

**Enforcement of Planning Control  
Enforcement Item for Consideration:  
Waterside Restaurant, Rollesby**  
Report by Head of Development Management

**Summary:** This report concerns the unauthorised use of a trip boat at Rollesby Broad

**Recommendation:** That no further action be taken

**Location:** Waterside Restaurant, Main Road, Rollesby

## **1 Site and Location**

- 1.1 The Waterside Restaurant is located on the north shore of Rollesby Broad. It is located to the south of the A149, which here forms Main Road and bisects the village, and to the immediate west of the road bridge which separates Rollesby and Ormesby Broads.
- 1.2 The Waterside Restaurant occupies a 1 hectare plot and comprises a detached building on the edge of the Broad which operates as a restaurant and tea rooms, plus a trip boat operation comprising the Gentleman Jim passenger launch which tours the Broad, a Wheelyboat trip boat which also tours the Broad and is adapted for disabled passengers, plus a fleet of up to 20 rowing boats for self-hire and which also come equipped with electric outboard engines. The site is largely laid to grass, with parking to the north of the restaurant building.
- 1.3 The site is situated adjacent to Rollesby Broad which forms part of the Trinity Broads. The Trinity Broads is a part of the Broads system which is of particular importance for ecological value and biodiversity and is designated an SSSI, SAC and SPA in recognition of this importance; they also provide the drinking water supply to Great Yarmouth. The Trinity Broads are managed by the Trinity Broads Partnership, made up of Essex and Suffolk Water (E&SW) who own most of the area, the Broads Authority, the Environment Agency and Natural England.

## **2 Planning History and Background**

- 2.1 In 2006 the original planning permission was granted at land adjacent to Staithe House, Main Road, Rollesby for a restaurant/tea rooms and boat hire booking office (06/05/0001/BF). This planning permission was implemented, further planning permissions were subsequently granted and the operation has developed into what is now the Waterside Restaurant at Rollesby.

2.2 When the original planning permission was granted in 2006 this was subject to a number of conditions. Of these, condition 12 stated:

*“No power boats (other than those powered by electric outboards), canoes, windsurfers, sailboats or privately owned row boats shall be hired or launched from the site and the total number of rowing boats (included those powered by electric outboards) hired out at any one time shall be no greater than 20 and all shall be returned before sunset”.*

The reason for the condition was:

*“To safeguard the natural environment”.*

2.3 In addition to the conditions, the original planning permission was also subject to a Section 106 Legal Agreement. This limited the areas which could be navigated by boats launching from the site, and restricted these to:

- parts of Rollesby Broad and Ormesby Little Broad only; and
- no closer than five metres to the reed fringes and the adjoining dykes of Rollesby Broad and Ormesby Little Broad.

Further, there was to be no navigation by boats launching from the site in to Lily Broad, Ormesby Broad or Filby Broad.

2.4 To ensure compliance with the areas excluded from navigation, the Section 106 Agreement also required that any person hiring a boat from the site be provided with a map showing where navigation was permitted.

2.5 In 2009 planning permission was granted for the variation of condition 17 on the original 2006 planning permission to amend the opening hours of the restaurant (BA/2009/0339/COND).

2.6 In 2010 planning permission was granted for an extension to the kitchen (BA/2010/0331/FUL).

### **3 Current position**

3.1 The operator of the Waterside Restaurant is currently operating vessels from the site as follows:

- 5 x rowing boats;
- 5 x rowing boats with electric outboard engines;
- 1 x passenger trip boat (Gentleman Jim) powered by electric inboard engine;
- 1 x passenger trip boat (Wheely Boat) powered by electric outboard engine;
- 1 x recovery vessel powered by a petrol outboard engine.

3.2 The operation of the Gentleman Jim passenger trip boat is contrary to condition 12 of the 2006 planning permission because it is an electric inboard engine rather than an electric outboard engine.

- 3.3 The operation of the recovery vessel is contrary to condition 12 of the 2006 planning permission because it is a petrol outboard engine rather than an electric outboard engine.
- 3.4 The operator had also previously trialled a small number of canoes and kayaks, following informal agreement with the Broads Authority ranger, however this was contrary to the planning condition and has now ceased. It is noted that this trial use was the subject of strenuous complaint from E&SW and Natural England, who had major concerns about the disturbance to wildlife resulting from this use as a result of the ability of canoes to navigate into the quieter parts of the area. These concerns were shared by the conservation team of the Broads Authority.

## 4 Policies

- 4.1 The purpose of the condition 12 on the original 2006 planning permission was to protect the area of the Trinity Broads from harm, including through disturbance (for example from noise) or pollution (for example fuel spills). The policies of the adopted Core Strategy (2007) and Development Management Policies DPD (2011) support this continued protection. The following policies are relevant.

4.2 **Adopted Core Strategy (2007)**  
[DMP DPD - Adoption version.pdf](#)

CS1: Landscape Protection and Enhancement  
CS7: Environmental Protection.

4.3 **Development Management Policies DPD (2011)**  
[Development and Flood Risk Supplementary Planning Document \(SPD\)](#)

DP1: Natural Environment  
DP3: Water Quality and Resources  
DP12: Access to the Water.

- 4.4 In addition to the above, the Management Plan (2012- 17) for the Trinity Broads outlines the measures to be taken to protect the quality of the area and includes, in respect of boating, the following statement at paragraph 5.4.1:

*“... Certain activities on the open water are viewed as being incompatible with the conservation objectives for the Trinity Broads. They include:*

*Powered craft: Apart from where legal rights exist and when agreed for necessity (such as carrying heavy engineering equipment and rescue boats) use of petrol outboards is prohibited. Electric outboards are permitted. Any petrol outboards using the broads are subject to strict controls on usage, type of engine and storage requirements. ...”*

- 4.5 In addition, since its publication in March 2012 the National Planning Policy Framework (NPPF) is a material consideration in making planning decisions. The NPPF seeks to balance the needs of businesses with the need to protect the environment more generally, but with particular emphasis on bio-diversity and at paragraph 109 the NPPF advises that:

*“The planning system should contribute to and enhance the natural and local environment by: ...*

- *Minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressure ...”*

- 4.6 It recognises the importance of the rural economy, and the role of tourism in this, and states at paragraph 28 that planning policies should:

*“... support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres...”.*

## **5 Action Proposed**

- 5.1 The use of the Gentleman Jim trip boat and the recovery vessel are in contravention of condition 12 of the 2006 planning permission and are therefore potentially liable to enforcement action. It should be noted, however, that enforcement action is not mandatory, but is at the discretion of the Local Planning Authority (LPA) and the LPA must decide whether or not it is expedient to take such action, having regard to the provisions of the development plan and to any other material considerations. In determining expediency, an LPA needs to be mindful of the harm that is being caused by the breach and the acceptability in planning terms of what is being undertaken.
- 5.2 Discussions have been taking place since early 2010 regarding the above breaches and the operator had indicated that he was prepared to submit a planning application to vary Condition 12 to permit the use of the electric inboard engine and the petrol-powered rescue vessel. Whilst the operator has indicated on a number of occasions that he is on the brink of submitting an application, no valid application has been forthcoming. Any permission would also need to be subject to a variation of the Section 106 Agreement and this would need to be agreed with Essex and Suffolk Water who would be a party to the Agreement. It is understood that Essex and Suffolk Water, however, will not give a commitment to sign such a S106 Legal Agreement. Accordingly, the landowner will not submit an application and the use of the electric in-board engine and the petrol-powered rescue vessel remain unauthorised and with no obvious alternative route for resolution.

- 5.3 The purpose of the planning condition was to protect the tranquillity and ecological value of the Trinity Broads and this was achieved through a restriction on petrol and/or diesel power in favour of only electric outboard engines and a restriction on the numbers of un-powered craft.
- 5.4 The Gentleman Jim vessel uses an electric in-board engine rather than an electric out-board engine. Whilst in strictly technical terms the electric in-board engine does not comply with the wording of the condition, in practical terms the operation and impact is indistinguishable. The electric engine – whether in-board or out-board - is quiet, thereby reducing disturbance, and being operated off a battery does not offer the risk of fuel spill. Natural England have been consulted on the use of the electric in-board engine and have indicated that they do not have an objection. In planning terms it is acceptable.
- 5.5 The rescue vessel is petrol operated and is therefore noisier than its electric counterpart; there is also risk of spillage associated with any refuelling operation. The operator has advised that the rescue vessel is used to retrieve rowers who get in to trouble on the water. In order to be effective it needs to be able to operate quickly and reliably, and it is noted that rescues are more often needed in windy or inclement weather, when electric engines may not be powerful enough to be effective. By definition the rescue vessel should not be used on a routine basis, and the LPA does not have any evidence to suggest that this is the case. It is also noted that the sailing club uses petrol powered engines for their rescue vessels. With regard to the risk of contamination, the operator has advised that the engine is re-fuelled only in a bunded area and never on the water. Natural England have been consulted on the current use of the rescue vessel and have indicated that, subject to bunding arrangements for re-fuelling and appropriate storage, they do not have an objection provided that it is used solely for rescues. Given the above, it is concluded that the harm arising from the occasional use of a petrol-engined rescue boat is not of sufficient detriment to justify enforcement action.
- 5.6 Whilst the background is complicated, the planning issues are clear. Although the activity that is currently taking place is clearly contrary to the current planning condition, in applying the test of expediency the Local Planning Authority needs to consider whether the activity complies with the policies of the Development Plan and the National Planning Policy Framework and whether, in fact, if faced with an application planning permission could be granted. The Local Planning Authority also needs to have regard to any other material considerations. The reasons for the reticence of the landowner to submit an application to regularise the situation are outlined above. The key issue in this matter is the impact on the designated sites and specifically the difference in impact between electric inboard and electric outboard engines and the occasional use of a petrol outboard engine on a rescue vessel. As outlined above in paragraphs 5.4 and 5.5 above, the former is considered to be indistinguishable from the permitted engine type and the latter is not considered to have such an effect as to justify enforcement action.

- 5.7 In summary, it is therefore considered that there are no grounds on which to argue that enforcement action is currently expedient. It is recommended that no further action is taken.
- 5.8 It is understood that E&SW and Natural England have wider concerns about the boating operation run from the Waterside Restaurant. These concerns appear to relate mainly to the number and types of boats and the frequency of their operation. It is understood that they would like to see a reduction in number and frequency of boats movements and greater control over the types of boat from that specified in the current permission, because, for example, currently 20 electric powered trip boats could be active throughout the day. The concerns of E&SW and NE are shared by the conservation team of the BA. The operation is covered by condition 12 of the original planning permission and, as is clear from 2.2 above, this permits the use of up to 20 rowing boats or boats powered by electric outboard. Other than the use of the electric inboard engine and the petrol powered rescue boat, the operation is within the terms of the planning condition and is entirely lawful. The only way for the LPA to reduce the number, type or frequency of operation would be through negotiation with the operator and by persuading him to give up some of his permitted uses. The operator has previously indicated that he would be willing to consider amendments to the operation, including a lower limit on the number of boats, however he would want to do this in the context of a variation of condition 12 to include the use of the electric inboard engine and the petrol powered rescue boat. This application, however, would need to be subject to a S106 Legal Agreement and, as set out at 5.2 above, E&SW will not give a commitment to agree to this. In the absence of this, no application is likely to be submitted to vary the condition.

## **6 Financial Implications**

- 6.1 There are no legal costs associated directly with this course of action.

Background papers:	None
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Appendices:	APPENDIX 1 - Site plan

APPENDIX 1

The Waterside, Rollesby Ltd, Main Road, Rollesby

