

# Planning Committee

31 March 2023

Agenda item number 7.5

## Enforcement – Berney Arms, Halvergate

Report by Head of Planning

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### Summary

Two caravans and one wooden building are being used for residential purposes on land to the rear of Berney Arms. There is no planning permission for this use, the 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 Berney Arms is situated on the River Yare at the western end of Breydon Water. It is a remote location with few buildings nearby, and those that do exist relate primarily to historical activities and land uses in the area. The Grade 1 listed Berney Arms Drainage Mill is located to the west, and beyond this are the buildings of Ashtree Farm, now owned by the RSPB. There is a further mill and listed Hall on the land opposite, on Haddiscoe Island, and beyond these, on the other side of the River Waveney, is Burgh Castle which is the closest settlement by distance. The surrounding land is marshes, most of it managed for conservation purposes.
- 1.2. Access to the site is limited. There is a road across the marshes, but it is privately owned and not a public highway. It is understood that there is a right of vehicular

access to the Berney Arms, but this is restricted to the landlord/licensee or similar in connection with its use as a pub only and this is not a general right of access. As the site directly fronts the River Yare there is good access from the water, as well as extensive mooring provision. The Norwich to Great Yarmouth railway line crosses Halvergate Marshes to the west of the site and the Berney Arms halt is located 650m to the west of the site.

- 1.3. The Berney Arms sits within a substantial curtilage which stretches both north and south of the main building. The main pub building is unused. There is a separate building to the south which was previously operated as a shop and café and is now registered as a bistro, although it serves only cold drinks and packaged snacks. There are a number of outbuildings and sheds to the rear of the site and two dilapidated static caravans. The buildings and structures on the site are in relatively poor condition.
- 1.4. There are also two touring caravans located on land to the south of the main buildings.

## **2. The unauthorised development**

- 2.1. The two static caravans and one of the outbuildings to the rear of the property are being used for residential purposes. There is no planning permission for this use.
- 2.2. Planning Contravention Notices (PCN) were served in February 2023 to obtain further information on the uses on the site.
- 2.3. The information provided shows that the two static caravans are currently being rented out for residential use on Assured Shorthold Tenancies which commenced on 1 September 2019. One of the outbuildings is also being rented out for residential use and the Assured Shorthold Tenancy for this unit commenced on 15 August 2021. The PCN responses stated that the services provided are bottled gas, electricity (direct or from extension lead) and bottled water. The outbuilding is connected to the on-site septic tank.
- 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. The occupation of the outbuilding as a dwelling is also a material change of use. In this case, the unauthorised development on the site has resulted in a change of use from land ancillary to the former public house to a mixed-use ancillary to the former public house, the stationing and residential occupation of static caravans and the material change of use of the outbuilding to a residential use.
- 2.5. 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 caravans are in poor condition, are unlikely to offer adequate levels of heating and/or insulation and have no amenity space. The outbuilding which is being occupied is a simple timber building, with no adequate provision for insulation or heating or with proper facilities for cooking or hygiene. 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. The advice in Planning Practice Guidance (PPG) is that “Caravans, mobile homes and park homes intended for permanent residential use” are classified as ‘highly vulnerable’ in terms of flood risk and 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 use of the static caravans for residential purposes is therefore inappropriate and conflicts with DM5.

- 3.6. With regard to the outbuilding, if it can be treated as a dwelling house it would be classified as 'more vulnerable' in terms of flood risk and would only be considered appropriate in Flood Risk Zones 1 or 2, or in Flood Risk Zone 3A where an Exceptions Test can be satisfied. The Exceptions Test would need to demonstrate community or other benefits sufficient to outweigh the flood risk and it is not considered that this could be concluded here, particularly given the overriding in principle objection under policy DM35. On this basis the use is therefore inappropriate and conflicts with DM5.
- 3.7. Adopted Local Plan policy DM43 requires all development to meet a high standard of design. The two static caravans are standard units in poor condition, whilst the outbuilding is a standard timber building with windows, also in poor condition. None of these units meet the requirements of policy DM43 and all are unacceptable.

#### 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 factors are expediency, proportionality and consistency.

#### Expediency

- 3.9. 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.
- 3.10. The harm resulting from the unauthorised 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

- 3.11. 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.

- 3.12. It is noted that both the two static caravans and the outbuilding are being occupied as dwellings, with the users enjoying the benefits of this and the landowner deriving a financial benefit from renting them out. These, however, are private benefits and should not override the public benefits associated with upholding the planning system.
- 3.13. Overall it is considered that enforcement action to secure the cessation of the unauthorised development is proportionate.

#### Consistency

- 3.14. 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.
- 3.15. The LPA has already served Enforcement Notices in respect of three caravans being occupied on a permanent basis on land to the rear of the Beauchamp Arms, as well as against two caravans on land at Loddon Marina. Both of these sites are in the same ownership as Berney Arms, albeit under a different parent company.
- 3.16. It is considered that enforcement action against the breaches identified here would be consistent with the approach taken elsewhere and therefore meets the requirements of the Local Enforcement Plan.
- 3.17. 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.
- 3.18. Members will be aware of the history of breaches of planning control on land owned and/or managed by this operator, across whose sites there has been a 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.

- 3.19. 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.
- 3.20. 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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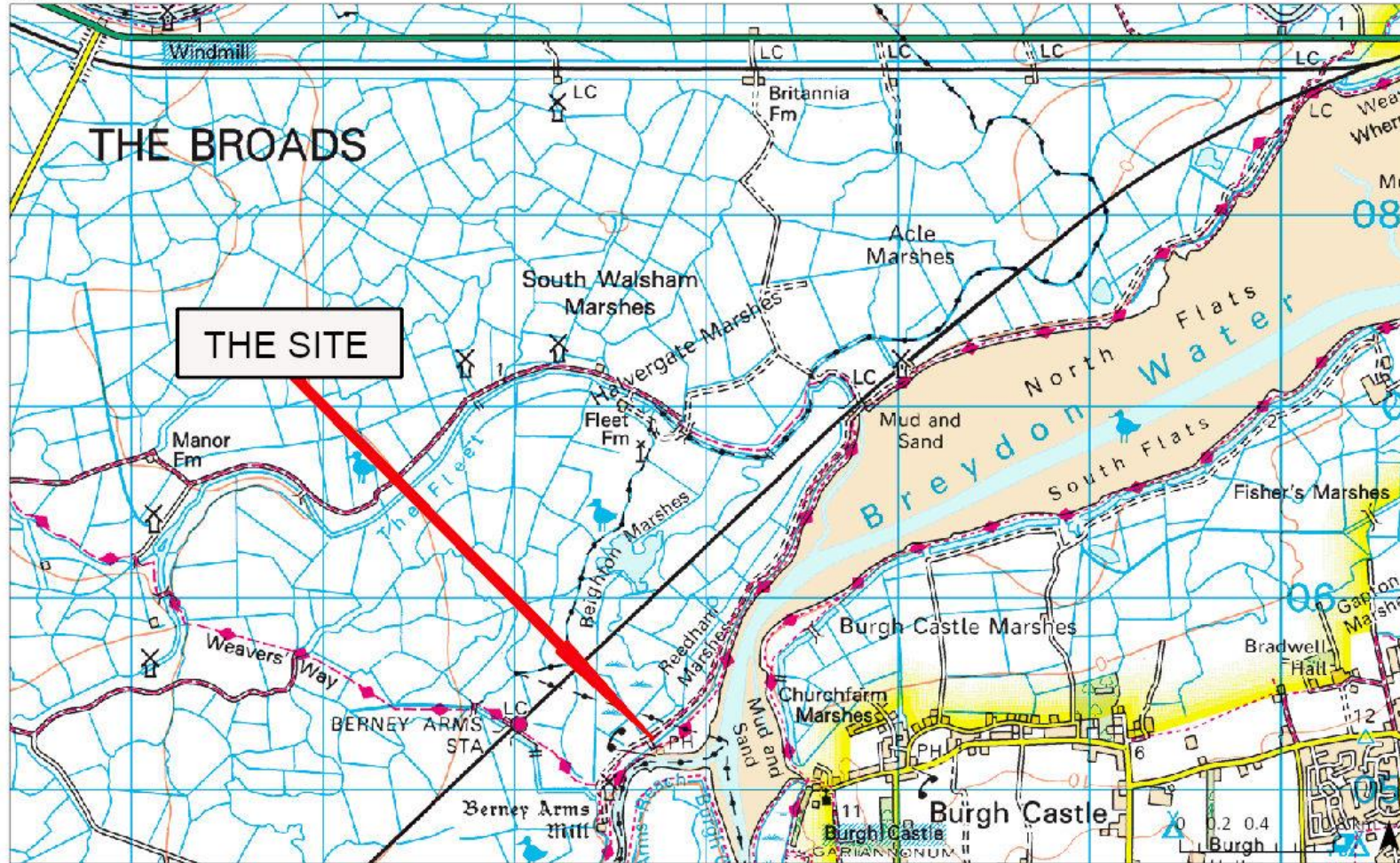
Background papers: Enforcement file

Appendix 1 – location map

# Appendix 1 – location maps

The Berney Arms Inn, Berney Arms, Gt Yarmouth

Scale: 1:25,000



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