

Planning Committee

04 December 2020

Agenda item number 8.2

BA/2020/0002 – Enforcement on land east of North End, Thorpe next Haddiscoe

Report by Head of Planning

Summary

Unauthorised development has taken place on land to the east of North End comprising the change of use to mixed use of a leisure plot and storage.

Recommendation

To serve an Enforcement Notice.

Contents

1.	Site location	1
2.	The unauthorised development	2
3.	The planning issues	3
	The acceptability of the development	3
	The expediency of enforcement action	4
4.	Financial implications	6
5.	Conclusion	6
	Appendix 1 – location map	8
	Appendix 2 – Appeal decision APP/E9505/W/20/3256122: Land east of Brograve Mill	9

1. Site location

- 1.1. The site is located on land to the east of North End, which is a minor road running broadly north-south to the west of Thorpe Marshes which form part of the Waveney valley. North End is on the valley side, with land rising relatively steeply to the west thereby effectively creating a cutting in which the road sits. There are a number of dispersed residential properties set within generous curtilages, with the intervening land being used for grazing or as low level agriculture. There are separate blocks of

trees to the east, which allows views through to the marshes beyond. The land has a very strongly rural character.

- 1.2. The subject site is around 2 hectares in area and is located on the east side of North End. The site slopes from the road down towards the marshes to the east, with a line of trees just inside the site's eastern boundary and informal hedging on the other boundaries. On the roadside boundary there is a small wooden outbuilding which has been used to accommodate tools and other equipment used to maintain the site. Historically the land has been cut periodically, rather than grazed, but in the last year gravel paths have been laid, and an area separated off by post and wire fencing.
- 1.3. The site has a strongly rural character and is typical of the land on the valley side here.

2. The unauthorised development

- 2.1. The subject site is a plot of land within the countryside. Historically it would have been used for agricultural grazing, but it has in recent years had a nil planning use as there has been no subsequent use.
- 2.2. In 2007 a caravan and mobile home were brought onto the site, along with various vehicles and other paraphernalia, with hardcore laid to facilitate access. A report was brought to the 7 December 2007 meeting of the Planning Committee, where authority was granted to serve Enforcement Notices (BA/2007/0111/UNAUP3). These were served in February 2008, but the land was not cleared within the timescale given. The LPA subsequently prosecuted the landowner in 2009 for non-compliance and the land was cleared.
- 2.3. Since 2009 there have been various complaints about activities on the site, but nothing has taken place which required planning permission. The owners have visited the site periodically, but there has been no regular or sustained activity such as to change the character of the land. Repairs have also taken place to the shed which has been on the site for many years.
- 2.4. In January 2020 the LPA received reports that a large storage building had been brought on the site and works in preparation for its erection were underway, including the connection of electricity. Officers met the landowner and his son on site in February, where they were reminded of the need for planning permission for any development. The landowner advised that the building was being stored for resale or use elsewhere and that they might want to keep some animals on the site, so the electricity had been connected for electric fencing.
- 2.5. In May 2020 the LPA received reports that a base for caravans had been laid. On inspection, this turned out to be a 8m x 4m free standing patio, comprised of some hardcore, a thin membrane topped with gravel and a number of breeze blocks to hold a rudimentary wooden framework topped with decking. There were also other items of equipment on the site including patio furniture, a fire pit and further paraphernalia. Subsequent visits have found further equipment, including a gazebo, bbq equipment

and tents. Gravel paths have been laid to facilitate access around the site and the southern end has been separated off with post and rail fencing in a manner suggesting horse grazing.

- 2.6. The cumulative impact of the storage of the various structures and items, plus the laying of paths and fencing, has had the effect of altering the character of the land from rural countryside to having the appearance of a leisure plot and land used for storage. Planning permission is required for such a change of use, and has neither been applied for nor granted.
- 2.7. The landowner has been written to on a number of occasions and advised that the activities on the site are unacceptable in planning terms and has been asked to clear the site, but no action has been taken and nor has a response been received.

3. The planning issues

- 3.1. The Broads 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"
- 3.2. In determining how to take this matter forward, the LPA must, therefore, first consider whether the unauthorised development is acceptable in planning terms, whether it is capable of being made acceptable, or whether it is unacceptable. If the unauthorised development is not and cannot be made acceptable, then the LPA must consider the expediency of enforcement action.

The acceptability of the development

- 3.3. Looking first at the acceptability of the existing unauthorised development, which comprises the change of use of land to a mixed use as a leisure plot and for storage.
- 3.4. For the purposes of the Local Plan, a 'leisure plot' is defined in the Reasoned Justification to adopted policy DM50 as "a plot resulting from the sub-division of land and its use for leisure purposes, such as quiet enjoyment of the plot and scenery, and

informal recreation.” The policy states that “New leisure plots and mooring plots will not normally be permitted ...”, going on to explain in the Reasoned Justification that this is because “... (they) often result in the creation of a suburban appearance, with associated domestic paraphernalia that detracts from the landscape character of the Broads.” This is precisely what has happened on this site, where the landowner has installed various structures and domestic paraphernalia to make the site more comfortable for an increased frequency and intensity of use, which has resulted in a change of character. None of the structures in themselves constitute development (the free standing patio, for example, is not fixed to the ground), but the overall effect is one of a gradual suburbanisation. This is in conflict with DM50.

- 3.5. The site is located in an area with a strongly rural character, with long views from North End across to the marshes and the river valley. The residential properties are in the main well screened by trees and hedges, which reduce views into the domestic curtilages giving the landscape here an undeveloped character. Adopted policy DM16 seeks to protect the character of the Broads and states “Development proposals that would have an adverse impact on either the character of the immediate or the wider landscape or the special qualities of the Broads will not be permitted.” It is considered that the creation of a leisure plot here, with the associated paraphernalia, has introduced a developed and domestic element which has had a significant adverse impact on the character of the immediate landscape, as well as an adverse impact on the integrity of the wider landscape. This is in conflict with DM16.
- 3.6. The arguments outlined in respect of conflict with DM16 apply also to the use of the site for storage purposes, whereby the stacking of the sectional building and other materials, has exacerbated the adverse impact on the landscape. The use of land for storage purposes is generally an employment use and criterion (i) of adopted policy DM25 seeks to locate such uses within a development boundary, within or adjacent to existing employment sites or in a building used as an employment use. This site is none of these, so there is an in principle conflict. Criterion (ii) of DM25 permits such a use only where “Proposals do not have an adverse impact on landscape character”, which reinforces the general presumption against such a use on a rural greenfield site such as this. The development is in conflict with DM25.
- 3.7. Due to conflict with policies DM50, DM16 and DM25 the unauthorised development is unacceptable. As it is unacceptable, it is not appropriate to seek a retrospective application. It is also the case that the conflicts with development plan policy are fundamental and could not be overcome by amendments to the development, so there is no basis for requesting these. The LPA must, therefore, proceed on the basis that as the development is unacceptable and cannot be made acceptable, the next step is to consider the expediency of enforcement action.

The expediency of enforcement action

- 3.8. When a breach of planning control has taken place and the LPA is considering what action is appropriate, it will need to look carefully at a number of factors. The first

factor is expediency. This may be explained as an assessment of the harm that is being caused by the breach. Harm may arise through a range or combination of factors, for example

- Adverse impact on visual amenity due to poor design or materials;
- Adverse impact on neighbouring amenity due to noise, overlooking or loss of privacy; and/or
- Inappropriate or conspicuous development that has an adverse impact on a protected landscape or Conservation Area.

3.9. There are two types of harm that result from this particular unauthorised development. The first is the specific harm caused to the protected Broads landscape by a development which introduces an inappropriate domestication to a strongly rural landscape with an otherwise undeveloped character. The second is the generic harm which arises from a development which is in conflict with adopted policies and which, if it were not addressed, would undermine the policies in the development plan as well as the principles of the NPPF and NPPG. In undermining these, the retention of the non-compliant development would undermine the integrity of the planning system and the protection of this system is a valid and justifiable objective. Overall it is considered that the harm resulting from the development is significant. There will be costs associated with enforcement action, however, when balanced against the need to ensure, amongst other matters, the protection of the Broads landscape, enforcement action is likely to be expedient given the benefits of securing a cessation of the development.

3.10. The second test is one of proportionality; enforcement action should always be proportionate to the seriousness of the harm being caused. In this case, significant harm is being caused to the Broads landscape, which is identified as of national value and protected for this reason. Whilst the landowner may derive enjoyment from the leisure plot use and convenience from the storage, it is considered that these private benefits should not override the public benefits associated with protecting the national asset and that enforcement action to secure the cessation of the unauthorised development is proportionate.

3.11. The Local Enforcement Plan identifies the need to ensure consistency so that a similar approach is taken in similar circumstances to achieve similar outcomes. This third test is somewhat harder to apply as there are no recent comparable cases which have been the subject of enforcement action. It is, however, worth noting the recent appeal decision at Brograve Mill, where the LPA refused a retrospective application for planning permission for the retention of a scrape on the grounds of its adverse impact on the character of the landscape. In dismissing the appeal, the Inspector relied on Paragraph 172 of the National Planning Policy Framework (the Framework) which “requires that great weight should be given to conserving and enhancing landscape and scenic beauty in the Broads and AONBs which, along with National Parks, have the highest status of protection in relation to these issues.” A copy of this decision is

attached at Appendix 2. The issue here is also one of impact on the protected landscape, with the remedy sought being a cessation of the unauthorised use, so, in this respect, the approaches are consistent. The principle of the approach taken is also consistent with the Local Enforcement Plan.

- 3.12. Finally, it is noted in the Local Enforcement Plan that whilst the law gives an LPA strong legal powers to deal with unauthorised development, the preferred approach is always to seek to negotiate a solution and the fourth test considers whether this approach has been applied. In negotiating a solution, the outcome will either be that the development is (or is made) acceptable and planning permission is granted, or, where the development is not and cannot be made acceptable, that the breach is stopped. In this case, for the reasons outlined at 3.3 – 3.7 above, the development cannot be made acceptable and there is no prospect of planning permission being granted. The solution will therefore require the cessation of the development.
- 3.13. The LPA engaged previously with the landowner, including in person in February 2020 when he was reminded him of the need for planning permission for development, but the activities on site have increased. There has been no response to letters sent in July and October. Given the landowner's failure to engage it is considered unlikely that compliance could be achieved by negotiation.
- 3.14. In considering expediency it is also necessary to take account of the impacts and costs of taking action, which would include the resources required to do this, as well as what is likely to be achieved. The more harm that is being caused then the more likely it is that it will be expedient to take enforcement action due to the need to stop the harm. Conversely, if there is little harm it may not be expedient to pursue the matter, particularly if the costs are high. In this case, there is significant harm to interests of public importance from development which is intrinsically unacceptable. The service of Enforcement Notices, as a first step, incurs little cost other than officer time; if further action is needed to secure compliance this will need to be considered.

4. Financial implications

- 4.1. The service of Enforcement Notices will require officer time; any costs associated with administration will be met from the existing planning service budget.
- 4.2. If compliance is not achieved voluntarily there will be costs associated with enforcing this. Members will be advised of progress through the regular update to Planning Committee, so there will be the opportunity to consider any additional costs.

5. Conclusion

- 5.1. The unauthorised development at the site is contrary to development plan policy and could not be granted planning permission.
- 5.2. The Local Enforcement Plan explains that where an unauthorised development is unacceptable and cannot be made acceptable, the LPA should seek to negotiate a

solution. There is no realistic prospect of a negotiated solution here and it is recommended that an Enforcement Notice is served requiring the clearance of the site and the cessation of its use as a leisure plot and for storage. A compliance period of 4 months would be appropriate.

Author: Cally Smith

Date of report: 18 November 2020

Background papers: Enforcement file BA/2020/0002

Appendix 1 – location map

Appendix 2 – Appeal decision APP/E9505/W/20/3256122: Land east of Brograve Mill

Appendix 1 – location map





Appeal Decision

Site visit made on 28 October 2020

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Appeal Ref: APP/E9505/W/20/3256122

Land adjacent to Brograve Farmhouse, Coast Road, Waxham, Norfolk NR12 0EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Harvey against the decision of the Broads Authority.
 - The application Ref BA/2018/0463/FUL, dated 1 November 2018, was refused by notice dated 5 February 2020.
 - The development proposed is to retain a scrape which has already been dug on land to the east of Brograve Farmhouse, Coast Road, Waxham, Norfolk NR12 0EB.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The scrape in place appears to be as shown in the submitted plans, although the water levels at the time of my visit were high, covering the dug edges.

Main Issue

3. The effect the scrape has on the landscape character of the area.

Reasons

4. The site is within an Area of Outstanding Natural Beauty (AONB), as well as that of the Broads Authority. The scrape is within a marsh currently used to keep cattle. Such grazing marshes, which are drained by networks of straight dykes, comprise a characteristic wetland feature of the Broads landscape. Paragraph 172 of the National Planning Policy Framework (the Framework) requires that great weight should be given to conserving and enhancing landscape and scenic beauty in the Broads and AONBs which, along with National Parks, have the highest status of protection in relation to these issues.
5. The scrape is roughly rectangular in shape, with straight edges and rounded corners, and has a small promontory to one end and two evenly spaced islands beyond that. This water body is fed by a channel that links to the dyke running along the edge of the grazing marsh. As a man-made feature, this particular arrangement differs from the prevailing context of a mainly empty marsh landscape, traversed by a lattice of drainage dykes. In this context, the scrape comprises a somewhat alien feature. Whilst other water bodies in this area of the Broads might historically also relate to human works, these generally have irregular shapes and more naturalised, less well-defined edges.

6. Unlike more visually prominent man-made features, such as the modern farm-buildings which also dot this Broads landscape, above water level the scrape is a two-dimensional feature. Within an expansive, mainly very flat landscape, it is not prominent in views other than in positions quite near to its edges. From such close quarters, the overall form of the scrape is less perceptible, appearing not quite as discordant than as viewed on plan.
7. Nevertheless, despite the reduced visual accessibility, such an unnatural, engineered feature causes a significant degree of harm to the intrinsic character of the Broads landscape. Notwithstanding the presence locally of other flight ponds, such a feature clearly conflicts with policies SP7 and DM16 of the Local Plan¹, as well as paragraph 172 of the Framework, insofar as these seek proposals be both appropriate to, and conserve and enhance, the landscape character of the Broads.
8. Planning law requires that this appeal be determined in accordance with the development plan, unless material considerations indicate otherwise. The scrape and connecting channel include measures to reinstate land drainage mechanisms and drinking places for livestock, although neither of these farming benefits require the scale and shape of water body that has been dug. The scrape could provide some benefit to wildlife, through the additional water space provided. However, the design is less than optimal for nature conservation, for example by lacking the shallow fringes that might benefit wading birds, and so any such benefits are likely to be relatively small.
9. The scrape occupies a grazing marsh adjacent to a Natura 2000 site covered by overlaying designations providing protection through the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). As a flight pond, and by potentially focusing and intensifying wildfowling in this location, the scrape could likely have, indirectly, a significant effect on the adjacent Special Protection Area, through shooting disturbing wintering wildfowl. However, reaching a firm conclusion on this matter would require more information than is provided with this appeal. As competent authority under the Habitats Regulations, it would also require me to seek further advice from Natural England.
10. In this case, there is not the need to reach a conclusion as to whether or not this development satisfies the Habitats Regulations. This is because the farming and possible nature conservation benefits identified would not amount to material considerations of such weight as to indicate my decision be made otherwise than in accordance with the development plan, with which clear conflict is found.

Conclusion

11. For the reasons set out above, having taken into account all other matters raised, I therefore conclude that the appeal should be dismissed.

Jonathan Price

Inspector

¹ Local Plan for the Broads 2015-2036 adopted 17 May 2019.