

REPORT OF THE DEPUTY DIRECTOR (Planning and Community Strategy)
TO THE DEVELOPMENT CONTROL COMMITTEE
12th May 2008

Enforcement Programme

1.0 Introduction and Report Summary

1.1 This reports draws Committee's attention to a number of potential enforcement matters at;

Abingdon Marina, South Quay, Abingdon, OX14 5TW

1.2 The contact Officer for this report is Paul Yaxley, Enforcement Officer (01235 540352).
paul.yaxley@whitehorsedc.co.uk

2.0 Recommendations

- (a) ***Total number of boats moored in the marina exceeding agreed numbers.***
That the decision on whether to take enforcement action in relation to the number of boats moored at the marina be deferred until the current application to vary the terms of the Section 106 Agreement dated 3rd December 1998 has been determined.
- (b) ***Provision, location and use of the 20 overnight moorings.***
That the decision on whether to take any enforcement action against the lack of overnight moorings be deferred at this time and the owners of the marina be urged to submit a further application to vary the 1998 Section 106 Agreement to address this issue as soon as reasonably possible.
- (c) ***Eight new posts pile driven into the bed of the marina.***
That no further action be taken in relation to the eight new mooring posts which have been installed at the northern end of the marina.
- (d) ***A moored boat extending beyond the western limit of the marina application site.***
That in this particular case no further action be taken against the mooring of the boat 'Heron Island' when on mooring/berth number 93 on the western end of the northern arm of the marina.
- (e) ***Breach of Condition regarding repair and improvement of the access road.***
That authority be delegated to the Deputy Director (Planning and Community Strategy) in consultation with the Committee Chair and/or Vice Chair, to decide whether enforcement action should be taken against Builders Ede Ltd. Abingdon Boat Marina, South Quay, Abingdon (including the possible issue of a Breach of Condition Notice) to ensure the access road is repaired and improved

to the standard set by Oxfordshire County Council in accordance with Condition 3 of planning permission ABG/742/42.

- (f) **Breach of Condition regarding the provision of reed bed protection buoys.**
That authority be delegated to the Deputy Director (Planning and Community Strategy) in consultation with the Committee Chair and/or Vice Chair, to decide whether enforcement action should be taken against Builders Ede Ltd. Abingdon Boat Marina, South Quay, Abingdon (including the possible issue of a Breach of Condition Notice) to ensure the buoys are fixed in accordance with details yet to be approved in accordance with Condition 2 of planning permission ABG/742/42.
- (g) **Storage of a small touring caravan and box trailer in the secure compound**
That authority be delegated to the Deputy Director (Planning and Community Strategy) in consultation with the Committee Chair and/or Vice Chair, to decide whether enforcement action should be taken against Builders Ede Ltd. Abingdon Boat Marina, South Quay, Abingdon, to secure the removal of the caravan and box trailer.
- (h) **Permanent residential use of moorings**
That authority be delegated to the Deputy Director (Planning and Community Strategy) in consultation with the Committee Chair and/or Vice Chair, to decide whether enforcement action should be taken against Builders Ede Ltd. Abingdon Boat Marina, South Quay, Abingdon, and any individual(s) residing on a boat if it is established that any boat(s) in the marina (apart from the Marina Manager's boat) are being used as an individual's sole or a principal place of residence.

3.0 Relationship with the Council's Vision, Strategies and Policies

- 3.1 The content of this report is in line with objectives A, C and D of the Council's Vision Statement.
- 3.2 This report relates to Enforcement Strategies 13, 14, 15 and 16 and complies with Enforcement Policies E2 and E3.

4.0 Background Papers

- 4.1 Application numbers; ABG/742/34, ABG/742/37 and ABG/742/42.

5.0 Builders Ede, Abingdon Marina, Abingdon

- 5.1 Abingdon Marina has a long and complex planning history involving several enforcement investigations in the past. A plan showing the layout of the marina facilities is at **Appendix 1**. Currently there are believed to be 8 allegations of breaches of planning control that residents of the marina have drawn the Council's attention to at the site. These are:
1. Total number of boats moored in the marina exceeding agreed numbers.
 2. Provision, location and use of the 20 overnight moorings.
 3. Eight new posts pile driven into the bed of the marina.
 4. A moored boat extending beyond the western limit of the marina application site.
 5. Breach of Condition regarding the repair and improvement of the access road.
 6. Breach of Condition regarding provision of reed bed protection buoys.

7. The storage of a small touring caravan and box trailer in the secure compound.
8. The permanent residential use of a number of moorings.

6.0 Total number of boats moored in the marina exceeding agreed numbers

- 6.1 Committee may recall that having considered report 42/07 at its meeting of the 1st August 2007 it resolved to grant planning permission (ABG/742/42) for the “Construction of 8 finger pontoons to increase the capacity at Abingdon Marina from 100 to 113 moorings”. The 8 new finger moorings were installed on the 11th April 2008 and are in use. An application has recently been received from the marina owners to formally vary the Section 106 Agreement dated 3rd December 1998, which currently restricts the total number of moorings at the marina to be no more than 100. In the interest of imposing an enforceable restriction, the original Section 106 Agreement limits the number of moorings, not boats, to 100. It would be well beyond the Council’s enforcement resources to monitor continually the number of boats in the marina, given their transient nature. Consequently, the pragmatic approach agreed at the time (1998) was to restrict the size of the marina by limiting the number of moorings. Whilst this enables a small number of additional boats to be moored on the prescribed number of moorings this, in itself, is not considered by your officers to cause any significant harm, particularly as any increased number of boats is limited by the size and layout of the pontoons and the area of the original application site.
- 6.2 The current application to vary the terms of the Section 106 Agreement to increase the number of moorings at the marina in accordance with the planning permission (ABG/742/42) has yet to be formally considered, and it would be inappropriate to pre-judge the issue. Therefore, it is considered appropriate to defer the decision on whether to take any enforcement action against the additional moorings at this time, until the issue of any variation to the Section 106 agreement has been resolved.

7.0 Provision, location and use of the 20 overnight moorings

- 7.1 Planning permission ABG/742/34 was granted in 1998 subject to a Section 106 Agreement which stipulated that 20 of the 100 moorings should be for overnight stay only. The 1998 Agreement also required the submission to the Council and approval of a plan showing the location of the 20 overnight moorings. This requirement, however, has never been complied with.
- 7.2 The Marina owners have recently expressed a wish to vary the 1998 Section 106 Agreement to reduce the number of overnight moorings from the agreed 20, stating there is very little demand for them given the proximity of other overnight moorings much closer to the town centre. However, no such application has yet been received and it is not part of the current application. Your officers do not consider it appropriate that overnight moorings are left empty due to a lack of demand. In the circumstances, it is considered appropriate to defer the decision on whether to take any enforcement action against the lack of overnight moorings at this time and to urge the owners of the marina to submit a further application to vary of the 1998 Section 106 Agreement as soon as reasonably possible. That application will need to explain and justify their case that there is insufficient demand for 20 overnight moorings at the marina, and this should inform Committee’s decision on whether to initiate enforcement action on this issue. The application should also propose a location for the reduced number of overnight moorings.

8.0 Eight new posts pile driven into the bed of the marina

8.1 In February/March 2006 8 steel posts were pile driven into the bed of the marina basin, each one located in line with the end of each finger pontoon on the northern side of the marina. The posts enable the mooring of longer boats. At normal river levels, the posts extend about 1.5 metres above the water. In your officers' opinion, the posts do need planning permission but to date, no planning application has been submitted to try to regularise their installation. Whilst such an application would enable their impact on the character, appearance and navigation of the marina basin to be properly assessed, the owners of the marina have expressed the view that the posts are in themselves visually unobtrusive and, although they enable longer boats to be moored more easily, this does not change the character of the marina. In your Officer's view, the posts have a minimal impact on the character and function of the marina basin, particularly as longer boats could be moored at the northern end of the marina by alternative means (i.e. by roping the boats together and roping them back to the original pontoons) without conflicting with the terms of the original planning permission (ABG/742/34). In these circumstances, it is not considered expedient to take enforcement action against the 8 new mooring posts.

9.0 A moored boat extending beyond the western limit of the marina application site

9.1 The original planning permission for the marina (ABG/742/34) showed all of the marina facilities contained within the application site. At its closest point, the application site is 43m away from the east side of South Quay promontory. One boat, Heron Island, is currently moored at the western end of the northern arm of the marina and extends marginally outside the original application site (on mooring/berth number 93). The distance from the end of the southern arm of the marina pontoons to South Quay has been measured at 43.6m, which is 0.6m further away than the 43m shown on the approved plan. Taking this into account, it is estimated that due to the large beam of Heron Island, the boat may encroach outside the permitted mooring area by between 0.5m and 1.5m. This minor breach is considered to be de-minimus and, as such, it is not considered expedient to take enforcement action.

10.0 Breach of Condition regarding repair and improvement of the access road

10.1 Notice of Permission ABG/742/42 for the 'Construction of 8 finger pontoons to increase the capacity at Abingdon marina from 100 to 113 moorings' (referred to in 5.1 above) includes Condition 3 which states:

"Prior to the first use of the finger moorings hereby approved the existing access road to the marina car park shall be repaired and improved to the standard of Oxfordshire County Council for such works, in accordance with a scheme which has first been submitted to, and approved in writing by, the District Planning Authority.

Reason: In the interest of highway safety."

10.2 The access road from the height restriction barrier to the marina car park gateway has recently been repaired and surfaced with considerable areas of new concrete. However, no scheme was submitted or approved prior to the work being carried out, and the County Engineer considers the condition of the road is not yet up to standard.

10.3 It is anticipated that a meeting will be held on site with the marina owners and County Highways prior to the Committee Meeting, and an update on this matter will be reported at the Meeting.

10.4 Nevertheless, in case the matter cannot be satisfactorily resolved, it is recommended that Committee delegates authority to the Deputy Director (Planning and Community

Strategy) in consultation with the Committee Chair/Vice Chair to decide whether enforcement action should be taken(including the possible issue of a Breach of Condition Notice).

11.0 Breach of Condition regarding the provision of reed bed protection buoys

11.1 Notice of Permission ABG/742/42 for the 'Construction of 8 finger pontoons to increase the capacity at Abingdon marina from 100 to 113 moorings' (referred to in 5.1 above) includes Condition 2 which states:

"Prior to development commencing, details of marker buoys to be placed between the eastern bank and the additional moorings shall be submitted to and approved in writing by the Local Planning Authority. The buoys shall then be fixed in accordance with the approved details, prior to any boats berthing at the new moorings.

Reason: To provide a physical barrier to boats operating near and potentially damaging important reed beds."

11.2 A string of "marker buoys" has recently been placed between the eastern bank of the marina basin and the new moorings. However, no details were submitted or approved prior to the buoys being laid/fixing in position.

11.3 It is anticipated that a meeting will be held on site with the marina owners and the Environment Agency prior to the Committee Meeting, and an update on this matter will be reported at the Meeting.

11.4 Nevertheless, in case the matter cannot be satisfactorily resolved and the Environment Agency is unhappy with the position of the buoys, it is recommended that Committee delegates authority to the Deputy Director (Planning and Community Strategy) in consultation with the Committee Chair/Vice Chair to decide whether enforcement action should be taken (including the possible issue of a Breach of Condition Notice).

12.0 Storage of a small touring caravan and box trailer in the secure compound

12.1 A small touring caravan and box trailer are currently being used for storage purposes in the secure compound. The authorised use of the compound is for the secure parking of cars/vehicles and boat trailers only. The caravan and box trailer, therefore, are unauthorised. Whilst it may be possible to provide a less obtrusive form of storage on the site, this would need to be the subject of a planning application. In the meantime, it is considered expedient to initiate enforcement action to secure the removal of the caravan and box trailer.

12.2 It is recommended that Committee delegates authority to the Deputy Director (Planning and Community Strategy) in consultation with the Committee Chair/Vice Chair to decide whether enforcement action should be taken to secure the removal of the caravan and box trailer.

13.0 Permanent residential use of moorings

13.1 Residents of the marina have made allegations that boat owners and other persons are "staying, sleeping and living on boats" and they believe that with the exception of the twenty "overnight moorings" this is not permitted and should be enforced against. The Marina Manager has always insisted that with the exception of the one permitted residential mooring (i.e. "The Green Man" moored on berth number 74), there are no

other residential moorings. He has admitted, however, that there are a number of owners who occasionally stay for two or three nights on their boats but he does not believe such occasional and irregular visits constitute a “residential use”.

- 13.2 The key issue here is what constitutes a “residential mooring”. In your Officer’s opinion, occasional overnight stays (even for more than a few nights at a time) does not constitute a residential use. The issue is what is the primary use of the mooring – i.e. is it used to moor a boat which is the occupier’s sole or a principal place of residence? Residents of the marina have submitted very helpful log sheets detailing the use of the car park by vehicles late at night and early in the morning, together with other circumstantial evidence. The Enforcement team has used this information and carried out numerous early morning and late night site visits. Initial findings on this issue tend to support the allegation that a few boats may be being used as the occupier’s sole or a principal residence. Investigations are still ongoing and Officers have recently been given unrestricted access onto the pontoons by the marina operator to interview any individual at any time who appears to be staying overnight.
- 13.3 Further investigations are needed to ensure the enforcement case is sound before any action is taken. Any recommendation for authorisation to take enforcement action could, if implemented, amount to an interference with the right of the individuals concerned to respect for their home under Article 8 of the European Convention on Human Rights. <http://www.sada.org.uk/> On this issue, the residential use of the moorings would be an inappropriate form of development in a sensitive location on the edge of the open countryside and the River Thames. Residential development in this location would be harmful to the character of the area and contrary to policy. Therefore, residential use of the moorings would be contrary to Policies G5 and R3 of the adopted Oxfordshire Structure Plan, Policies GS2 and L17 of the adopted Vale of White Horse Local Plan and the advice in PPS7. There does not appear to be any special circumstances that would outweigh these policy objections. Therefore, this interference is considered to be proportionate to the harm that would be caused if it is established that any unauthorised residential moorings exist and they were allowed to remain. Enforcement action in these circumstances would be justified and in the public interest.
- 13.4 It is recommended that Committee delegates authority to the Deputy Director (Planning and Community Strategy) in consultation with the Committee Chair/Vice Chair to decide whether enforcement action should be taken against the Marina Owners and any individuals if it is established that they are using any boat(s) (apart from the Marina Manager’s boat) as their sole or a principal place of residence, and it is considered expedient to do so.

RODGER HOOD
DEPUTY DIRECTOR (Planning and Community Strategy)