

Planning Committee

06 March 2020

Agenda item number 10

Ditchingham Maltings- prosecution

Report by Head of Planning

Summary

There has been a longstanding and persistent failure to implement the approved landscaping scheme (including maintenance) at Ditchingham Maltings. This is having an adverse impact on the appearance and enjoyment of the area for local residents and complaints have been received. A Breach of Condition Notice (BCN) was served, but has not been complied with.

Recommendation

That the Authority prosecute for failure to comply with the BCN and take direct action in respect of parts of the maintenance programme.

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1. Introduction

- 1.1. In January 2012 a planning application was submitted for the redevelopment of the former Ditchingham Maltings site on the edge of Bungay (BA/2012/0005/FUL). The application proposed the conversion of the remaining former Silk Mill and the construction of new residential units on the remainder of the site to provide 13 apartments and 92 new houses in total. Parking would be provided to all units and the houses would have small gardens. There is a small stream (Alma Beck) running through

the site and this was to be cleared out, with the land downstream being reprofiled to create additional flood compensation areas. A triangular area of land to the eastern area to the site was to be provided as public open amenity space, with mown paths, and informal play area and a small community orchard. At one hectare in area, this element was considered to provide an attractive feature within the development. Finally, a comprehensive landscaping scheme was proposed with a variety of tree and shrub species offering year round interest and biodiversity benefits.

- 1.2. The permission was granted in July 2012 with a number of planning conditions. Condition 15 required the submission of a landscaping scheme within 4 months of commencement and that "... the landscaping shall be carried out and maintained in accordance with the approved Landscaping Scheme for the lifetime of the development". The Landscape Management and Maintenance Plan was submitted in August 2016 and agreed. It then formed a part of the approved scheme.

2. Implementing the permission

- 2.1. Work to implement the permission commenced in late 2012. A number of applications were received proposing minor changes to the scheme (for example elevational amendments or changes to the materials), but the overall scheme remained broadly the same. No changes were proposed to the landscaping. The landscaping scheme was planted in 2016.

3. Implementation of the landscaping scheme and maintenance

- 3.1. As the scheme was built out, issues arose with regard to the implementation of the landscaping scheme. In particular, there were considerable delays in constructing the flood compensation areas and clearing and laying out the open amenity space. The file records considerable correspondence on this matter between the applicant company and the Local Planning Authority (LPA) as well as a number of site meetings in 2017 and 2018; no wholly satisfactory resolution was achieved.
- 3.2. In addition, the Parish Council were reporting incomplete and irregular maintenance of the scheme. For example, the mown paths which were to be created through the amenity area were not being regularly cut or maintained so residents and parishioners were unable to access this area. In response to these complaints, the applicant company advised in October 2018 that "... (our landscape contractor) assures me that everything is going to plan and that he has meetings with the Parish Council on a regular basis, but they were working off an old drawing ...". In response the Parish Council advised: "1. I have emailed (NAME REDACTED) at Greenleaf services several times since the meeting on 6th September requesting the maintenance contract he promised to email me. He has not answered any of the emails or sent the contract. 2. The maintenance is minimal and always have been, we are pretty sure the contract is

not being met. The footpath is unfit for purpose and the edges of the site stand should (sic) high with weeds. The beck cannot even be seen”.

- 3.3. Again, the file records considerable correspondence on this in 2018, with the LPA pressing the contractor for the schedule of maintenance so this could be compared with the approved scheme. Limited information was provided.
- 3.4. In March 2019 the LPA did a survey of the landscaping scheme on site, intending to use this information as a baseline against which to monitor maintenance over the year. It was found that the scheme as planted was not the scheme which had been agreed – in fact, not one single tree which had been planted was as shown on the plan. Instead of a variety of species, it was mainly silver birch which had been planted and some trees identified on the plan were missing. In the amenity and natural landscaping areas there was no habitat planting, the native hedging was different to as shown (being ornamental not mixed species) and the grassed area was unmanaged, whilst over 50% of the new hedging on the boundary had failed due to poor maintenance.
- 3.5. The applicant company was advised of this by letter on 18 March 2019, with photographs provided. They were advised that they would need to either:
 - Replant to the agreed schedule; or
 - Pursue the scheme as planted and apply to vary the condition on the planning permission; or
 - Pursue an amended scheme (the details of which would need to be agreed) and apply to vary the condition on the planning permission.
- 3.6. The applicant company commissioned a survey of the as-planted scheme to confirm the information provided by the LPA and this was carried out in May 2019 by Norwich City Council. In June 2019 they advised that they had received the information and would be putting together a scheme for the Authority’s consideration, with submission anticipated within a couple of weeks. Nothing was received.
- 3.7. Over the next few months, minimal maintenance was carried out. Complaints continued to be received from the Parish Council about the condition of the area and site visits by the LPA confirmed that there had been very little maintenance and certainly nothing regular. It transpired in conversation that the appointed contractor was based in Ireland, so contact details for local companies were provided by the LPA; no alternative appointment was made.
- 3.8. On 9 September 2019 the LPA served a Planning Contravention Notice (PCN) on the applicant company. The purpose of this was to obtain a schedule of exactly what works had been carried out and by whom, and to find out what was planned for the next six months.
- 3.9. The response was received on 30 September 2019 and the information provided was then compared with the agreed schedule in the management plan. Significant

discrepancies were found. For example, the approved management plan showed the grassed amenity area being cut to 30 – 50mm twice monthly, whilst the schedule showed it cut to 10mm three times per year (March, September and November). The applicant company was advised that the works were not in accordance in a letter on 9 October 2019 and warned that the LPA was intending to serve a Breach of Condition Notice (BCN). No response was received.

3.10. On 22 October 2019 the BCN Notice was served.

4. The Breach of Condition Notice

- 4.1. A BCN is a simple tool. It identifies a planning breach and details the steps required to remedy it. There is no right of appeal against a BCN and failure to comply is a criminal offence, with a fine on conviction at a Magistrates Court of up to £1,000. The level of fine is not always a deterrent, but the criminal conviction is.
- 4.2. The BCN here identified the planning breach as non-compliance with Condition 15, in that the planting was not in accordance with the approved scheme, neither the flood compensation area nor Alma Beck had been maintained in an appropriate and unobstructed condition and the maintenance of the whole area had not been in accordance with approved scheme.
- 4.3. The BCN set out 5 requirements:
 - a. In the planted areas (residential areas, natural landscape zone and informal play area) where the planting was not in accordance with the approved plan, to either remove the existing planting and replant as approved or submit and have approved an alternative scheme of planting and then implement this; and
 - b. Remove all dead, damaged and diseased planting in the hedgerow area and replant; and
 - c. Clear the flood compensation area; and
 - d. Clear Alma Beck; and
 - e. Implement the approved landscape management plan.
- 4.4. The deadlines for compliance were one month for items (c) and (d) plus the clearance of the informal play area, and three months for the remainder.
- 4.5. The LPA visited the site on 28 November 2019 and found that items (c) and (d) above had been completed. The applicant company was advised of compliance with this deadline.
- 4.6. On 14 January 2020 the applicant company was reminded by email that the deadline for the remainder of the work was 21 January 2020.
- 4.7. On 21 January 2020 the applicant company submitted a revised landscaping scheme for the site. The scheme outlined was the as-planted scheme, so effectively this was an

application to retain the status quo. The application was on an incorrect form, did not seek to vary the condition (as required) and was not accompanied by a fee. The application was invalid.

- 4.8. The LPA visited the site on 23 January 2020. No further works had been undertaken.
- 4.9. On 24 January 2020 the LPA wrote to the applicant company advising that the BCN had not been complied with. A copy of this letter is attached at Appendix 2. No response has been received.

5. Proposed actions

- 5.1. As outlined above, the LPA has been endeavouring to secure compliance with the landscaping scheme on this site since 2017. This is not simply an issue of principle, but is to achieve the high standard of amenity and appearance of the development as planned, and to ensure that the residents of the development and wider area can use and enjoy the public open space which was to be provided as part of the scheme. Access to a high quality environment improves the experience of place and offers multiple benefits to communities.
- 5.2. The LPA has engaged with the applicant company informally through correspondence and multiple site meetings; these have not been effective. It has therefore served both a PCN and, subsequently a BCN in an effort to force compliance, but these have not achieved very much either, despite the punitive measures associated with non-compliance with the latter. The LPA is able to prosecute the applicant company for failure to comply with the BCN.
- 5.3. Prosecution in a matter such as this is a blunt tool. Essentially the Court will consider whether or not the condition has been complied with and, to do this, will look at the facts of the case. The facts here are clear and there is a high chance of a successful prosecution. A successful prosecution, however, is just that and is not compliance, but the advantage of a successful prosecution is that it does tend to prompt compliance. The reasons for this can be multiple, and will include reputational risk and to avoid further court action. It also demonstrates the commitment of the LPA to upholding the planning requirements.
- 5.4. The issue here which has most exercised local residents is the inadequate maintenance of the amenity area, which impacts directly on the use and enjoyment of the development. This will start to become an issue again in April. Prosecution may prompt adherence to the agreed schedule. If it does not, there is an option for the LPA to engage a contractor to do this work and recharge it to the applicant company as a form of direct action; these costs can be raised through the prosecution process.

6. Conclusion and recommendation

- 6.1. The Ditchingham Malting scheme is a sensitively designed and well-constructed development. However, the failure to correctly complete the landscaping scheme or to

undertake the maintenance is having a direct and adverse impact on the enjoyment of the amenity area. This failure is long standing and persistent.

- 6.2. The applicant company has failed to respond adequately to any of the approaches of the LPA, either informal or formal. Prosecution is therefore recommended in order to address the previous failure and to prompt compliance.
- 6.3. Should there be continued failure to comply with the scheme, it is recommended that the LPA engage a contractor to undertake item (e) at 4.3 and recharge the applicant company. In taking this approach, the LPA will liaise with the Parish Council.

Author: Cally Smith

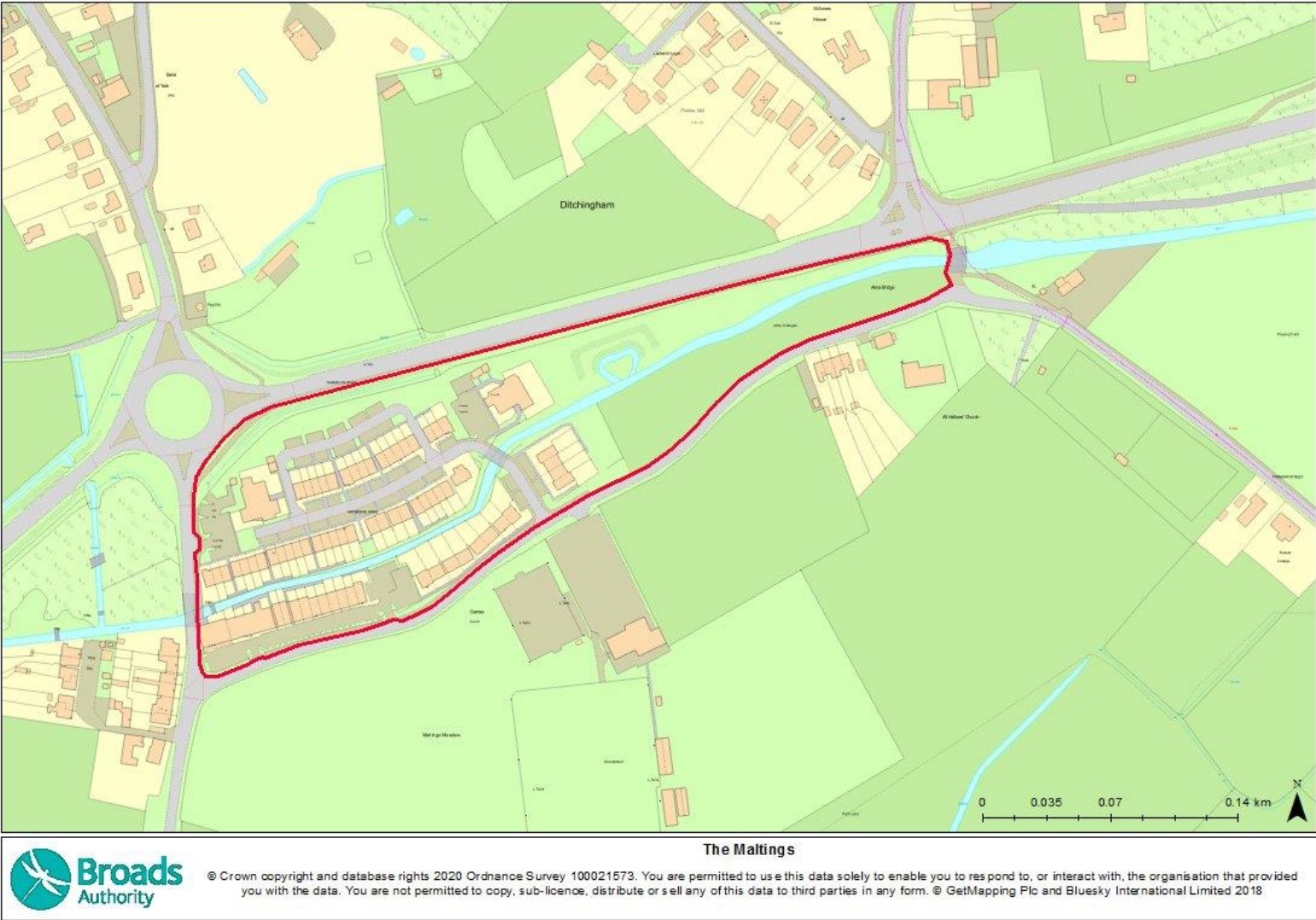
Date of report: 24 February 2020

Background papers: enforcement file BA/2018/0059/INFENF

Appendix 1 – Site plan

Appendix 2 – letter to applicant company

Appendix 1 – Site plan



Appendix 2 – letter to applicant company



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Date 24 January 2020

Our ref BA/2018/0059/INFENF

Your ref

Dear Mr Wilshaw

Breach of Condition Notice at Ditchingham Maltings

You will be aware that the Broads Authority served a Breach of Condition Notice (BCN) in respect of the above development on 22 October 2019.

The BCN required the following works to be completed by 22 November 2019:

- (i) Natural landscape plan - remove all existing planting around and within the area identified as 'Informal Play' on plan SR 655.4.1OC dated December 2012; and
- (ii) Flood Compensation Areas - Clear all obstructions, debris, litter, fly tipping to enable the area to operate unobstructed and able to store flood water; and
- (iii) Alma Beck - Clear all obstructions, debris, litter, fly tipping to enable the area to operate unobstructed and able to store flood water.

My colleague Linda Ibbitson-Elks visited the site on 26 November 2019 and found the following in respect of compliance:

- (i) None of the planting had been removed and compliance with this requirement had not been achieved;
- (ii) Some clearance work had been undertaken and whilst this was not comprehensive, it was sufficient to enable the area to store water and therefore, on balance, it was concluded that compliance has been achieved;
- (iii) Some clearance had been undertaken to remedy obstructions and a demonstrable improvement could be seen. It was concluded that compliance had been achieved.



The BCN required the following works to be completed by 22 January 2020:

- (iv) Residential areas - remove all existing planting as required in order to implement in full the planting scheme shown on plan SR 655.40 Dec 2012; or submit and have agreed in writing with the Local Planning Authority an alternative Landscaping Scheme for residential areas as shown on plan 655.40 Dec 2012; and
- (v) Residential areas - implement in full the planting scheme shown on plan 655.40 Dec 2012; or such alternative Landscaping Scheme as shall be agreed in writing with the Local Planning Authority in pursuance of (i) as above; and
- (vi) Natural landscape zone - remove all existing planting to the south of Alma Beck as required in order to implement in full the planting scheme shown on plan 655.4.10C dated December 2012; or submit and have agreed in writing with the Local Planning Authority an alternative Landscaping Scheme for residential areas as shown on plan 655.4.10C dated Dec 2012; and
- (vii) Natural landscape zone - implement in full the planting scheme shown on plan 655.4.10C dated December 2012; or such alternative Landscaping Scheme as shall be agreed in writing with the Local Planning Authority in pursuance of (vi) as above; and
- (viii) Natural landscape zone - implement in full the planting scheme shown around and within the area identified as 'Informal Play' on plan 655.4.10C dated December 2012; and
- (ix) Natural landscape zone - Remove all dead, damaged and diseased planting and implement in full a scheme for hedge planting in gaps along the boundary shaded in blue on the attached plan 655.4.10C dated December 2012; and
- (x) Undertake maintenance in accordance with the Landscape Management Maintenance Plan Rev D dated August 2016.

I have viewed the documents that you submitted on 21 January 2020, including the explanatory letter. I have also visited the site. I have found the following in respect of compliance:

- (iv) The BCN was framed in the alternative and required that you either remove all existing planting as a precursor to replacing it with the planting as shown on the approved scheme or that you submit and have approved an alternative scheme by the compliance date.

On 21 January 2020 you submitted an application for approval of details accompanied by an incomplete plan purporting to show the scheme as planted and indicating that you proposed to retain this.

Not only does this not meet the requirement of the BCN in either alternative, but the form is incorrect and so the application cannot even be validated. I would also remark that the simple retention of the scheme as planted with no amendments is unlikely to prove acceptable to the Authority. I have advised you of this previously.

The requirement of 6 (iv) of the BCN has not been met.

- (v) The BCN required either the implementation of the landscaping scheme as originally approved, or an alternative scheme agreed with the LPA under requirement (iv) above.

No planting has taken place so the requirement of 6 (v) of the BCN has not been met.

- (vi) The BCN was framed in the alternative and required that you either remove all existing planting as a precursor to replacing it with the planting as shown on the approved scheme or that you submit and have approved an alternative scheme by the compliance date.

On 21 January 2020 you submitted an application for approval of details accompanied by an incomplete plan purporting to show the scheme as planted and indicating that you proposed to retain this.

Not only does this not meet the requirement of the BCN in either alternative, but the form is incorrect and so the application cannot even be validated. I would also remark that the simple retention of the scheme as planted with no amendments is unlikely to prove acceptable to the Authority. I have advised you of this previously.

The requirement of 6 (vi) of the BCN has not been met.

- (vii) The BCN required either the implementation of the landscaping scheme as originally approved, or an alternative scheme agreed with the LPA under requirement (vi) above.

No planting has taken place so the requirement of 6 (vii) of the BCN has not been met.

- (viii) The BCN required the implementation of the landscaping scheme as previously agreed. No planting has taken place so the requirement of 6 (viii) of the BCN has not been met.

- (ix) The BCN required the removal of all dead, damaged and diseased planting within the hedgerow area and the implementation of a replacement planting scheme.

No planting has taken place so the requirement of 6 (ix) of the BCN has not been met.

- (x) The BCN required the maintenance of the site in accordance with the approved Landscape Management Plan Rev D.

There are a range of actions in the Landscape Management Plan, some of which require action at specific trigger points, whilst others are ongoing. From my inspection it is not clear whether all the weekly actions are being undertaken, so I intend to serve you with a Planning Contravention Notice so I have all the necessary information.

Notwithstanding the comments in respect of 6 (x) above, where there is outstanding information which I need, I conclude that there has not been compliance with the BCN.

As you are aware, the Authority served the BCN following a long period of discussions about this site, during which we have repeatedly expressed our significant concerns about the absence of meaningful action to address the issues around landscaping and maintenance. I am disappointed that the BCN has failed to elicit any timely or meaningful response and can advise you that I will be preparing a report for my Planning Committee seeking authority to prosecute for non-compliance.

Yours sincerely



Cally Smith
Head of Planning