

Planning Committee

15 September 2023

Agenda item number 7.1

Enforcement - Broadgate Bakery, Horsefen Road, Ludham - unauthorised bakery

Report by Head of Planning

Summary

Planning permission was refused in July 2022 for an extension to facilitate an existing bakery, with the decision being upheld on appeal by the Planning Inspectorate in July 2023. The business continues to operate.

Recommendation

To serve an Enforcement Notice.

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1. Site location and description

1.1. The site comprises a detached dwelling, sited on the south-western side of Horsefen Road in Ludham which runs southwards from the main A1062 Yarmouth Road. The site is approximately 450m from the junction with the main road and approximately 85 metres south east of the Womack Staithe area, where there are moorings, public toilets and a small commercial area.

1.2. The property is within a residential area, where there are both holiday units and permanent dwellings. Access to the site is along Horsefen Road, which is a narrow lane

with limited provision for passing and no separate footpath, and there are two accesses into the subject premises.

- 1.3. The bakery is currently operating from the dwellinghouse. Baked goods are advertised on boards outside the site and opposite Womack Water and on social media. They are sold directly from the premises.
- 1.4. The site is within the Ludham Conservation Area.

2. The unauthorised development

- 2.1 In June 2021 a planning application was submitted for the change of the of the property to a mixed-use comprising dwelling and bakery with retail sales, including the erection of single storey extension of 30sqm (BA/2021/0211/FUL). The application was part retrospective, in that the bakery was already operating from the premises, having commenced in lockdown. The application was refused planning permission in February 2022 on grounds of highway safety, impact on neighbouring amenity and inappropriate location.
- 2.2 An appeal against the refusal notice was submitted to the Planning Inspectorate in March 2022. On 20 July 2023 the appeal was dismissed, with the Inspector concluding in the decision letter that the proposal would have an unacceptably harmful effect on highway safety, would cause significant harm to the living conditions of the occupants of neighbouring dwellings through noise and other disturbance generated by customers visiting the site, and that the appeal site is not in a suitable location for the proposed development having regard to local and national planning policies for the location of retail development.
- 2.3 Following receipt of the decision the Local Planning Authority (LPA) wrote to the operator advising him to cease operation of the bakery by 21 August 2023. The business continues and the operator advises that he will remain open until the end of October.

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, the use of the site as a bakery was considered under planning application BA/2021/0211/FUL and it was not considered acceptable. At the meeting on 4 February 2022 the Authority’s Planning Committee resolved to refuse planning permission for reasons including conflict with policies that support highway safety (Policy DM23 of the Local Plan for the Broads) and protect local amenity (Policy DM21) and that this was an inappropriate location for a commercial activity (Policies DM44 and DM51). This refusal was supported on appeal. The development is not acceptable in planning terms.
- 3.4. The planning objections to the proposal cover the fundamental issues of location, access and impact on the local area. These cannot be addressed in such a way as to overcome the objections, so the development cannot be made acceptable through amendment. If the development cannot be made acceptable, the Local Enforcement Plan requires that it cease.

The expediency of enforcement action

- 3.5. Having established that the unauthorised development is not and cannot be made acceptable, then the LPA must consider the expediency of enforcement action and whether such action would be proportionate and consistent.

Expediency

- 3.6. 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.

- 3.7. There are direct adverse impacts (i.e., harm) arising from the development in terms of the impact on highway safety and local amenity; these were confirmed in the appeal decision. There is also harm to the integrity of the planning system arising from this continuing breach, which is exacerbated by the length of time the activity has been going on (since 2020). The operator has also stated publicly that he does not intend to close the bakery until the end of the season, indicating that the absence of planning permission does not deter him, and raising questions about his intentions for next year.
- 3.8. Given the clear conflict with planning policy and the harm arising from the development it is considered that enforcement action is expedient.

Proportionality

- 3.9. The second test is one of proportionality; enforcement action should always be proportionate to the seriousness of the harm being caused. In this case, there are both 'in principle' objections to the development, as well as harm to local interests. 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.

Consistency

- 3.10. 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. There are no cases directly comparable to this one – i.e., a business operating in a residential area, with similar impacts – however the LPA has been consistent in taking action against planning breaches where these have not been otherwise resolved. In this respect, formal enforcement action here would be consistent and therefore meets the requirements of the Local Enforcement Plan.
- 3.11. 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. As outlined above, the development here is not capable of being made acceptable, so the resolution will require the cessation of the development. Officers have written and spoken to the operator, who is clear that he does not intend to cease until he is ready.
- 3.12. 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 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. The

service of Enforcement Notices now will also prohibit a resumption of the use next year, so will protect the future position.

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

4. Proposed actions

- 4.1. It is proposed to serve an Enforcement Notice requiring the cessation of the bakery operation and retail sales. A compliance period of 28 days would be appropriate. Once served, an Enforcement Notice remains extant unless and until it is withdrawn by the LPA, so this will prevent a resumption of the use.
- 4.2. Should Members wish to enforce an immediate cessation of the activities, there is an option to serve either a Temporary Stop Notice which would take immediate effect and endure for 28 days, or a Stop Notice which would take effect after three days and endure until the Enforcement Notice took effect. Given that the operator has indicated that he will close at the end of the season, Members may consider this further action disproportionate, but it is useful to be aware of the remedy.

5. Financial implications

- 5.1. The service of Enforcement Notices will require officer time; any costs associated with administration will be met from the existing planning service budget.
- 5.2. 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.

6. Conclusion and recommendation

- 6.1. The unauthorised development at the site is contrary to development plan policy and could not be granted planning permission.
- 6.2. 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.

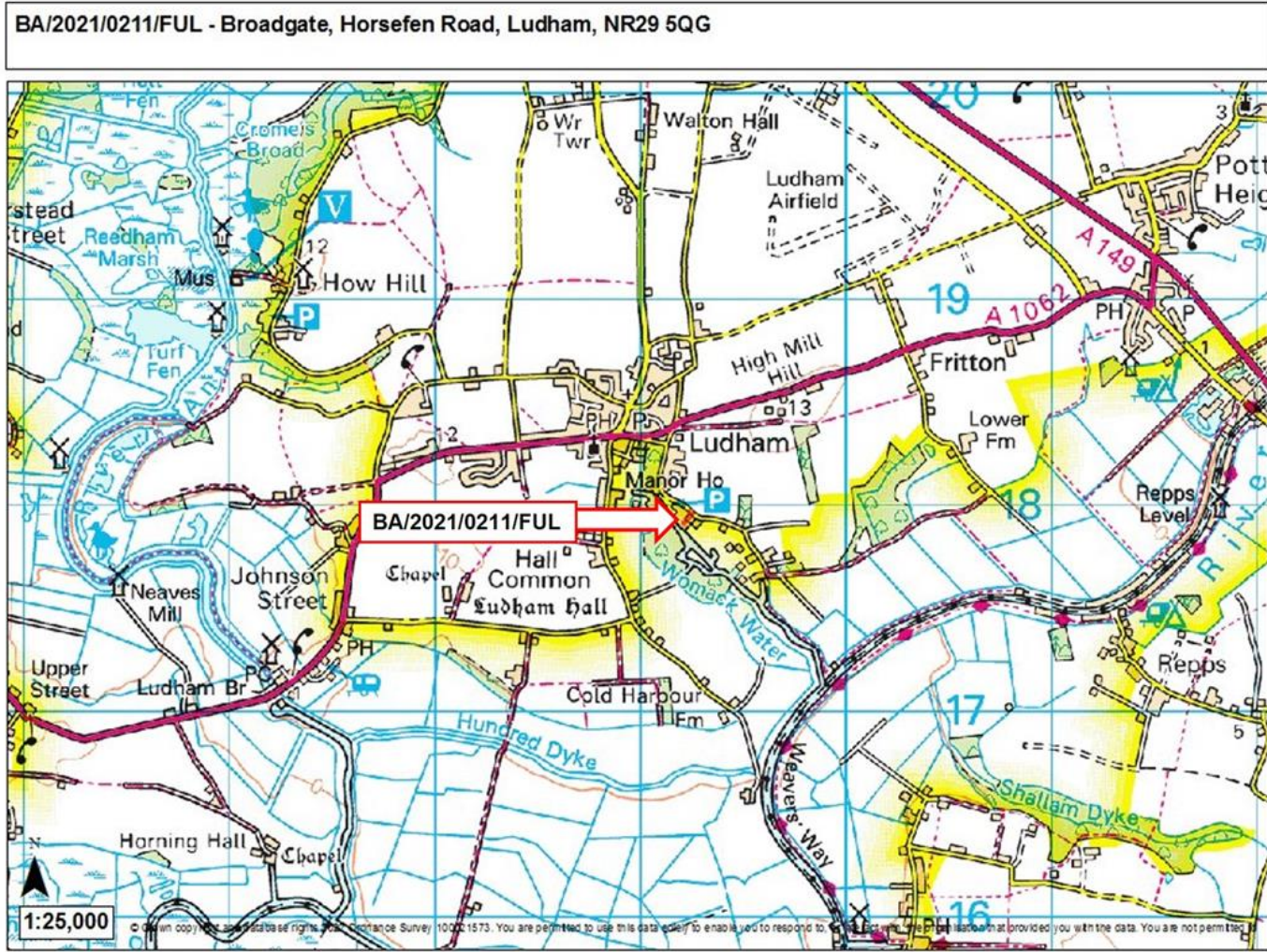
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Background papers: Enforcement file

Appendix 1 – location map

Appendix 1 – location maps



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