

**Report to** Planning applications committee

**Item**

13 September 2018

**Report of** Head of planning services

**4(i)**

**Subject** Enforcement Case 16/00167/ENF – Café Britannia,  
Britannia Road, Norwich

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**Summary**

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| <b>Description</b>                           | Without planning permission the change of use of the land to café (A3), shop (A1) and function rooms (D1).                           |
| <b>Reason for consideration at committee</b> | Enforcement action recommended   |
| <b>Recommendation</b>                        | Authorise enforcement action to require the occupier to comply with the requirements set out in paragraph 23 of this report in full. |
| <b>Ward</b>                                  | Crome  |
| <b>Contact Officer</b>                       | Robert Webb <a href="mailto:robertwebb@norwich.gov.uk">robertwebb@norwich.gov.uk</a>   |

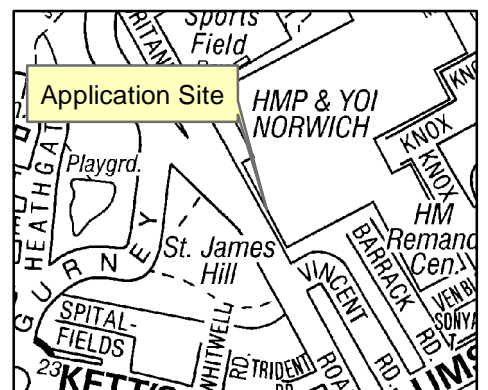


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Planning Application No 16/00167/ENF  
 Site Address Former Britannia Barracks  
 Britannia Road  
 Scale 1:1,000



**NORWICH**  
 City Council  
 PLANNING SERVICES



## **The site**

1. The site forms part of the Britannia Barracks building and grounds on Britannia Road and is part of the wider complex occupied by Norwich Prison. It comprises a café (Café Britannia) which is located on the ground floor of the historic barracks building and has an outside seating area, rooms on the first floor which are used for purposes such as meetings of networks and yoga sessions, and a shop which is located in a detached building next to the café which sells arts and crafts.
2. The barracks building itself is grade II listed. To the north east is the remainder of the complex occupied by HM Prison Norwich. To the south east is residential development on Britannia Road and Vincent Road. To the south west and west is Britannia Road, a public car park and Mousehold Heath. The site is elevated and benefits from expansive views towards Norwich city centre.

## **Relevant planning history**

3. There is no relevant planning history.

## **The breach**

4. The breach of planning control is the operation of a café, shop and function rooms from the site without planning permission. The café has operated since December 2013. Garden sales have taken place from the site since June 2015, and in October 2016 a shop selling arts and crafts began trading from a building next to the café.

## **Relevant development plan policies**

### **5. Joint Core Strategy for Broadland, Norwich and South Norfolk adopted March 2011 amendments adopted Jan. 2014 (JCS)**

- JCS1 Addressing climate change and protecting environmental assets
- JCS2 Promoting good design
- JCS3 Energy and water
- JCS5 The economy
- JCS6 Access and transportation
- JCS8 Culture, leisure and entertainment
- JCS9 Strategy for growth in the Norwich policy area
- JCS12 The remainder of the Norwich urban area including the fringe parishes

**6. Norwich Development Management Policies Local Plan adopted Dec. 2014 (DM Plan)**

- DM1 Achieving and delivering sustainable development
- DM2 Ensuring satisfactory living and working conditions
- DM3 Delivering high quality design
- DM9 Safeguarding Norwich's heritage
- DM16 Supporting the needs of business
- DM17 Supporting small business
- DM18 Promoting and supporting centres
- DM22 Planning for and safeguarding community facilities
- DM23 Supporting and managing the evening and late night economy
- DM28 Encouraging sustainable travel
- DM30 Access and highway safety
- DM31 Car parking and servicing
- DM33 Planning obligations and development viability.

**Other material considerations**

**7. Relevant sections of the National Planning Policy Framework August 2018 (NPPF):**

- NPPF2 Achieving sustainable development
- NPPF4 Decision taking
- NPPF6 Building a strong competitive economy
- NPPF8 Promoting healthy and safe communities
- NPPF9 Requiring sustainable transport
- NPPF12 Achieving well-designed places
- NPPF12 Conserving and enhancing the historic environment.

**Background**

8. Prior to the occupation by Café Britannia, the building had been historically been used as an officers mess for prison officers. This was an ancillary use to the prison and therefore no planning consent was required. In 2014, shortly after Café Britannia began to operate from the site, a complaint was received and planning officers investigated the matter. It was determined at that time that because of the scale of the operation and the functional linkages with the prison, that the use was ancillary to main use of the site as a prison.
9. Since the initial period when the café was first established, it has increased in size and diversified and visitor numbers have increased significantly. Following continued complaints, officers carried out a further investigation of the matter in 2016 and legal advice was sought which determined that a breach of planning control had occurred. For the reasons set out in this report, the use is causing a degree of harm and whilst there has been a number of discussions between officers and the operator of the site and attempts made to resolve the matter without recourse to formal enforcement action, this approach has been unsuccessful. As a result formal action is considered necessary, to tackle the

harm caused by the development and to minimise the risk of the council being accused of maladministration in failing to deal with the matter.

10. The following paragraphs set out the process that officers have gone through in reaching this position.

### **Consideration of whether a breach of planning control has occurred**

11. Any test for whether a use is ancillary to another, or not, is a matter of fact and degree and each case has to be determined on its particular merits. However, in practice two principal criteria have emerged from case law (*Harrods Ltd v Secretary of State for the Environment Transport and the Regions (2002)*, see appendix 3). First, a severability test, and second an environmental impact test.
12. Applying the first test, it could be asked whether the alleged ancillary use could practically and viably operate on its own were the primary use of the premises to cease. If it could, then the use is very unlikely to be ancillary as there is clearly no linkage or dependency. In the case of *Café Britannia* it could be argued that the current use would not viably operate without the prison as there would be very few staff available to operate the cafe in its current form.
13. The second test would look to any outward effects of the use, in terms of the appearance of the premises, the amenity of the surrounding area or neighbourhood traffic conditions. If it could be shown that there would be a significantly greater impact following from the introduction of the alleged ancillary activity than one could reasonably expect from the existing use, then it is likely that a change of use has occurred.
14. In the case of *Café Britannia*, it was determined in 2016 that evidence from site visits and comments from neighbouring occupiers showed that a significant increase in activity from people entering and leaving the building via the access adjacent to dwellings on Britannia Road occurred when the café opened. Visits to and from the site continued to increase as the café diversified and became more popular. An increase in vehicle movements and car parking in Britannia Road and the Mousehold Heath car park also occurred, to the extent that it was considered that the development was resulting in impacts which should legitimately be considered as part of a planning application.
15. As such, based on legal advice, the local planning authority has concluded that the café and associated uses are not ancillary to the prison, and amount to a separate mixed use of café, shop and function rooms (use classes A3, A1 and D1) in its own right, for which planning permission is required.

### **Consideration of whether it is expedient to take enforcement action and what action is necessary**

16. Having established that a breach has occurred, the planning authority should consider whether the level of harm is such that it is expedient to take action. In doing so it should have regard to the policies of the development plan and any

material considerations. In making this judgement the council should have regard to the following options which are available:

**Option A** - If the operation of the café and other uses is considered acceptable as it stands with no physical change or ongoing restriction on its operation then it would not be expedient to take any form of enforcement action;

**Option B** - If the operation of the café and other uses is considered unacceptable and not capable of being made acceptable through physical change or ongoing restriction on its operation then it would be expedient to serve an enforcement notice requiring the breach of planning control to cease within a specified timescale;

**Option C** - If the operation of the café is considered unacceptable as it stands but capable of being made acceptable through physical change or ongoing restriction on its operation then it would be expedient to serve an enforcement notice setting out such requirements and restrictions (known as under-enforcement).

17. In making this judgement it is recognised that the café delivers significant social benefits due to the success of its rehabilitation work and the associated reduction in re-offending rates. It also provides a social benefit in terms of providing a meeting place for people and adds to the attraction of visiting Mousehold Heath. It provides benefits to the local economy as it employs a number of people in addition to the prisoners who work in the café. It provides heritage benefits in terms of making good use of a listed building which provides an incentive to maintaining the building and its grounds to a good standard.
18. It is also recognised that the café and associated uses are not the sole reason why people visit the area, as some people visit to enjoy the views and for recreation purposes on Mousehold Heath. It is understood the area is also used informally for commuter parking by people working in the city centre. Notwithstanding this, the café is considered to be a significant draw which has led to an increased number of visitors.
19. In considering the level of harm, it is noted that the associated movements to and from the café has a particular impact upon the occupier of the residential dwelling at no. 1 Britannia Road, which is sited immediately adjacent to the pedestrian entrance to the café. The associated impacts from noise, disturbance and loss of privacy which occur are considered to represent harm which conflicts with the requirements of policy DM2 of the Development Management Policies document. This could be solved by the provision of a new entrance closer to the car park and main door of the café.
20. Additional impacts on nearby residents have arisen from increased parking and traffic congestion in the vicinity of the site, both on Britannia Road and within the car park for Mousehold Heath. However the café is not the sole cause of this congestion. Furthermore a number of highway improvements would be required to make a significant difference to the situation, and this is considered to be outside of the scope of the development and outside of the control of the occupier of the site. It would therefore not be reasonable or possible to require such

measures through an enforcement notice. The provision of some cycle stands closer to the café could however, make a small contribution towards encouraging people to cycle rather than drive to the site, which would help in reducing parking pressures.

21. In terms of the options available to the council set out in paragraph 16, the degree of harm is such that it is considered expedient to take some form of action to improve the situation, with particular reference to the entrance arrangements. Option A is therefore not encouraged.
22. Regarding option B (to require the uses to cease), it is considered that the principle of development is acceptable and measures could be required or imposed which would reduce the harm and make the development acceptable in planning terms. It is therefore considered that option B would be disproportionate and unreasonable.
23. The recommended way to proceed is option C – is to under-enforce by serving a notice which would allow the current uses to continue, providing the following measures are complied with:
  - (a) The provision of a new pedestrian entrance, closer to the front door of the café and better positioned for the car park, reducing the flow of people using the entrance next to no. 1 Britannia Road and therefore reducing the impact in terms of noise and privacy on the occupier of that property. It is recommended that this should be installed and opened within 12 months of the date of the enforcement notice, to allow sufficient time for the access to be designed and constructed, given that it involves work to a curtilage listed wall.
  - (b) The installation of cycle parking at a suitable location within the site, to encourage alternative modes of transport and reduce parking pressure. This should be provided within 12 months of the date of the notice.
  - (c) A restriction on opening hours so that the uses may operate between the hours of 07.30 and 22.00 on any day. This is a standard requirement to protect the amenity of neighbouring occupiers given the location of the site within a residential area. It is recommended that this restriction comes into effect 28 days following the serving of the notice.
  - (d) A restriction on the ability to change use without applying for planning permission. Current permitted development rules allow cafes to change use to a range of different uses such as a hotel, residential school, or temporarily to an office or shop. There are further permitted development rights that could apply to the shop. It is recommended that a restriction is applied allowing the premises to be operated as a café, shop, and function rooms, within the current areas of the building(s) only and with no change of use permitted without formal planning approval, as a number of potential uses that might otherwise be permitted development may be considered unacceptable in this location. This restriction should come into effect 28 days after the serving of the enforcement notice.

24. Should the occupier comply in full with the measures set out in the enforcement notice, they would be deemed to benefit from planning permission for the use(s).
25. Consideration has also been given as to whether any restriction seeking to limit the café and associated uses to those with some functional link to the adjacent prison should be applied. It is considered that any such restriction would be difficult to enforce in practice and also that the café operation would be acceptable in this location adjacent to Mousehold Heath even without this functional link. Therefore such a restriction is not proposed and it is recommended that the café should be able to operate irrespective of whether it retains the functional link to the prison.

### **Equality and Diversity Issues**

26. The Human Rights Act 1998 came into effect on 2nd October 2000. In so far as its provisions are relevant:
- (a) Article 1 of the First Protocol (the peaceful enjoyment of ones possessions), is relevant in this case. Parliament has delegated to the council the responsibility to take enforcement action when it is seen to be expedient and in the public interest.
  - (b) Article 6: the right to a fair hearing is relevant to the extent that the recipient of the enforcement notice and any other interested party ought to be allowed to address the committee as necessary. This could be in person, through a representative or in writing.

### **Conclusion**

27. The development represents a change of use for which planning permission is required. Whilst Café Britannia delivers significant social and economic benefits and alongside the other uses including shop and function rooms is acceptable in principle in this location, a number of measures and restrictions are considered necessary to reduce the harm the development is causing to local residents in Britannia Road and to ensure a degree of planning control is imposed to safeguard public amenity. It is therefore considered expedient to pursue enforcement action in the form of under-enforcement to allow the use to continue, subject to the measures and restrictions as set out in paragraph 23 being complied with.

### **Recommendation**

28. That the committee authorises enforcement action, up to and including prosecution, to require the measures set out in paragraph 23 of this report to be complied with in full.