

Case No. ENF/17/00076/COU

Grid Ref: 296197 122000

Address:

Land and Buildings at NGR 296197 122000, Ashleigh Park, Bampton, Devon

Alleged Breach:

Untidy site having an adverse effect upon the visual amenity of the locality arising from the unauthorised deposition of excavated soil on the land.

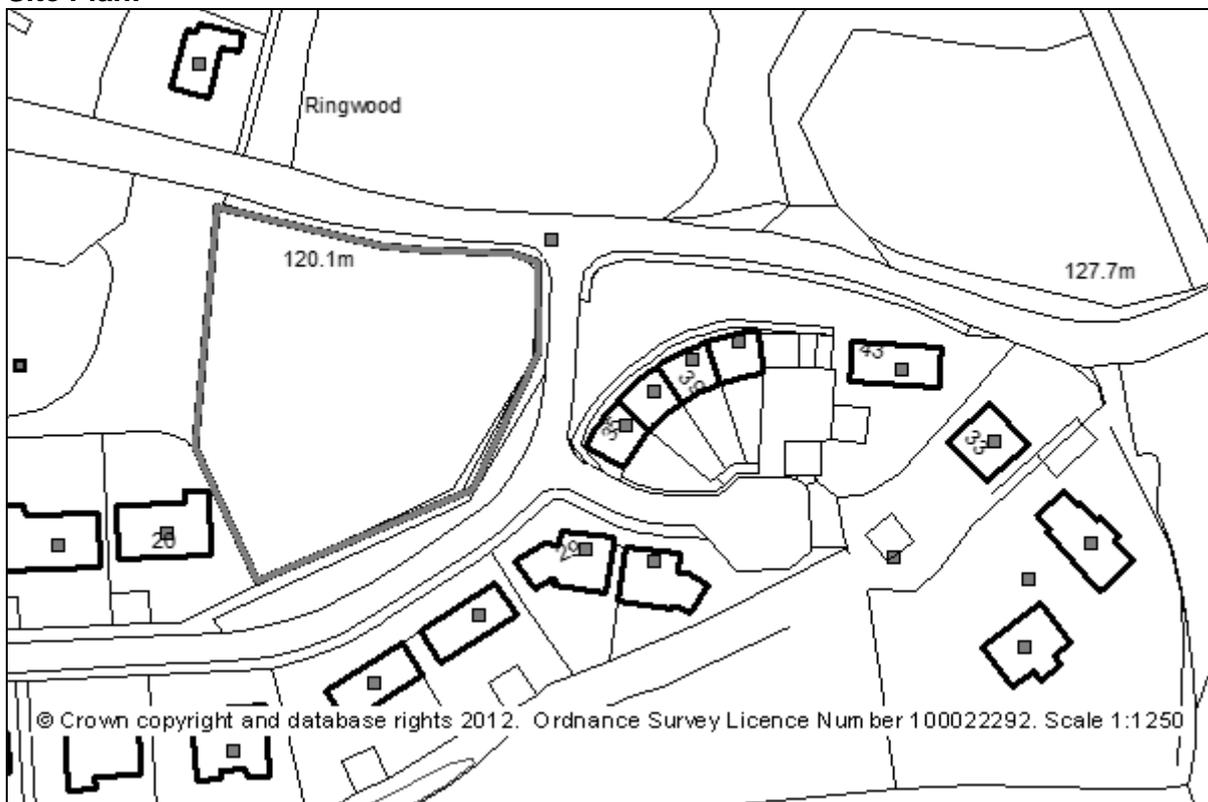
Recommendation:

That Members having considered that the condition of the land identified in this report is having an adverse effect on the locality grant authority to the Legal Services Manager to take all such steps and action necessary to secure the improvement of the appearance of the land, including the issue of a Section 215 (Untidy Site) Notice and prosecution and/or Direct Action in the event of non-compliance with the notice.

Site Description:

The site sits within the parish of Bampton and occupies a corner plot of land at the junction of Old Tiverton Road and Ashleigh Park.

Site Plan:



Site History:

14/00140/OUT	Outline for the erection of 4 bungalows; levelling of site; formation of access and landscaping	PERMIT
14/01441/FULL	Engineering works to remove The Knoll and levelling and compaction of site	PERMIT
17/00525/ARM	Reserved Matters for the erection of 4 bungalows and garages following Outline approval 14/00140/OUT	PERCON
17/01671/FULL	Erection of 7 dwellings (Revised scheme following previous permissions granted under 17/00525/ARM, 14/00140/OUT, 98/00887/ARM, and 95/00220/OUT)	PCO

Development Plan Policies:

None Relevant to this matter

Reasons/Material Considerations:

In April 2017, a complaint was passed to the enforcement team regarding the deposition of excavated material on land at the junction of Ashleigh Park and Old Tiverton Road, Bampton. The excavated material, primarily soil, resulted from engineering works associated with application 14/01441/FULL to remove the knoll and level the land immediately to the west of the site subject to this report. The concerns expressed by local stakeholders relate to the unsightly appearance of the spoil mound in such close proximity to residential properties.

The landowner's agent has confirmed that the storage of the excavated material in the spoil heap was a temporary arrangement whilst arrangements are made for it to be exported away from the site. At no time in the discussions with the agent has it been confirmed that the material in the spoil heap would be used to facilitate the implementation of the approved scheme of development for the wider site which has stated above has the benefit of extant planning permissions to build 8 houses on it. Although and also as stated above there is a current planning application pending consideration to rework the scheme for 7 bungalows.

Despite several requests to the landowner's agent to complete the removal of the spoil heap at the time of writing, the earth mound remains on the land. On this basis it is therefore your officer's view that the landowner has had the opportunity to resolve this matter voluntarily, but has failed to do so. The Council has a duty to consider the expectations of the local residents who have expressed a view that the earth mound presents as an unsightly and incongruous feature within the street scene resulting in a detrimental impact upon the visual amenity of the locality.

It is, therefore, proposed that a Section 215 (Untidy Site) Notice should be served, securing an improvement in the condition of the land. Members are advised that failure to comply with the terms of a Section 215 Notice is an Offence for which the landowner may be prosecuted in the Magistrates Court.

Human Rights and Equality Issues:

The expediency of Enforcement action has been assessed with reference to the National Planning Policy Framework (NPPF). Expediency has also been assessed with regard to the statutory Development Plan, comprising the Core Strategy 2026 (July 2007), the Allocations and

Infrastructure Development Plan Policies (January 2011) the Local Plan Part 3 Development Management Policies (October 2013) the Proposed Local Plan Review Policies 2013 - 2033.

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies.

In addition, Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

The power to issue any form of Notice to redress the issue is discretionary and should only be used where the Local Planning Authority (LPA) are satisfied that there is a reason to do so. The LPA must also be satisfied that it is expedient to issue the Notice. Consequently the Council must decide based on the particular circumstances of each individual case the question of expediency. The decision to take action must be reasonable and not based on irrational factors or taken without proper consideration of the relevant facts.

Reasons for Issuing the Notice:

The concern in this case is regards the presence of the spoil heap and the impact that it has on the visual appearance of the land, resulting in an adverse effect on the amenities of the area.