

**Enforcement of Planning Control
Burghwood Barns, Ormsby St Michael**
Report by Head of Planning

<p>Summary: This report concerns unauthorised development at Burghwood Barns, Ormsby St Michael, where an Enforcement Notice has previously been served.</p> <p>Recommendation: Members are requested to note that prosecution proceedings will commence following non-compliance with the Enforcement Notice. Authority is sought for the service of a Breach of Condition Notice in respect non-compliance with planning conditions on permission BA/2016/0444/FUL.</p>

1. Background

- 1.1. Burghwood Barns at Ormsby St Michael is a dwelling house situated within an extensive plot on land to the south of the A149. The dwelling is a converted barn which is surrounded to the south, east and west by agricultural land and woodland on the edge of Ormsby Little Broad. The site is almost immediately adjacent (by a distance of 5 metres) to areas with SAC and SSSI designations.
- 1.2. The site has an extensive planning history, but for the purposes of this report the relevant matters are briefly:
 - (i) the change of use of 6,000 sqm former agricultural land to inclusion within the domestic curtilage;
 - (ii) compliance with the planning permission for works on a separate 5,000 sqm area of the site.

2. Change of use to domestic curtilage

- 2.1. Around 2016 the landowner acquired a large parcel of the adjacent agricultural land and sought to incorporate it into his domestic curtilage. This included a 6,000 sqm area at the southern end of the plot, which was grassed and demarcated from the remainder of the site by a 1.8 metre wide paved path around the edge enclosed by ornamental planting and a 1.8 metre high fence. A large metal gazebo structure was installed in the southwest corner and lighting was installed on the southern boundary facing out of the site. Planning permission was neither applied for nor granted for any of the above development.

- 2.2. The matter was considered by the Planning Committee at their meeting on 3 March 2017, in connection with a related matter (covered below). It was resolved to serve an Enforcement Notice in respect of the 6,000 sqm and the associated structures. The Enforcement Notice was served on 8 March 2017 with a compliance date of 19 July 2017. The Enforcement Notice required the cessation of the use of the land as residential curtilage and the removal of the path, gazebo, domestic paraphernalia and lighting.
- 2.3. On 13 April 2017 an appeal was submitted against the Enforcement Notice, however this was dismissed in a decision letter dated 9 January 2018. The compliance period was extended to 6 months allowed, giving a deadline date of 9 July 2018.
- 2.4. In July 2017 a retrospective planning application was submitted to retain the unauthorised development (BA/2017/0179/FUL). At the 18 August 2017 meeting of the Planning Committee it was resolved to refuse the application and the refusal of planning permission was issued on 13 October 2017.
- 2.5. Compliance was required by 9 July 2018 which is the compliance date set out in the Inspector's appeal decision letter. Site inspections have taken place on 10 July and 6 August 2018 and the Enforcement Notice has not been complied with, in that the path, gazebo, domestic paraphernalia and lighting remain in situ. The land is in a condition suitable for use as residential curtilage. The landowner stated at a site monitoring visit in July 2018 that he does not intend to comply.

3. Compliance with planning conditions

- 3.1. In December 2016 a retrospective planning application was submitted to retain a separate 5,000 sqm of the former agricultural land within the residential curtilage (BA/2016/0444/FUL). This comprised land to the east of the dwelling and consisted of a continuation of the lawn within the area covered by an earlier permission, plus a large pond along the eastern side of the now 'L' shaped site. All the proposals were retrospective and included new buildings along the northern boundary.
- 3.2. The matter was considered by the Planning Committee at their meeting on 3 March 2017. It was noted that the application proposed retaining a significant extension to the curtilage of the dwelling through the change of use from arable agricultural land and the retention of built development, and that the isolated, rural site had evolved substantially from the original conversion of an agricultural barn with a modest but ample curtilage. Members resolved to grant planning permission, in accordance with the recommendation, subject to various conditions including ones requiring various improvements to the landscaping, pond, buildings and a new fence and hedge across the southern boundary. The planning permission was issued on 6 March 2017.
- 3.3. This planning permission has been the subject of regular monitoring and discussions with the landowner around what needs to be done, with a number of extensions of time having been agreed informally in response to on-site

issues, for example those arising from the wet spring. The following indicates the current position in respect of compliance with conditions 3, 4 and 5:

Condition 3:

Reprofile pond margins	Completed
Aquatic planting	completed
Internal boundary planting to pond	Completed
External boundary planting to pond	Completed
Boundary planting to fence line	Completed
Planting to vertical surfaces	Completed
Stabilise pond edges with coir rolls	compliance date 30 September 2018
Native hedging across site	compliance date 31 October 2018
Seeding around reprofiled edges	compliance date 31 March 2018 - not completed – in breach

Condition 4:

Construct pitched roof to building 1	compliance date 31 October 2018
Construct pitched roof to building 2	compliance date 31 August 2018
Timber doors to car port	compliance date 30 November 2018
Timber doors to building 1	compliance date 31 December 2018
Timber doors to shed	Compliance date 31 July 2018 - not completed – in breach
Fence across site	Compliance date 31 March 2018 - not completed – in breach

Condition 5:

Bat boxes installed	compliance date 1 February 2018– not in accordance with approved details
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3.4. As can be seen, there has been some compliance with the requirements of the conditions on planning permission BA/2016/0444/FUL, but it is not complete.

4. Proposed next steps

4.1. At the 3 March 2017 meeting of the Planning Committee, in addition to resolving to serve an Enforcement Notice in respect of the matters covered at section 2 above, Members also resolved that if compliance was not achieved through that Enforcement Notice then authority given to proceed to prosecution. This authority remains extant.

4.2. Following discussion of the matter at the meeting of the Planning Committee on 20 July 2018, Members directed officers to write to the landowner advising of the resolution to prosecute and allowing a further 14 days for compliance.

This was undertaken, with the letter being sent on 23 July with a deadline for compliance of 7 August.

- 4.3. Regrettably, compliance has still not been achieved. At a site visit on 9 August it was found that no further work had been done so there had been no progress towards compliance. The Authority should therefore proceed to a prosecution for non-compliance with the requirements of the Enforcement Notice.
- 4.4. With regard to the matters outlined at section 3 above, whilst there has been some compliance, this is not comprehensive and the matters which remain outstanding range from minor (bat boxes in wrong place) to more significant (construction of pitched roof to improve visual appearance of building). The deadlines for other works has not yet been reached.
- 4.5. Whilst it is accepted that a number of the matters are minor, there is nonetheless a breach and when considered in the context of the long history of non-compliance on this site, there is a justification for pursuing the breaches to secure full compliance. By doing this, the Broads Authority as a Local Planning Authority (LPA) would be resolving the on-site issues as well as protecting the credibility of the planning system. This is a valid objective and it is noted that the recently published National Planning Policy Framework states at paragraph 58: "Effective enforcement is important to maintain public confidence in the planning system".
- 4.6. The LPA is able to serve a Breach of Condition Notice (BCN) in respect of any planning conditions where there has not been full compliance to date, with the issued BCN stipulating the date by which compliance is required. There is no right of appeal against a BCN and if compliance is not achieved by the stipulated date the LPA is able to prosecute.
- 4.7. It is recommended that a BCN be issued in respect of conditions 3, 4 and 5. Should this not result in prompt compliance, where required, the LPA would be able to pursue this through prosecution and this could be done simultaneous with the legal action proceeding in respect of the Enforcement Notice.

5. Conclusion

- 5.1. This is a site where there has been significant past unauthorised development and extension into agricultural land with the continuing breaches noted in this report. Through the actions proposed the LPA is seeking to bring matters to a close.

6. Financial Implications

- 6.1. There will be financial implications should the LPA proceed to prosecution. The costs of this will be met from the existing legal budget.

7. Recommendation

7.1. Members are requested to note that prosecution proceedings will commence following non-compliance with the Enforcement Notice. Authority is sought for the service of a Breach of Condition Notice in respect non-compliance with planning conditions on permission BA/2016/0444/FUL

Author: Cally Smith

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Background Papers: BA/2017/0179/FUL and BA/2016/0444/FUL