

# Planning Committee

09 December 2022

Agenda item number 7.2

## Enforcement- Beauchamp Arms

Report by Head of Planning

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### Summary

There is an Enforcement Notice in place at Beauchamp Arms in respect of two caravans being used for residential purposes, but a third caravan has now been brought into a residential use. This development is contrary to planning policy and permission could not be granted.

### Recommendation

To serve an Enforcement Notice.

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## 1. Site location and description

- 1.1. 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 the site of the 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.
- 1.2. To the rear of the premises is a recently surfaced car parking area, bordered by kerbing and fencing and lit by lights on tall lampstands. Neither the kerbing or lighting has

planning permission and Enforcement Notices were issued in June 2022; these are the subject of a current appeal. Behind the fencing are three static caravans, two of which have been occupied since at least September 2021. An Enforcement Notice was issued against these two caravans in November 2021, but this was not complied with, so Members authorised a prosecution and the preparatory works on this are underway. The third caravan, which was previously empty, is now occupied.

- 1.3. There are further caravans standing on the land to the rear of the premises and on the access road, however, whilst these may look unsightly, they are not occupied so there is not a planning breach. There is also a large wooden workshop to the west of the plot. This was constructed in May 2022 without planning permission, so an Enforcement Notice was served in June 2022 and this is the subject of a current appeal.
- 1.4. At a site visit on 15 November 2022 officers observed that a large decked area measuring 14m x 20m has been built to the upstream side of the pub building to provide outside seating. A canopy has also been constructed on the front of the pub building and the minor extension to the western side has been completed. There is no planning permission for any of these works. The operator has been requested to submit a retrospective planning application.

## 2. The unauthorised development

- 2.1. There are three static caravans located to the rear of the Beauchamp Arms premises, two side by side immediately behind the fence and the third is located further into the site towards the north-eastern corner. Investigations in 2021 demonstrated that only the more westerly of the pair of units and the one in the north-eastern corner were occupied, so the Enforcement Notices was served on these units only. The middle unit was recorded as unoccupied. Planning Contravention Notices were served in April 2022 to check compliance with the Enforcement Notice and these showed that these two units were still occupied, whilst the middle one was still empty.
- 2.2. Information was received in October suggesting that there had been some changes to occupation of the caravans, so the site was visited on 15 November 2022. It was found that the occupier of the western unit had moved into the previously empty middle unit, whilst the occupier of the separate unit on the north-eastern corner had moved into the western unit. A third occupier had moved onto the site and was now living in the caravan on the north-eastern corner. The effect of this is that the two units which are the subject of the Enforcement Notice (namely, the most western unit and the one in the north-eastern corner) are still occupied in contravention of the Enforcement Notice, and there is now a further breach due to the occupation of the middle caravan without planning permission.
- 2.3. On 25 November a Planning Contravention Notice was issued in respect of all three caravans seeking information on the occupation, including when the occupation of the middle caravan started. The responses to this will be reported verbally, if received by the 9 December.

- 2.4. Whilst the use of land for the standing of a caravan does not necessarily constitute development for which planning permission is needed, where the caravan is occupied this becomes a material change of use. In this case it is a change of use from land ancillary to the public house to a mixed-use ancillary to the public house and the stationing and residential occupation of static caravans. Planning permission is required and there is no planning permission for this use.

### 3. The planning issues

- 3.1. The Broads Authority has a Local Enforcement Plan which sets out its approach to dealing with enforcement matters. It was reviewed and updated in July 2022. 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, Adopted Local Plan Policy SP15 sets out the spatial strategy for the provision of new housing and this is further developed in policy DM35 which states:

“New residential development will only be permitted within defined development boundaries, and must be compatible with other policies of the Development Plan.”

There is no development boundary in this area and the development is therefore contrary to DM35 and SP15.

- 3.4. Adopted Local Plan policy DM21 requires that all development provides occupiers with satisfactory level of amenity, including internal accommodation and external amenity space. The caravan is of poor quality, are unlikely to offer adequate levels of heating

and/or insulation and has inadequate amenity space. The requirements of DM21 are not met.

- 3.5. Adopted Local Plan policy DM5 requires that all development is appropriate for the flood risk zone in which it is located and that a site specific flood risk assessment is provided where necessary to demonstrate this. Dwelling houses are classified as 'more vulnerable' to flood risk, however where that dwelling comprises "Caravans, mobile homes and park homes intended for permanent residential use" the risk is increased to 'highly vulnerable'. 'Highly vulnerable' uses are only considered appropriate in Flood Risk Zone 1, or in Flood Risk Zone 2 where an Exceptions Test can be satisfied. This site is located in Flood Risk Zone 3 so the development is therefore inappropriate and conflicts with DM5.
- 3.6. Adopted Local Plan policy DM43 requires all development to meet a high standard of design. This unit is a standard static caravan to which a basic decked area and a shed have been attached. It does not meet the requirements of policy DM43.

#### The expediency of enforcement action

- 3.7. 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 factors are expediency, proportionality and consistency.

#### Expediency

- 3.8. Expediency 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, and this would be an example of direct harm arising from the unlawful development. There is also 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. Furthermore, a failure to address non-compliant development would undermine the integrity of the planning system and paragraph 59 of the NPPF emphasises the importance of this when it states "Effective enforcement is important to maintain public confidence in the planning system", demonstrating that this is a valid objective in itself.
- 3.9. The harm resulting from this development arises from the clear conflict with planning policy, both national and local. It is considered that this harm is significant because the conflict relates to the fundamental principles of the location of new residential development. There will be costs associated with enforcement action, however, when balanced against the need to ensure, amongst other matters, the protection of the planning system it is considered that enforcement action is likely to be expedient given the benefits of securing a cessation of the development.

#### Proportionality

- 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, again, the main

objection to the development is the 'in principle' conflict with the approach to the location of new residential development as set out in the NPPF and adopted planning policies. Where it is accepted that an LPA has a responsibility to protect the planning system in order to maintain public confidence in it, it follows that the extent of the action should be directly proportionate to the extent of the breach. In this case, as there is a fundamental conflict with planning policy only a full cessation of the unauthorised use can be justified.

3.11. It is noted that this caravan is being occupied as a dwelling, with the user enjoying the benefits of this and the landowner will be deriving a financial benefit from renting it out. These, however, are private benefits and should not override the public benefits associated with upholding the planning system.

3.12. Overall it is considered that enforcement action to secure the cessation of the unauthorised development is proportionate.

#### Consistency

3.13. The third test is consistency and the Local Enforcement Plan identifies the need to ensure consistency so that a similar approach is taken in similar circumstances to achieve similar outcomes.

3.14. The LPA has already served Enforcement Notices in respect of the other two caravans being occupied on a permanent basis on this site, as well as against two caravans on land in the same ownership at Loddon Marina.

3.15. It is considered that enforcement action against this latest caravan would be consistent with the approach taken elsewhere and therefore meets the requirements of the Local Enforcement Plan.

3.16. 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 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.

3.17. Members will be aware of the history of breaches of planning control at this site. The owner of this site has other properties elsewhere in the Broads, including at Loddon Marina, and across these sites there is a history of disregard for planning regulations. Previous experience indicates that it is very unlikely that compliance could be achieved by negotiation. Consequently, the LPA has not sought to engage with the landowner on this matter as it is considered that this would not be the best use of resources and is likely only to delay resolution.

- 3.18. 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.
- 3.19. In conclusion, it is considered that the development is unacceptable and enforcement action can be justified as expedient.

## **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 cessation of the unauthorised use. A compliance period of four months would be appropriate.

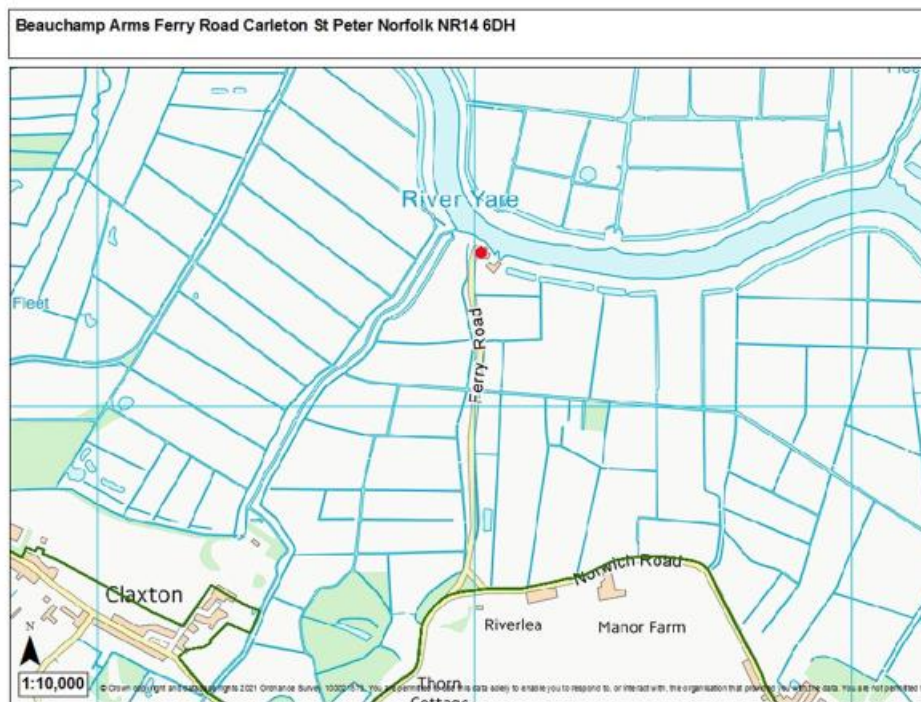
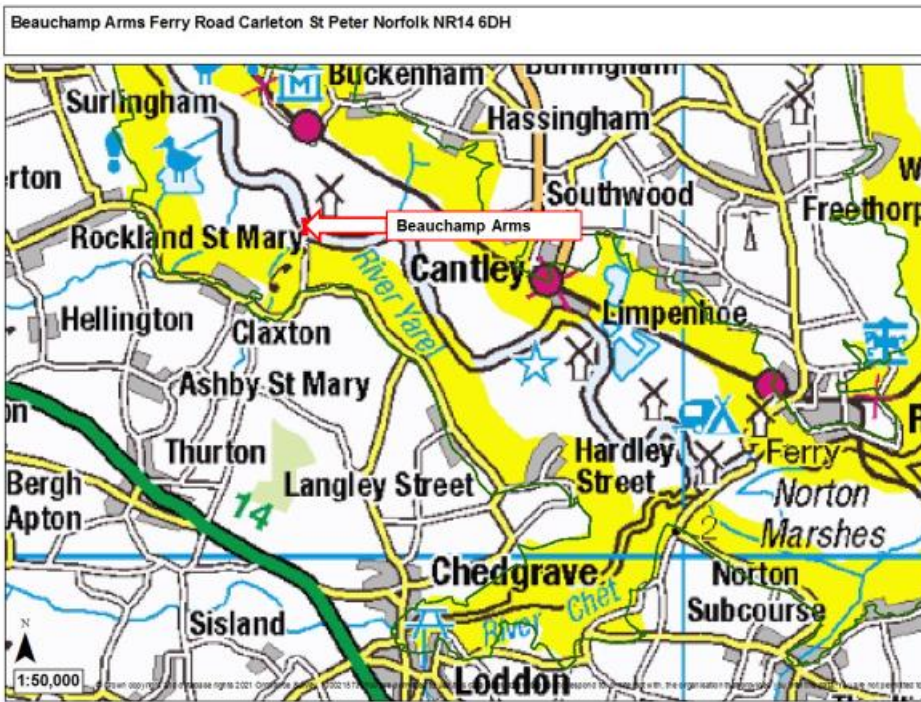
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Background papers: Enforcement file

Appendix 1 – location map

# Appendix 1 – location maps



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