

Case No. 17/00160/COU

300441 125017

Address:

Land lying to the North of Petton Cross, Shillingford, Tiverton, Devon.

Alleged Breach:

Change of use of land from agriculture to mixed use agriculture and the siting and use of a caravan for human habitation together with domestic paraphernalia ancillary to such use and the storage of two non-agricultural motor vehicles.

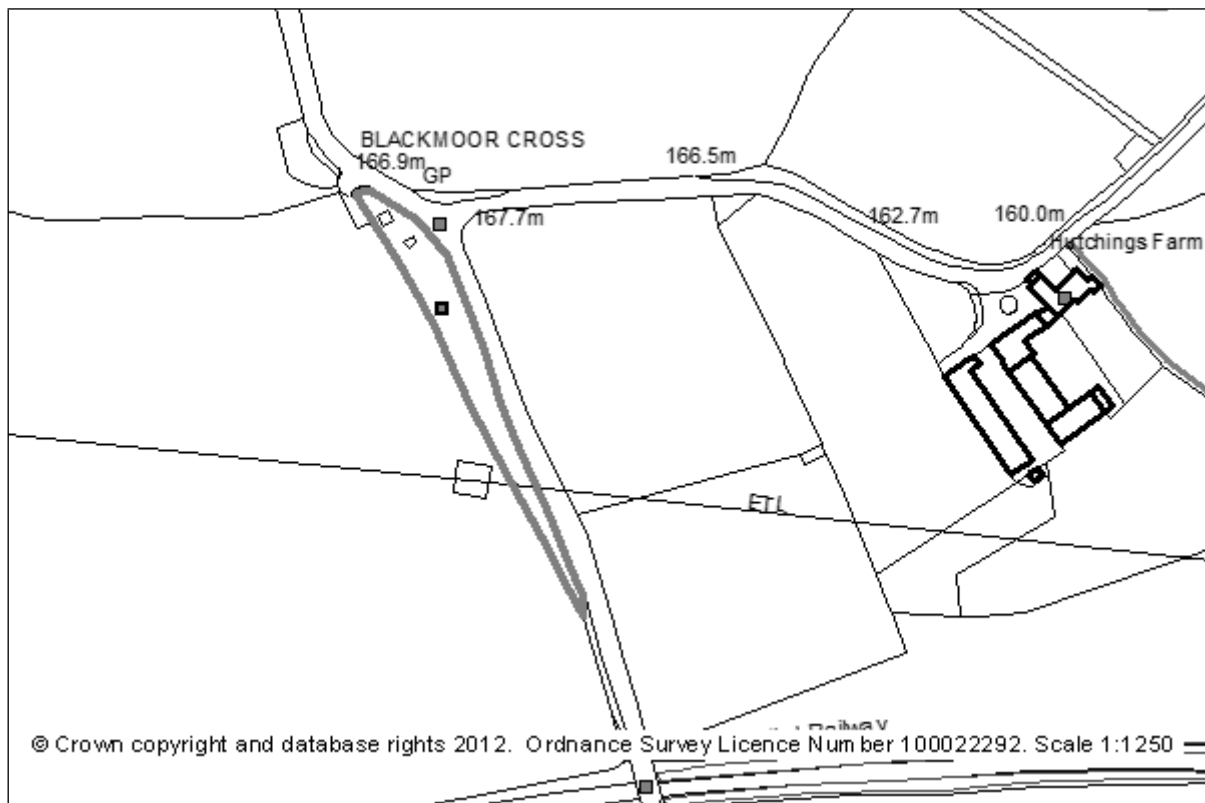
Recommendation:

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 take all such steps and action necessary to secure the cessation of the unauthorised change of use by the removal of the caravan and associated domestic paraphernalia a long with the two non-agricultural motor vehicles from the site. This could include the issue of an enforcement notice, followed by prosecution and/or Direct Action in the event of non-compliance with the notice.

Site Description:

The site is located within the Parish of Bampton; on an intersection known as Blackmoor Cross, approximately 0.2 mile north of the Petton Cross Intersection on the B3227, Shillingford to Waterrow Road. It is a long, thin piece of land that is in the open countryside.

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)

DM31 - Planning enforcement

Reasons/Material Considerations:

The above breach of planning control has occurred within the last 10 years. Evidence strongly suggests that this caravan and two vehicles were not on the site prior to February 2016. This is clearly evident from the aerial photographs and records held by Mid-Devon District Council.

The Planning Enforcement Team was made aware of the situation in June 2017 and, having confirmed that a breach of planning had occurred, contacted the owner of the land to discuss the removal of the caravan and vehicles. The owner of the land was advised by telephone, e-mail and letter that the change of use of the land (from agriculture to a mixed use agriculture and the siting of a caravan for human habitation) along with the keeping/storage of two non-agricultural motor vehicles was unauthorised-and that the use should cease immediately and the caravan and two non-agricultural motor vehicles removed from the land.

In September 2017 the owner was given a deadline of November 2017 by which to resolve the breach. At the request of the Land owner this deadline was extended through to the end of December 2017.

A further site visit was undertaken on 3rd January 2018 and it was recorded that the caravan and two non-agricultural motor vehicles remained in situ on the land.

Communication was entered into again advising that the breach of planning was still evident and that the use of the land remained unauthorised until such time as the unauthorised use ceased and the caravan and two non-agricultural motor vehicles were removed from the land.

To date the Caravan and two non-agricultural motor vehicles remain on site. It is your officer's view that the unauthorised change of use represents a breach of planning control which results in detriment to the overall character and appearance of the open countryside, and could if no action is taken, become immune from enforcement action through the passage of time.

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

The Council does not consider the unauthorised use has been carried on continuously for a period of 10 years and therefore the serving of an Enforcement Notice is necessary to have the breach resolved by means of the removal of the caravan, domestic paraphernalia and the two non-agricultural motor vehicles.

The current unlawful use of the site, for the siting of a caravan for human habitation along with the keeping and storage of the two non-agricultural motor vehicles is considered to be contrary to policy COR18 of the Mid Devon Core Strategy 2026 and policy DM31 of the Mid Devon Local Plan Part 3 in that it does not enhance the character, appearance and biodiversity of the countryside while promoting sustainable diversification of the rural economy.

Failure to enforce planning conditions or address unauthorised development can reduce the effectiveness of the Local Planning Authority and undermine public confidence in the planning system.