

PLANNING COMMITTEE AGENDA – 18th June 2014

Enforcement List

<u>Item No.</u>	<u>Description</u>
1.	ENF/13/00060/LIS – Unauthorised works namely the removal of ground floor front door and window at Grade II listed building contrary to Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 – 22A Fore Street, Cullompton, EX15 1JH
2.	ENF/13/00076/BRE – (1) Without planning permission the unauthorised material change of use of equestrian land to a mixed use of equestrian and for the siting/placement of a caravan (mobile home) for residential purposes/human habitation. (2) Without planning permission the unauthorised material change of use of the equestrian land to a mixed use of equestrian and the placement/siting of a metal container for the purposes of residential occupation/human habitation. (3) Without planning permission operational development consisting of the placement/siting of a metal container (which constitutes a building operation) for residential purposes/human habitation – Land and Buildings at NGR 311505 111709 (Hackpen Hill) known as 'Hackpen Stables', Blackborough EX15 2HX
3.	ENF/13/00112/LIS – Unauthorised replacement windows to the front and the rear of the grade II listed property at 22 Castle Street, Tiverton from traditional timber to green grey colour metal framed double glazed units with applied glazing bars contrary to Section 7 of the Planning (Listed Building and Conservation Areas) Act 1990.

Case No. ENF/13/00060/LIS

Grid Ref: 302051 107247

Address:

22A Fore Street, Cullompton, Devon, EX15 1JH

Alleged Breach:

Unauthorised works namely the removal of ground floor front door and window at Grade II listed building contrary to Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

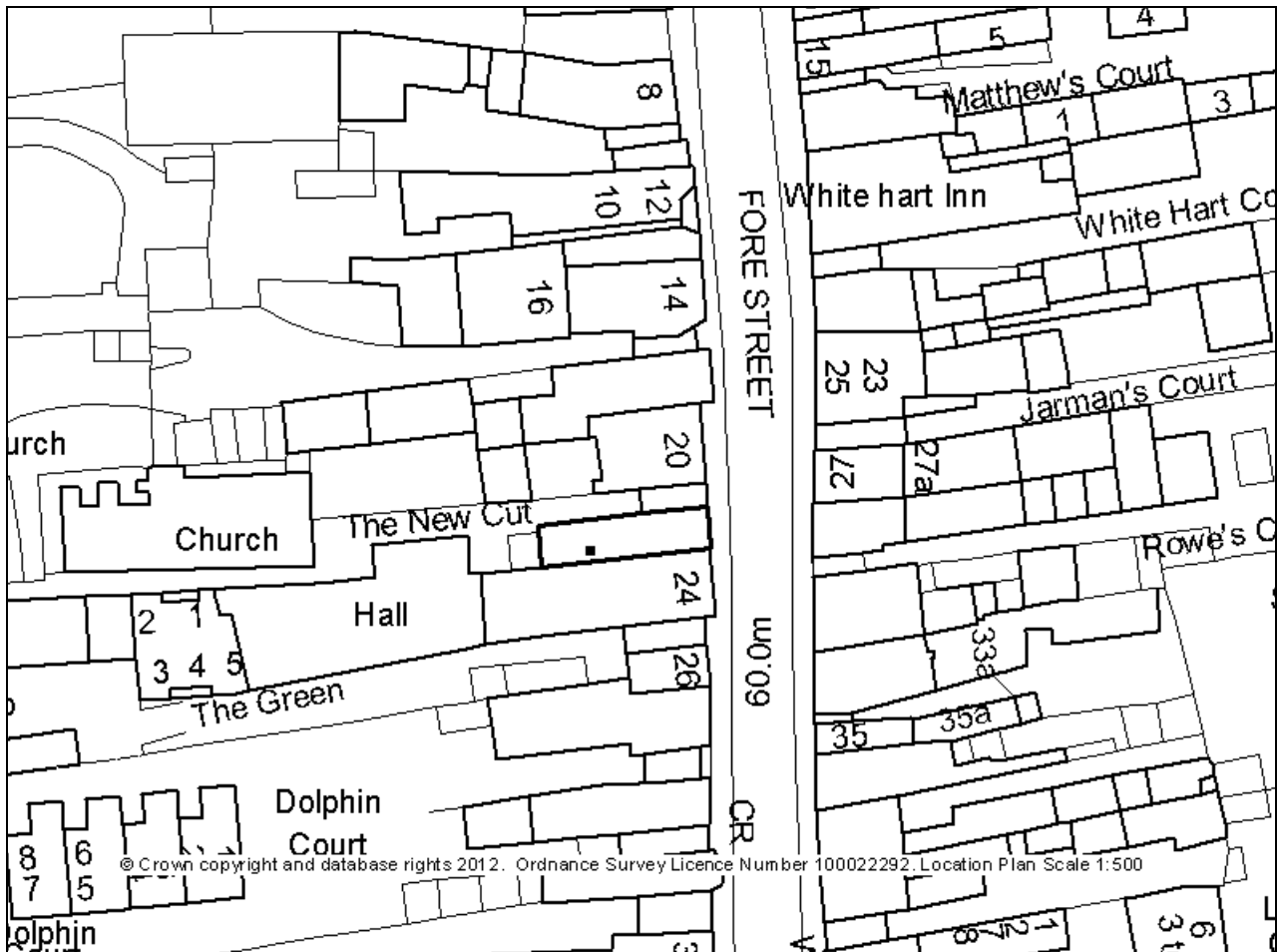
Recommendations:

To delegate authority to the Legal Services Manager to take the appropriate legal action to include the service of a Listed Building Enforcement Notice or Notices the Notice to require that the ground floor door and ground floor window on the Northern elevation situated in New Cut, Cullompton are replaced to a specification provided by the Local Planning Authority. In the event of a failure to comply with the Listed Building Enforcement Notice the consideration of prosecution proceedings, the issue of injunction proceedings, or direct action.

Site Description:

22A Fore Street, Cullompton, EX15 1JH is a terraced Listed Building situated on the western side of Fore Street, Cullompton, the unauthorised works taken place on the Northern elevation of the property which is accessed through an archway and covered walkway known as New Cut.

Site Plan:



Site History:

No relevant history

Development Plan Policies:

National Planning Policy Framework
Paragraph 132, 134

Mid Devon Local Plan Part 3 (Development Management Policies)

Mid Devon Core Strategy (Local Plan 1)
COR2 - Local Distinctiveness

Local Plan Part 3 (Development Management Policies)

DM27 - Development affecting Heritage Assets
DM31 - Planning Enforcement

Policy

In the opinion of the Local Planning Authority, the removal of the ground floor front door and ground floor window and their blocking up is inappropriate and detrimentally affect the character and appearance of the Listed Building contrary to Policies COR2 of the Mid Devon Core Strategy (Local Plan 1) and DM27 of the Mid Devon Local Plan (Development Management Policies) together with guidance in the National Planning Policy Framework (Paragraphs 132 and 134).

Reasons/Material Considerations

22A Fore Street, Cullompton, EX15 1JH is a Grade II Listed Building. Following information received in Mid-2013 it was ascertained that a doorway and window on the ground floor of the Northern elevation, accessed by New Cut, had been blocked up and re-rendered. No Listed Building Consent had been granted for these works and they are therefore considered as unauthorised and contrary to Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Enquiries with the landowner indicated that retrospective Listed Building Consent application would be submitted for the reinstatement of the original door and window which if granted and implemented would have resolved the breach. At the time of writing this report no such application has been received and as a result the recommendations contained at the end of the report are put to this committee. Immunity periods do not apply in relation to unauthorised works to Listed Buildings.

Human Rights and Equality Issues:

Any of the enforcement action taken or proposed, and being considered in relation to this report could affect the land/property and owners Human Rights under the provisions of Article 8 and Article 1 of the First Protocol of the Human Rights Act 1998. However, the Local Planning Authority feels it is pursuing a legitimate aim in seeking compliance with the Planning (Listed Buildings and Conservation Areas) Act 1990, so as to prevent demonstrable harm in the interests of acknowledged importance and to protect the environment. In this particular case the unauthorised works to the Listed Building are considered in appropriate and contrary to the policies referred to. The Human Rights provisions in relation to this case are qualified rights and interference with those rights is considered to be proportionate so as to protect the harm to the immunity identified, and also to protect the local and national adopted planning policies. The

current landowner has been made aware of the breach but no communications have been received at the time of writing this report.

Options for action or remedy:

The list of options available is as follows:

Take no action:

A no action option is not thought to be appropriate in the circumstances where the unauthorised works have taken place and are contrary to the local and national planning policies.

Formal Enforcement Action

Formal enforcement action to include the service of a Listed Building Enforcement Notice to require that the ground floor window and front door on the Northern elevation of 22A Fore Street are replaced to a specification provided by the Local Planning Authority.

Reasons for Decision:

Your Officers recommend formal enforcement action with reasons set out in this report and for the reasons outlined in the development plan policy section.

Steps Required:

Re-open the doorway and window on the ground floor on the Northern elevation of 22A Fore Street, in a location as identified on an attached site plan, and replace with a timber front door and a timber window to a specification provided by the Local Planning Authority.

Period for Compliance:

Six months after the Notice takes affect.

Case No. ENF/13/00076/BRE

Grid Ref: 311508 111713

Address:

Land and Buildings at NGR 311505 111709 (Hackpen Hill) Hackpen Stables, Blackborough, Devon, EX15 2HX

Alleged Breach:

1. Without planning permission the unauthorised material change of use of equestrian land to a mixed use of equestrian and for the siting/placement of a caravan (mobile home) for residential purposes/human habitation.
2. Without planning permission the unauthorised material change of use of the equestrian land to a mixed use of equestrian and for the placement/siting of a metal container for the purposes of residential occupation/human habitation.
3. Without planning permission operational development consisting of the placement/siting of a metal container (which constitutes a building operation) for residential purposes/human habitation.

The above are contrary to Section 171A(1) Town and Country Planning Act 1990 (as amended).

Recommendation:

To delegate authority to the Legal Services Manager to take the appropriate legal action to include the service of an enforcement notice or notices. Any notice to require that the unauthorised material change of use on the land should cease and that the land is returned to its lawful use of equestrian. In addition that any unauthorised caravan or container is removed from the land. In addition that any unauthorised operational development (building operation) is dismantled and removed from the land. In the event of a failure to comply with any enforcement notice/s the consideration of prosecution proceedings, the issue of injunction proceedings, or direct action.

Site Description:

The site in question is situated on the Blackdown Hills within an Area of Outstanding Natural Beauty (AONB). It is located to the South West of Hemyock Common and to the West of Leigh Cross.

Site Plan:



Site History:

03/05278/FULL	Erection of equine exercise arena.	Granted 15 th January 2004
08/01980/FULL	Erection of equestrian storage barn and retention of change of use of land from agriculture to equestrian	Granted 6 th January 2009

Development Plan Policies:

National Planning Policy Framework

Paragraph – 55

Paragraph – 207

Mid Devon Core Strategy (Local Plan Part 1) Adopted July 2007

COR18 – Countryside

COR 2 – Local Distinctiveness

Mid Devon Local Plan Part 3 (Development Management Policies)

DM1 – Presumption in favour of sustainable development

DM2 - High Quality Design

DM29 - Protected Landscapes

DM23 - Equestrian Development

DM10- Rural Workers Dwellings

DM31 - Planning Enforcement

The development would not receive Local Planning Authority (LPA) support as the site is located in the countryside where policies, and in particular paragraph 55 of the National Planning Policy Framework, seek to avoid new isolated homes in the countryside unless there are special circumstances. National and local planning policy seeks to provide residential development in the most sustainable locations with accessibility to services, employment, education and public transport and therefore only permits residential accommodation in the countryside in certain circumstances. The residential accommodation provided is not considered to be required to support an essential need for a rural worker to live at or near their place of work. Therefore the provision of the caravan and cabin is contrary to Policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1), Policies DM1 and DM10 of the Mid Devon Local Plan Part 3 (Development Management Policies) and the National Planning Policy Framework. The site is within the Blackdown Hills Area of Outstanding Natural Beauty where new development is required to preserve the special qualities of the landscape. The provision of the cabin structure being used for human habitation, by virtue of its utilitarian appearance which is alien to the landscape in this area is considered to detract from the special qualities of the Area of Outstanding Natural Beauty, contrary to policies COR2 of the Mid Devon Core Strategy (Local Plan 1) and DM29 of the Local Plan Part 3 (Development Management Policies) and the National Planning Policy Framework.

Reasons/Material Considerations:

In June 2013 an investigation was commenced in relation to allegations concerning the breach of condition 2 imposed upon planning permission 08/01980/FULL relating to the use of approved equestrian buildings and land for commercial equestrian purposes. The site visit at that time revealed the placement and siting of a caravan which appeared to be used for residential purposes. A Planning Contravention Notice (PCN) was served on the 5th July 2013 where the

response to the question regarding unauthorised uses or breach of conditions was that there was 'no' breach taking place.

Following the receipt of further information in April 2014 a site visit revealed that the caravan placed on site in 2013 had been removed and replaced with a newer model. In addition a metal storage type container with doors and windows had been placed near to the caravan. Both the caravan and container were connected to on site generated electricity. It is your Officers view that the container is no longer portable due to its size, siting, permanence, and physical attachment to the ground. As a result it could constitute a building operation, and therefore unauthorised development and the creation of an unauthorised building. At the time of the site visit in April 2014 your Officer was not able to ascertain the internal use of either the caravan or the container.

However, a further site visit on the 1st May 2014 resulted in an internal examination of both the caravan and the container. The caravan was being used for residential purposes, as was the container. The container had within it a separate bedroom with a double bed, the construction of a shower cubicle had been commenced (but not finished). Various personal items i.e. clothing etc. were also within the container. The caravan contained all the normal facilities associated with residential use/human habitation, namely bedroom/kitchen/living room and bathroom. As a result it was your Officers opinion that both the caravan and container/building were being used for human habitation/residential purposes. A breach of the Town & Country Planning Act 1990.

On the 7th May 2014 your Officer met with the occupiers of the land who indicated their intention to submit a Certificate of Lawful Existing Use (CLUED) application under the provisions of Section 191 in an attempt to establish immunity against enforcement in connection with the use and siting of a caravan. In addition the occupiers indicated their intention to submit a retrospective planning application for the retention of the container/building to be used as a secure equestrian tack room. At the time of writing this report neither application has been received.

At the time of the meeting on the 7th May 2014 the occupier was handed a Planning Contravention Notice (PCN) and at the time of writing this report those replies are awaited. In addition a PCN has been served upon the land owner (who is not the occupier). Replies are awaited.

The building/container has not been in place/on site for more than 4 years. However, the occupier does claim that a caravan has existed on site, and used for residential purposes, continually, since 1999 and this is likely to be the subject of any certificate application.

Human Rights and Equality Issues:

Any of the enforcement action taken as proposed or being considered in relation to this report could affect the land/property and the owners/occupiers rights under the provisions of Article 8 and Article 1 of the First Protocol of the Human Rights Act 1998. However the Local Planning Authority feels it is pursuing a legitimate aim in seeking compliance with the Town and Country Planning Act 1990 so as to prevent demonstrable harm in the interests of acknowledged importance and to protect the environment. In this particular case, the unauthorised material change of use and operational development is considered to be a breach of the Town and Country Planning Act 1990. The land owner and occupier are aware that the use and development is unauthorised and have been informed of that fact in writing. 2 x Planning Contravention Notices have been served. The Human Rights provisions in relation to this case are qualified rights and interference with those rights is considered to be proportionate so as to protect harm to the amenity identified, and to protect the local adopted planning policies. Your Officers also feel that negotiations and communications have been carried out in line with National Planning Policy Framework (NPPF) Paragraph 207. In the event that Members resolve as per the recommendation within this report it is 'not' anticipated that contact should be made with Mid Devon Councils Homelessness Team because the occupier does have an alternative address.

Options for action or remedy:

The list of options available is as follows:

Your Officers recommend formal enforcement action for the reasons set out in the report.

1. Cease the unauthorised material change of use of the land and return it to its authorised use of equestrian.
2. Remove from the land any caravan or caravans used for unauthorised human habitation or non equestrian storage purposes.
3. Cease any unauthorised residential use or human habitation of the equestrian land.
4. Remove from the land any building/container that constitutes unauthorised development.
4. Remove from the land any building/container that constitutes unauthorised development.

Your Officers recommend formal enforcement action for the reasons set out in the report.

Period for compliance:

Six months after the Notice takes effect.

Case No. ENF/13/00112/LIS

Grid Ref: 295513 112856

Address:

22 Castle Street, Tiverton, Devon, EX16 6RG

Alleged Breach:

Unauthorised replacement windows to the front and rear of the grade II listed property at 22 Castle Street Tiverton from traditional timber to green grey colour metal framed double glazed units with applied glazing bars contrary to Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Recommendations:

To delegate authority to the Legal Services Manager to take the appropriate legal action to include the service of a Listed Building Enforcement Notice or Notices the Notice to require that the windows to the front and rear of the property situated in 22 Castle Street are replaced to a specification provided by the Local Planning Authority. In the event of a failure to comply with the Listed Building Enforcement Notice the consideration of prosecution proceedings, the issue of injunction proceedings, or direct action.

Site Description:

22 Castle Street, Tiverton, Devon, EX16 6RG is a mid-terraced Listed Building situated on the western side of Castle Street, Tiverton, the unauthorised works taken place on the front and rear elevation of the property.

Site Plan:



Site History:

No previous planning applications or enforcement action

Development Plan Policies:

National Planning Policy Framework
Paragraphs 130, 132, 134

Mid Devon Core Strategy (Local Plan 1)

COR2 - Local Distinctiveness

Local Plan Part 3 (Development Management Policies)

DM27- Development affecting Heritage Assets

DM31- Planning Enforcement

Reasons/Material Considerations:

22 Castle Street is a grade II listed building located in Tiverton conservation area, built around 1850. It was built at the same time as, and as a part of the public house (Queen's Head) to the left (possibly as landlord's accommodation) and the features such as the deep eaves overhang and the windows are / were continuous throughout both properties. The windows to the front of this property were single glazed, timber, high transomed casement windows with glazing bars to the ground floor and a single glazed, timber, eight-over-eight, non-horned sash window to the ground floor. No photographic record of the windows to the rear of the house are available but it is likely that the windows were a combination of sash and casement single glazed timber windows. The windows of no. 22 Castle Street were replaced by the new owner of the house during 2013. The new windows are coloured metal framed double glazed units with applied glazing bars. At ground floor they are fixed with two upper top opening lights and at first floor they are side hung casements. The replacement of the windows was brought to the Council's attention and before the final details of the windows were completed (the application of non-structural glazing bars) discussions took place with the owner. The owner was advised that the windows were not of a suitable style or materials and that consent would be unlikely to be forthcoming if applied for. Various options were outlined to the owner, including applying for listed building consent or removing and replacing the windows with ones more appropriate to the building. The owner decided to carry on with the installation and completion of the windows. No application for listed building consent has been made and the windows are therefore unauthorised works to a listed building.

Listed buildings represent only 2% of all buildings in Britain. They are identified as being of special architectural or historic interest and are protected by law. It is a criminal offence to undertake works to a listed building that affect its character or appearance without listed building consent. Thirty two buildings on Castle Street are listed and the whole street is in the Conservation Area - it is a quality historic road in the core of historic Tiverton with the attractive exposed lead course running down the middle. The removal of historic features leads to the gradual erosion of the quality of the area and of the building concerned. Failure to enforce against unauthorised breaches of listed building legislation would send a poor message to other owners of listed buildings in the district and the immediate area in particular and would be a failure of the local planning authority to uphold the clear legislative and national planning guidance regarding the protection of historic assets.

The replacement windows are not of a sufficiently high standard for a listed building, nor are they an appropriate material. The visual impact on the building is negative. The windows cannot be altered to be made acceptable. It is recommended that they are required to be removed and replaced with more suitable windows of a matching design and materials to those that were

removed, through the serving of a listed building enforcement notice. (Information provided by Conservation officer).

Options for action or remedy:

The list of options available is as follows:

Take no action:

A no action option is not thought to be appropriate in the circumstances where the unauthorised works have taken place and are contrary to the local and national planning policies.

Formal Enforcement Action

Formal enforcement action to include the service of a Listed Building Enforcement Notice to require that all the replaced windows of 22 Castle Street are replaced to a specification provided by the Local Planning Authority.

Reasons for Decision:

Your Officers recommend formal enforcement action with reasons set out in this report and for the reasons outlined in the development plan policy section.

Steps Required:

Replace all unauthorised windows with timber windows to a specification provided by the Local Planning Authority.

Period for Compliance:

Six months after the Notice takes effect.