

**Planning Committee:** 20<sup>th</sup> September 2006.

**Item Number 23**

**Investigation Number:** ENF112/11/04

**Parish Council:** Eathorpe, Hunningham, Offchurch, Wappenbury and Weston-under-Wetherley

**Case Officer:** David Edmonds  
01926-456521 [planning\\_appeals@warwickdc.gov.uk](mailto:planning_appeals@warwickdc.gov.uk)

**Land opposite Fosse Wharf, Fosse Way, Offchurch, Leamington Spa**

1. Material Change of use of stretch of canal side embankment and part of canal to residential use
2. Erection of raised wooden decking platform/ mooring on canal side embankment and wooden flight of steps leading from embankment to adjacent land
3. Use of land adjacent to canal side embankment as a mixed use for agriculture and the stationing of two caravans in residential and industrial uses

Occupants – Allan John Lorentzen and Christine Ann Lorentzen

Owners - Allan John Lorentzen and Christine Ann Lorentzen – agricultural land; British Waterways – embankment.

---

This item was deferred for a site inspection scheduled for 16<sup>th</sup> September. Further information will also be provided for Members on issues raised at the 22<sup>nd</sup> August meeting. The addendum report for the August meeting contained the agent response to the Committee report. This response is attached as an appendix to the current report.

**BACKGROUND:**

In March 2004, the appeals and enforcement section received complaints that people were living permanently on a canal boat on the Grand Union Canal and were using the adjacent embankment top for residential use. Additionally 2 mobile homes had been stationed on adjacent agricultural land and were being used for storage of residential belongings and as office accommodation. Subsequent investigations revealed that a raised decking platform and mooring had been erected on the top of this part of the embankment with holes to retain existing trees and a flight of steps leading down to the agricultural land. There is an array of patio furniture and planters. It revealed a variety of animal shelters built on the agricultural land adjacent to the canal. The caravans are stationed at the foot of the embankment and both have residential fitments and one appears to be used for spinning and weaving of wool derived from alpaca's that are kept on the land adjacent to the canal.

In respect of the residential use of the canal and canalside, the occupant was advised there were three courses of potential action open to him in a letter sent in July 2005. First, submit an application for planning permission for residential use – (temporary or permanent) with a full agricultural justification of financial and functional need for an on-site residential presence. Secondly submit an application for a Certificate of Lawful Existing Use or Development with necessary legal submissions to test the assertion that planning permission is not required. Thirdly to voluntarily cease using the canal and canal bank for residential purposes.

The occupant has not chosen any of these options and has continued the residential use, and retained the decking. Since it appears that the embankment is owned by British Waterways, they have also been contacted to terminate the 'end of garden mooring agreement' we have been informed has been granted to the occupant and to seek to restore the embankment back to its original conditions.

In planning terms, in view of the continuing breach, it is considered appropriate to assess the expediency of formal enforcement action.

Regarding the animal shelters and two caravans, the owner/ occupant submitted a valid planning application (Ref W05/1650) for the erection of one timber boarded agricultural building, retention of five pig houses, two field shelters, one chicken pen and removal of the two caravans. The intention of the application was to allow an additional agricultural/ land management building for storage of feed and equipment, keep the uncontentious animal shelters and in return remove the caravans used for storage purposes. The application was granted on 2<sup>nd</sup> February 2006 subject to conditions including one that would ensure that the caravans were removed once the permission was implemented. The standard 3 years was given for the implementation. However, current indications are that the occupant/ owner has no firm plans to implement the permission and the caravans remain.

#### **OTHER RELEVANT PLANNING HISTORY:**

- **July 2002**, (Ref. W2002.0732). Application for erection of dwelling on the agricultural land, for Mr A Lorentzen, withdrawn
- **Aug 2003**, (Ref W2003.0982). Planning permission refused for erection of a wooden temporary agriculture workers dwelling for Mr A Lorentzen for a 3 year period. It was refused on grounds that the agricultural justification was did not demonstrated that there was a financial and functional need for a dwelling on the site and therefore it was contrary to policies (DW) H9 & H10 in the WDLP. The second reason related to the suburbanisation of the countryside.

#### **RELEVANT PLANNING POLICIES:**

*Regional Planning Guidance for West Midlands*

- PA15: Agriculture and farm diversification

*Warwickshire Structure Plan 1996-2011.*

- RA3: Housing and industrial development & hierarchy of settlements
- ER1: Natural and cultural assets.
- ER4: Protection and enhancement of the landscape

*Warwick District Local Plan 1989-2001*

- (DW)H10: Agricultural workers dwellings – where housing development is required for agricultural purposes the holding must be capable of sustaining a person in full time employment of a type that makes it essential to live on or adjacent to the site
- (DW)H11: Where it is demonstrated that a new dwelling is essential to the operation of a particular holding and such a dwelling cannot be accommodated within an existing rural settlement the new dwelling will be sited adjacent to the existing operation.
- (DW)C1: The appearance and character of the rural landscape will be conserved and enhanced .
- (DW)ENV30: Canal and Waterways – Development will not be permitted which would have an adverse effect upon the character and setting of the canals within the District, including the loss of or harm to views to and from the canals. Special attention will be paid to the appearance, siting, scale and canalside frontage of any proposed canalside development.

*Warwick District Local Plan 1996 – 2011, Revised Deposit Version*

- DP3: Natural and Historic Environment and Landscape
- RAP1: Development in Rural Areas
- RAP2: Directing new housing
- RAP6: Housing for rural workers

**KEY ISSUES:**

*Residential Use and decking & steps*

From the evidence of officer site visits, together with local knowledge, it appears that the canal boat is permanently moored on this part of the canalside, and is not just used as a base for touring. Case law indicates residential use can include residential use of that part of the canal on which that the house boat floats. The physical works including the construction of extensive decking and the steps, together with the placement of domestic accoutrements on it, all support the evidence of a material change of use.

In terms of planning law, the long-term stationing of a houseboat for the purpose of permanent residential accommodation is a material change of use that is equivalent to the full time residential occupation of a caravan. Such residential use and operational developments raise issues of compliance with the aforementioned housing and rural protection policies

In terms of agricultural justification for a residential occupancy, in the absence of a current application for a dwelling on the site which would need to provide an agricultural justification for residential presence which could then be assessed, reliance has been placed on the advice from Warwickshire County Rural Estates Manager, in connection with the previous applications. In June 2005 his conclusion was that "there was no functional need, whatsoever, either, temporary or permanent, or even that provided by the moored residential houseboat". There is no evidence of any change in circumstances since then that would lead to a variation to this opinion.

The site is a canal side location, relatively isolated from other groups of dwellings in the locality that are close to Fosse Way. It is also remote from limited infill and limited growth villages to which new residential development would be directed. Regarding rural character, the residential use and other operational developments, represent a significant degree of suburbanisation of this part of the countryside which have eroded the soft landscaped character of the canal embankment contrary to policy (DW)ENV30. Also, it harms the rural character of this part of the countryside that is described in the Warwickshire Landscape Guidelines as Dunsmore Plateau fringe. This is characterised by a nucleated settlement pattern and isolated brick built farmsteads. Its retention would thereby conflict with countryside protection policies as augmented by the Warwickshire Landscape Guidelines SPG.

The occupants have never explicitly cited any personal circumstances arguments for their residential use of the land related to the Human Rights Act. Although it appears to be their only home, the evidence indicates that they have sold a dwelling in order to relocate to this site. The Human Rights Act which came into force on 2<sup>nd</sup> October 2000 provides the legal framework for these issues. The typical human rights argument in such planning cases is that the right of respect for family/private life or their right of property has been breached. However, rights protected by Articles 8 and 1 (First Protocol) in the Act are qualified in terms of restrictions imposed in the public interest. It is necessary to consider firstly, whether the council's refusal of planning permission or issuing an enforcement notice would interfere with the applicants human rights; thereafter, whether any interference is in accordance with the law, has a legitimate aim and is proportionate.

I would conclude that the harm caused to countryside protection and housing policies without any agricultural justification is such that it warrants enforcement action and that the interference in human rights is proportionate.

### *Caravans*

Condition 2 of planning permission Ref W05/1650 issued in February 2006 was worded to allow the caravans currently used for storage on site to be retained

until the proposed agricultural building was built. (The footprint of the storage building is over the storage caravans)

The permission for the storage building contained the standard three year time limit for implementing the permission and condition 2 stated that the caravans should be removed within one month of the new storage building being erected.

The future removal of the caravans is thus dependent on this permission being implemented. Given the absence of any progress in its implementation (and also since the council cannot require its implementation), it is considered prudent to include a requirement to remove the caravans, with a period of compliance that would coincide with the three year period for their retention effectively given by W05/1650 i.e. by 2<sup>nd</sup> March 2009. This would then ensure that if the permission for the proposed agricultural building is not implemented within the three year period, any subsequent delay in requiring the removal of the caravans is minimised.

#### **RECOMMENDATION:**

That enforcement action be authorised requiring:

1. The cessation of the residential use of any part of the site and the removal of all domestic equipment and personal effects brought onto the land for the purpose of that use. The period of compliance to be 6 months.
2. The removal of the raised timber decking/ mooring platform in its entirety from the land. The period of compliance to be 4 months.
3. The cessation of the use of land adjacent to canal side embankment as a mixed use for agriculture and the stationing of two caravans in residential and industrial uses and the removal of the two caravans from the site. The period of compliance to expire on 2<sup>nd</sup> March 2009.