recommendation**

5.1 While the Authority welcomes the continued investment in the site by one of the largest hire boat operators, the encroachment of this unauthorised development into the navigation area is deemed unacceptable. It is recommended that the Planning Committee authorises officers to negotiate the restriction on the vessel length, an agreed mooring configuration, a scheme of management in respect of the pontoon, and the removal of the build-out.

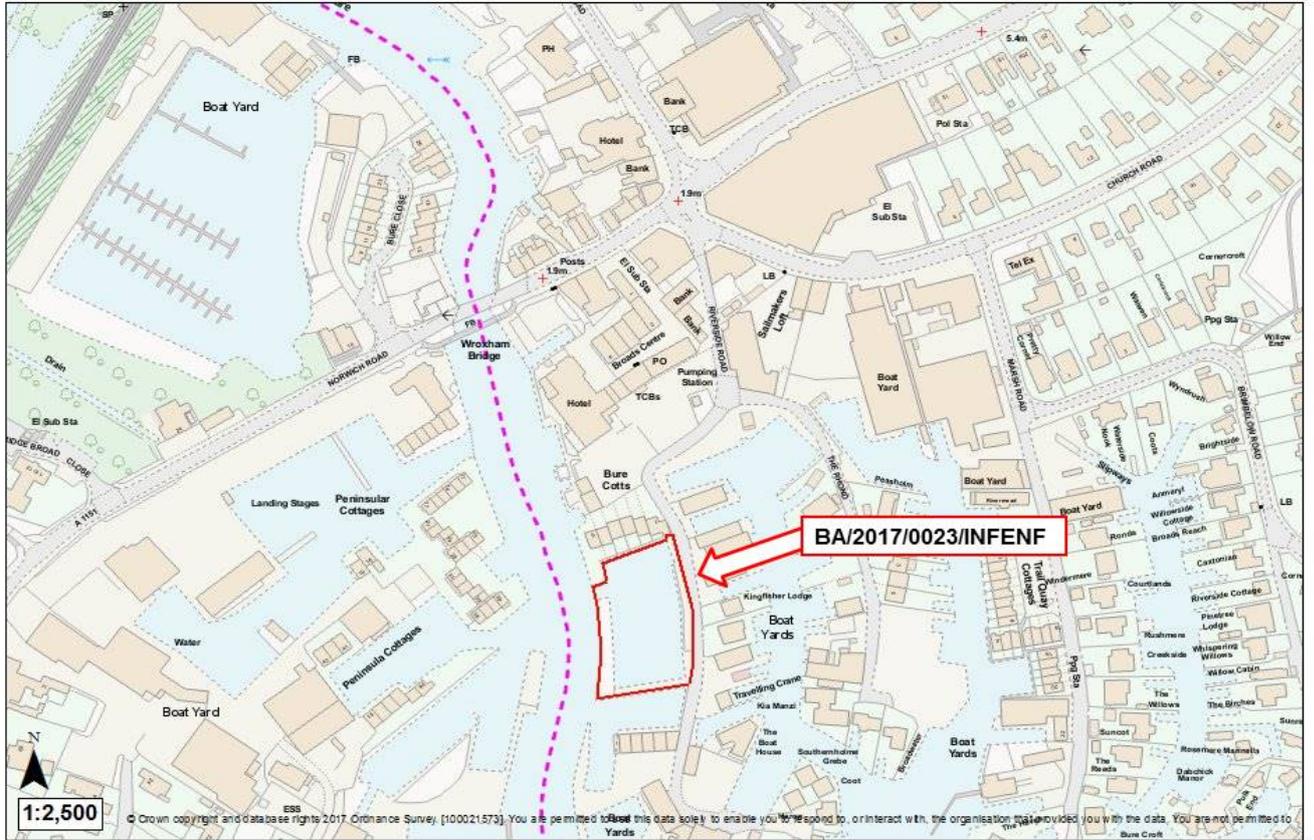
Background papers: BA/2017/0155/FUL

List of Appendices: Appendix 1 Location Plan
Appendix 2 Photographs

Author: Cally Smith
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Broads Plan Objectives: None

BA/2017/0023/INFENF - Barnes Brinkcraft Site



APPENDIX 2



