

**Case No.** ENF/17/00070/RURAL

**Grid Ref:** 307033 111196

**Address:**

Culm Wood (Gaddon Down Plantation), Ashill, Cullompton

**Alleged Breach:**

Unauthorised building operations concerning the extension of a former tractor storage shed and the unauthorised change of use of the land from woodland to a mixed use of woodland and recreational use.

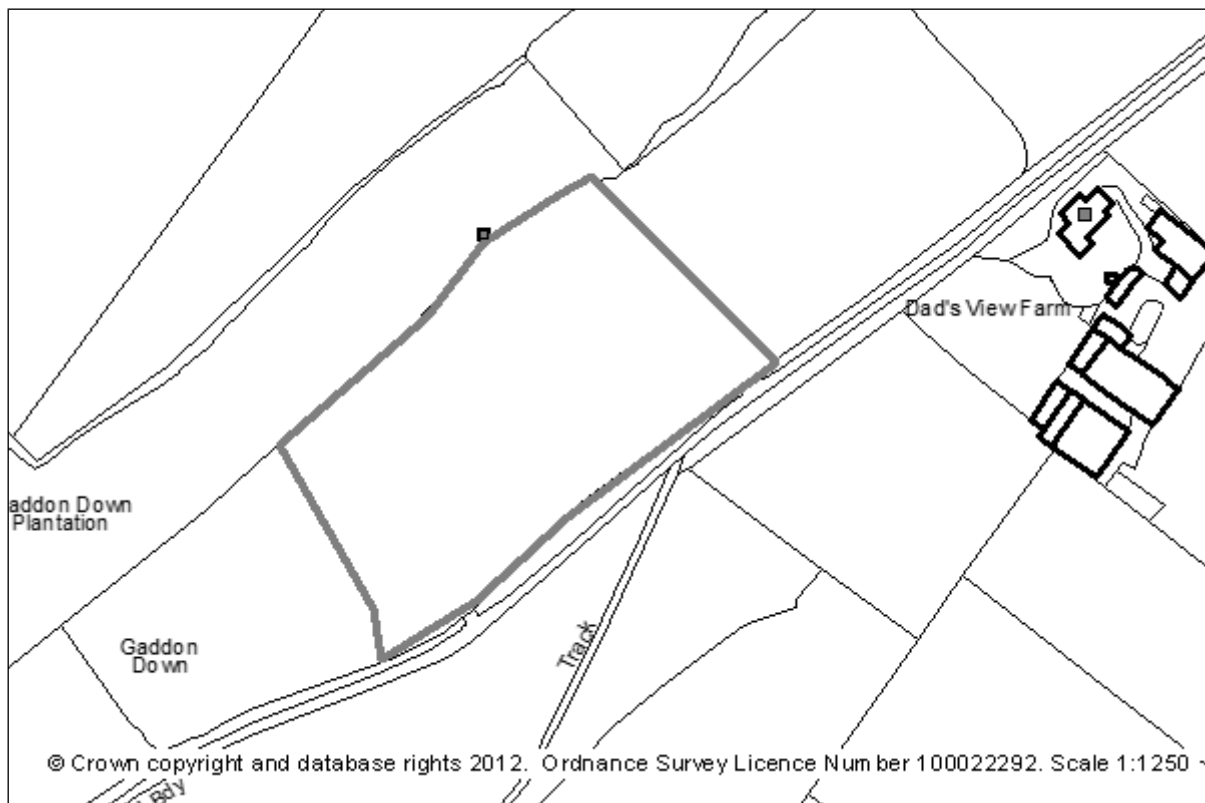
**Recommendation:**

That Members, having regard to the provisions of the Mid Devon Development Plan and all other material planning considerations in accordance with Section 172, Town and Country Planning Act 1990, ("the Act") should grant authority to the Legal Services Manager to take all such steps and action necessary to secure the demolition and removal of the unauthorised operational development, the cessation of the unauthorised use and the removal of the items of domestic paraphernalia on the land, including the issue of an enforcement notice and prosecution and/or Direct Action in the event of non-compliance with the notice.

**Site Description:**

The site occupies an area of land that extends to approximately 1.3ha and sits to the north of the road from South Hill past Gaddon Down Plantation, and 5 miles southwest of Cullompton. The woodland, which is the subject of an area Tree Preservation Order (57/00005/TPO), occupies the site of a former local tip. The topography of the land is such that it comprises two distinct levels, the upper level being predominantly woodland and the lower section comprising both woodland and a former tractor storage shed at the west corner of the site.

**Site Plan:**



**Site History:**

None

**Development Plan Policies:**

National Planning Policy Framework

**Mid Devon Core Strategy (Local Plan 1)**

COR 18 - Countryside

**Mid Devon Local Plan Part 3 (Development Management Policies)**

Policy DM 2 – High Quality Design

Policy DM11 – Conversion of Rural Buildings

Policy DM31 – Planning Enforcement

**Reasons/Material Considerations:**

In March 2017, a complaint was received by the enforcement team regarding unauthorised building works taking place on the land, together with the siting and occupation of a caravan for human habitation.

An initial site visit established that the woodland floor of the upper section of the site had been cleared and the land was being used as a form of encampment comprising a caravan and associated awning, a tent, tables, chairs, BBQ's, several cars, a motorbike and various other items of domestic paraphernalia. Furthermore, on the lower section of the site, significant ground works had taken place around a former tractor storage shed including the excavation of the land, the removal of trees, the laying of concrete and the construction of several retaining walls, without the benefit of planning permission.

The landowner attended a meeting with your officers at Phoenix House in June 2017 and was advised that the unauthorised residential occupation of the land must cease and no further building work should be undertaken until such time as the necessary planning consents were in place. The Council received confirmation at the end of July 2017 that the residential occupation of the land had ceased and the unauthorised caravan had been removed from the site, however, much of the domestic paraphernalia remained on the land, despite the Council's request that it be removed.

The domestic paraphernalia was extensive and in addition to various materials and items strewn across the site, included:

- Seating – picnic bench, recliner
- Shelter (tarpaulin) and parasol
- Camp chairs
- Greenhouse
- Small shed
- Hammock
- Mobile water storage

The enforcement team received further complaints that building works were continuing on site and a further site visit undertaken during September 2017 confirmed that the former storage (a utilitarian building of no particular merit in design terms) shed was being extended without the benefit of planning consent. Your officers have entered into lengthy and protracted discussions with both the landowners and their son with regard to how they might seek to regularise the situation on site, but at the time of writing, no progress has been made.

It is your officer's view that the unauthorised operational development represents a breach of planning control which could, if no action is taken, become immune from enforcement action through the passage of time. In addition, the site is classified as "High Risk Contaminated Land" and your officers have significant concerns about works continuing on site without the necessary land contamination reports being undertaken.

Your officers do not consider that the breach of planning control will be resolved voluntarily; therefore, it is proposed that an Enforcement Notice (Operational Development) should be served to secure the demolition of the unauthorised development and an Enforcement Notice (Change of Use) to secure the removal of the items of domestic paraphernalia and restore the land.

### **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 an Enforcement Notice is discretionary and should only be used where the Local Planning Authority are satisfied that there has been a breach or breaches of planning control. It must also be satisfied that it is expedient to issue the Notice having regard to the provisions of the Development Plan and to any other material considerations. Consequently the Council must decide based on the particular circumstances of each individual case the question of expediency. The decision to take enforcement action must be reasonable and not based on irrational factors or taken without proper consideration of the relevant facts and planning issues or based on non-planning grounds.

### **Reasons for issuing the Notice**

It appears to the Council that this breach of planning control has occurred within the last four years.

This breach concerns unauthorised operational development in relation to an extension to a former storage shed, without the benefit of planning consent, and an unauthorised change of use of the land from woodland to a mixed use of woodland and recreational use. The building itself is not considered to be a building which positively contributes to the rural character of the area, and furthermore the operational development that has been undertaken by virtue of its scale and massing represents an incongruous addition. The Council has concerns that the building may now, or in the future, be occupied as a separate unit of residential accommodation. The development is, therefore, considered to be contrary to Policies DM2, DM11 and DM31 of the Mid Devon Local Plan Part 3 and Policy COR18 of the Mid Devon Core Strategy.

The recreational use of the land, and the paraphernalia associated with it, fails to preserve or enhance the distinctive quality and character of the open countryside by introducing a scattered domestic appearance to the land. The unauthorised change of use of the land results in a visually unattractive site which fails to protect the characteristics of the surrounding area and the Council does not consider that the harm caused by the recreational use of the land could be overcome by the granting of conditional planning permission. The change of use of the land is, therefore, considered to be contrary to Policies DM2 and DM31 of the Mid Devon Local Plan Part 3 and Policies COR2 and COR18 of the Mid Devon Core Strategy.