

Planning Committee

05 February 2021

Agenda item number 8.2

Enforcement- Beauchamp Arms- Prosecution

Report by Head of Planning

Summary

Officers have been seeking to obtain information regarding a potential breach of planning control using their powers under section 171 of The Town and Country Planning Act 1990. The landowner has failed to provide the information requested and this is an offence.

Recommendation

That members authorise the commencement of prosecution proceedings in respect of non-compliance with a Planning Contravention Notice.

Contents

1.	Introduction and legal background	1
2.	Enforcement investigations at the Beauchamp Arms	2
3.	Action proposed	5
4.	Financial implications	5
5.	Risk implications	6
6.	Recommendation	6
	Appendix 1 – Location map	7
	Appendix 4 – Response to Planning Contravention Notice	8

1. Introduction and legal background

- 1.1. An effective enforcement service is a fundamental part of the planning system. It ensures compliance both with planning law and planning conditions, investigates and resolves planning breaches and, where necessary, instigates direct action or prosecution in order to achieve compliance. The latter are usually remedies of last resort. The National Planning Policy Framework states at paragraph 58 that “Effective enforcement is important to maintain public confidence in the planning system” and

the law gives a Local Planning Authority (LPA) a wide range of powers that it can use in the discharge of its enforcement duties.

- 1.2. The preliminary actions in any enforcement case involve an investigation of the facts of the matter, in order that the LPA can determine whether or not there has been a breach of planning control. The Town and Country Planning Act 1990 allows the LPA to make a formal request to a landowner (or any person with an interest in the land) for information about activities on land through the serving of a Planning Contravention Notice (PCN). The person on whom the PCN is served is required by law to respond to it, with failure to do so or to knowingly and/or recklessly make false or misleading statements on a material particular, being offences. The penalties on summary conviction are £1000 and £5000 respectively.
- 1.3. The PCN is a very useful tool and enables an LPA to make an accurate assessment of whether or not there has been a breach of planning control. This will inform the decisions on what further actions need to be taken.

2. Enforcement investigations at the Beauchamp Arms

- 2.1. The Beauchamp Arms Public House is situated in a remote location between the villages of Claxton and Langley on the south bank of the River Yare. It is a very prominent building over three storeys with moorings for craft on the south bank and it immediately adjoins Buckenham Sailing Club which is to the south east of the Beauchamp Arms alongside the River Yare. It sits in a big plot, with a large open area to the rear and a long driveway which connects it to the public highway.
- 2.2. In May 2018 officers became aware that a number of static caravans had been installed on land adjacent to the driveway at the Beauchamp Arms. The landowner indicated that he intended to refurbish them and to hire them out to fishermen as accommodation. At a site visit in July 2018, it was noted that they had been moved to the car park to the rear of the premises, and the landowner was asked to remove them off site by the end August 2018. They were not removed and a report was brought to the Planning Committee meeting on 14 September 2018 meeting seeking authority to serve an Enforcement Notice and for prosecution in the event of non-compliance. A copy of this report can be viewed at Appendix 2.
- 2.3. By the date of the Planning Committee meeting, one of the units had been removed and two relocated to land adjacent to the access drive; one remained on the car park. None were in use. Members resolved to authorise the enforcement action as requested, to enable officers to take action should there be a breach of planning control and it be necessary, reasonable and expedient to do so. A copy of the Minutes can be viewed at Appendix 3.
- 2.4. Officers have continued to monitor the site. PCNs were served on 1 March 2019 seeking information on the ownership and use of the three caravans, further to which it

was established that they were not in use. A fourth caravan was installed on the site in September 2019.

- 2.5. In October 2020 a number of complaints were received about works at the site and officers visited on 29 October 2020. They found three static caravans had been located to rear of site, with a close boarded fence around them effectively creating a compound. The landowner was present and advised that the caravans were being used by workers at the pub and the intention was to use them as additional accommodation in order to support the viability of the pub. He authorised officers to view them. Officers found services appeared to be attached to the caravans (ie electricity, water and bottled gas) and that two of the caravans appeared to be occupied.
- 2.6. The landowner was also constructing a small extension to the pub building, for which planning permission is required. No application has been submitted.
- 2.7. On 13 November 2020 a PCN was served. The PCN asked for information on matters including the ownership of the caravans, when and why they had been moved, the services attached and their use. There were also a number of questions about the accommodation in the pub, principally because of the apparent use of the caravans by pub workers. The deadline for the return of the completed PCN was 4 December 2020.
- 2.8. On 10 December a response was received from the landowner, stating the following:

“With reference to your notice please be advised due to the Covid !9 restrictions I am unable to consult with the necessary professionals to respond. Before I do consult and respond can you please advise.

There is no name of the officer who sent this email please provide.

Is this an officers opinion or is it the BA's legal position.

Your officers have inspected the caravans and are fully aware of their status so please quote exactly the planning law (not policy) that has been breached.

Our position is as follows.

There have been 3 statics on site for over 15 years and listed on the rates listing.

We do not accept the argument that when replaced there is any legal time limit. We have asked numerous times for the law or case law to support this position.

We do have a document by who we believe is the officer behind this harassment Cally Smith stating it is an officers opinion as to the time limit between losing enforcement action. Law cannot be an officer's opinion.

There is no connection between the statics and the pub building so under what authority are u asking about the occupants and usage of the main building.

I look forward to your response before I involve my business partners planning consultant.”

- 2.9. The LPA responded on 11 December, explaining that it was lawfully entitled to serve a PCN where it believes there may have been breach of planning control and wishes to obtain information about the activities on the land and that the purpose of the PCN was to obtain information so it could establish the planning position. It extended the deadline for response to 4 January 2021.
- 2.10. No response had been received by 4 January, so a final letter giving a further 7 days was sent on 7 January 2021.
- 2.11. On 10 January a response repeating the questions and remarks at 2.8 above was received.
- 2.12. The LPA responded on the 11 January, reiterating the basis on which it was seeking information and reminding the landowner of the penalties for failure to respond.
- 2.13. Later on the 11 January a further response was received. The landowner advised that:
- “It would appear that despite this being a blatant abuse of power I have been advised to respond to the request and attach the information as best as my knowledge extends ...
- ... As a matter of record I need to know if this is an officer's opinion as this illegal enforcement action has cost us a lost potential revenue of 1,500 per week since September 2018 and we are looking for compensation from the BA or an officer. Standard wording on BA's letters state about it being an officer's opinion. Hope somebody has received an indemnity from the BA.”
- A copy of the PCN was attached, with responses. Incomplete addresses were provided for the owners of the three caravans and the response to most of the other questions was, effectively, ‘don’t know’. A copy of this response is attached at Appendix 4.
- 2.14. On 13 January the LPA responded again to the landowner. The contents of that correspondence was as follows:

“I am writing to advise that I have received the PCN that you returned on 11 January 2021.

In your response you provide a name of the owners of the three caravans, but no contact addresses.

You advise that you do not know when they were moved to the part of the site where they are currently situated (Q2), what they are being used for (Q5), that you are not aware that they are being used for residential purposes (Q6 and 7) and that you do not know anything about a visitor use (Q7). You do not answer the question about why they were moved (Q3), the services to them (Q4) or their intended use (Q8).

You have not provided any information in respect of question 9 – 12 and have instead questioned the basis on which the Local Planning Authority has asked the questions.

You have previously told me that you own the caravans and that they were moved to this part of the site so that you could let them as additional accommodation to support the pub use and/or to fishermen as holiday accommodation. At my site visit on 30 October 2020 at least 2 of the caravans were occupied.

You are required by law to provide complete and accurate responses to the PCN. I do not find it credible that you do not know the answer to these questions.

Please complete the PCN in full and return it to me by 17.00 on Friday 15 January 2021”.

- 2.15. A further response was received from the landowner on 13 January, but it did not include the information requested. There has been no further correspondence.

3. Action proposed

- 3.1. The law gives an LPA a wide range of powers that it can use in the discharge of its enforcement duties. The function of a PCN is to enable an LPA to obtain sufficient information to be able to establish whether or not a planning breach is taking place and the nature of that breach. It can then decide how to proceed, including whether or not enforcement action is expedient. An LPA cannot exercise its enforcement function in the absence of complete and accurate information as it cannot be certain of the breach that it is addressing; were it to do so it would run a high risk of a successful challenge.
- 3.2. It is precisely because the PCN is such a fundamental tool in the investigation of a suspected planning breach that the penalties for failing to respond, or knowingly providing false or misleading information, are high.
- 3.3 In this case the landowner has failed to provide the requested information, despite the deadline being extended three times. It is apparent both from the correspondence and the returned document that he does not intend to respond.
- 3.3. The LPA is unable to progress this investigation in the absence of the requested information. It also has a duty to take action to uphold public confidence in the planning system.
- 3.4. It is proposed that the LPA commence prosecution proceedings against the landowner for failing to comply with the PCN served.

4. Financial implications

- 4.1. There will be a financial cost associated with a prosecution. The extent of this will depend on whether or not the landowner pleads guilty or offers a defence; the complexity of the proceedings will also have an impact. If the matter proceeds to trial the costs could be around £3,000.
- 4.2. It is worth noting that the threat of legal proceedings does sometimes prompt compliance.

5. Risk implications

- 5.1. There are reputational risks arising from the LPA failing to take action where there has been an abuse of its lawful processes.

6. Recommendation

- 6.1. That members authorise the commencement of prosecution proceedings in respect of non-compliance with a Planning Contravention Notice.

Author: Cally Smith

Date of report: 22 January 2021

Appendix 1 – Location map

Appendix 2 – [Report](#) to Planning Committee 14 September 2018

Appendix 3 – [Minutes](#) to Planning Committee 14 September 2018

Appendix 4 – Response to Planning Contravention Notice

Appendix 1 – Location map

BA20180047UNAUP3 Beauchamp Arms, Carleton St Peter



Appendix 4 – Response to Planning Contravention Notice

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990

(As amended by the Planning and Compensation Act 1991)

PLANNING CONTRAVENTION NOTICE

SERVED BY: [the Broads Authority]

On: Mr Ray Hollocks,
c/o The Beauchamp Arms
Ferry Road
Carleton St Peter
Norfolk
NR14 6DH

and by email at [REDACTED] and [REDACTED]

1. THIS NOTICE is served by the Authority because it appears to it that there may have been a breach of planning control, within section 171A(1) of the above Act, at the land described below. It is served on you as a person who appears to be the owner or occupier of the land or has another interest in it, or who is carrying out operations in, on, over or under the land or is using it for any purpose. The Authority requires you, in exercise of their powers under section 171C(2) and (3), so far as you are able, to provide certain information about interests in, and activities on, the land.

2. THE LAND TO WHICH THE NOTICE RELATES

The premises and/or land at;
Beauchamp Arms
Ferry Road
Carleton St Peter
Norfolk
NR14 6DH

shown edged in red on the attached plan ("the Land"), with the approximate location of the three static caravans marked with three crosses (x).

3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Standing and use of 3 Static Caravans on land to the rear of the Beauchamp Arms public house in the approximate locations marked with three crosses (x) on the attached plan.

4. WHAT YOU ARE REQUIRED TO DO

Provide in writing the following information:

(1) The name of the person(s) to whom the caravans belong:

Caravan 1: was owned by T Smith who abandoned it address unknown
Caravan 2: K Willingham address unknown
Caravan 3: J Kazandy Orlando FL USA

(2) The date when they were moved from the land adjacent to the access road to their current position to the rear of the Beauchamp Arms public house:

Caravan 1:

Caravan 2:

Caravan 3:

} unknown

(3) The reason for their being moved – i.e. why were they moved there:

Caravan 1:

Caravan 2:

Caravan 3:

no reason

(4) Details of the services provided to the caravans, including electricity, gas (mains or bottled), water and sewerage:

Caravan 1:

Caravan 2:

Caravan 3:

(5) Details of what they are being used for, e.g. ancillary storage, residential accommodation or visitor accommodation. If there is no use, please state. Please provide full details:

Caravan 1:

Caravan 2:

Caravan 3:

Unknown

~

~

(6) If they are being used as residential accommodation, please state:

(a) the name(s) of the occupant(s):

Caravan 1:

Caravan 2:

Caravan 3:

} not aware they're residential

(b) The date when they first started to use the caravan as residential accommodation:

Caravan 1:

Caravan 2:

Caravan 3:

} see above

(c) Details of the tenancy or rental agreement and the date that this commenced. Please supply a copy of this.

Caravan 1:

Caravan 2:

Caravan 3:

not aware of any

(d) Details of the amount of rent paid, either per week or per calendar month:

Caravan 1:

Caravan 2:

Caravan 3:

(e) Does this payment include the services identified at (4) above? If so, please state which ones.

Caravan 1: YES/NO

Caravan 2: YES/NO

Caravan 3: YES/NO

} not aware any

(f) Does this include Council Tax payments?

Caravan 1: YES/NO

Caravan 2: YES/NO

Caravan 3: YES/NO

} check council records

(7) If they are being used as visitor accommodation, please state:

(a) The date when this use first started:

Caravan 1:

Caravan 2:

Caravan 3:

} not aware any

(b) Details of the basis on which the static caravans are rented out, e.g. daily or weekly or longer:

Caravan 1:

Caravan 2:

Caravan 3:

} not aware any

(c) Details of the amount of amount charged to rent the units, for the periods identified in 7(b) above:

Caravan 1:

Caravan 2:

Caravan 3:

} not aware any

(d) Details of where the static caravans are advertised for rent. Please supply a copy of all advertising material.

Caravan 1:

Caravan 2:

Caravan 3:

} not aware any

(8) If the answer to question (5) above is that there is no use, please provide details of the intended use of the static caravans:

Caravan 1:

Caravan 2:

Caravan 3:

Caravan 3:

(9) Please provide details of the number of rooms in the Beauchamp Arms and the current use of these rooms:

Ground floor:

First floor:

Second floor:

Please advise law that requires this and relevance

(10) How many of these rooms are available for letting purposes?

Ground floor:

First floor:

Second floor:

Please explain what this is connected to planning

(11) Is any part of the main building of the Beauchamp Arms used as residential accommodation?

Ground floor:

YES/NO

First floor:

YES/NO

Second floor:

YES/NO

As above

(12) If the answer to question (11) is yes, please provide the names of the occupants:

Ground floor:

First floor:

Second floor:

As above

Time within which the information must be provided: within twenty-one days, beginning with the day on which this notice is served on you:

5. OPPORTUNITY TO MAKE REPRESENTATIONS IN RESPONSE TO NOTICE

If you wish to make an offer to apply for planning permission, or to stop carrying out any operations or activities, or to undertake remedial works; or to make any representations about this notice, the Authority, or representatives of the Authority, will consider them on Thursday 26th November 11am where you will be able to make any offer or representations in person at that time and place. Please contact us at planning.mail@broads-authority.gov.uk to arrange for this meeting to be conducted either in person or as a virtual meeting.

6. WARNING

It is an offence to fail, without reasonable excuse, to comply with any requirements of this notice within twenty-one days beginning with the day on which it was served on you. The maximum penalty on conviction of this offence is a fine of £1000. Continuing failure to comply following a conviction will constitute a further offence. It is also an offence knowingly or recklessly to give information, in response to this notice, which is false or misleading in any way. The maximum penalty on conviction of this offence is an unlimited fine.

7. ADDITIONAL INFORMATION

If you fail to respond to this notice, the Authority may take further action to deal with the suspected breach of planning control. In particular, they may issue an enforcement notice, under section 172 of

the 1990 Act, requiring the breach, or any injury to amenity caused by it, to be remedied. If the Authority serve a stop notice, under section 183 of the 1990 Act, section 186(5)(b) of the 1990 Act provides that should you otherwise become entitled (under section 186) to compensation for loss or damage attributable to that notice, no such compensation will be payable for any loss or damage which could have been avoided had you given the Authority the information required by this notice, or had you otherwise co-operated with the Authority when responding to it.

Dated: 13 November 2020

Signed:.....

On behalf of: The Broads Authority, 62-64 Thorpe Road
Norwich,
Norfolk, NR1 1RY.