

Enforcement List Item

Committee Date: 21.03.18

Case No. ENF17/00266/RURAL

Grid Ref: 307589 114376

Address:

Land and Buildings at NGR 307589 114376, (Land On Escotts Farm), Uffculme, Devon

Alleged Breach:

Unauthorised material change of use of land from agriculture to a mixed use for agriculture and the slaughtering, processing, packing, freezing, storage and distribution of meat, together with ancillary operational development comprising the erection of two structures and a concrete base.

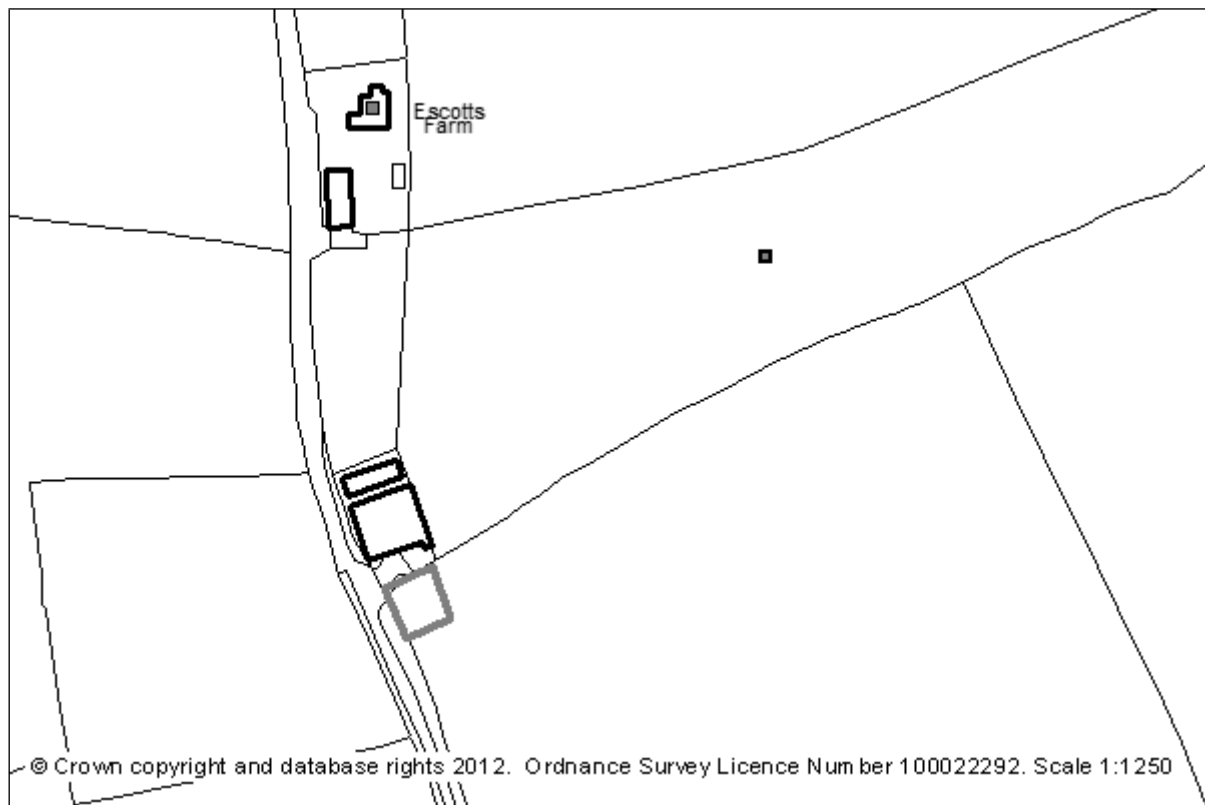
Recommendation:

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 Group Manager for Legal Services to take all such steps and action necessary to secure the cessation of the unauthorised use and the demolition and removal of the unauthorised ancillary operational development, 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 is located within the Parish of Uffculme, approximately 0.6 mile east of the A38, 0.1 mile to the north of Penslade Cross. The site occupies an area of land that is in the open countryside adjacent to an un-named lane.

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 DM31 – Planning Enforcement

Reasons/Material Considerations:

In October 2017, a complaint was received by the enforcement team regarding unauthorised building works taking place on the land.

An initial site visit established that the site had been cleared and that a walled hardstanding along with two structures had been built without the benefit of planning permission.

The landowner was advised that the unauthorised works must cease and no further building work should be undertaken until such time as the necessary planning consents were in place. The landowner agreed to submit said planning application within the time frames given.

On the 23rd November 2017 a Full Planning Application was received for the “Retention of walled hardstanding for agricultural use”. This application was invalid for a number of reasons that included documents missing, insufficient information and an unpaid fee. A letter was sent explaining that the landowner had until 18th December 2017 to submit a valid application.

After a long discussion with the landowner a further extension period was given until 19th January 2018, this was to enable the correct documents, information and fee to be paid. The application remained invalid after this second deadline date had passed.

On the 22nd January 2018 a further site visit was conducted and it became apparent that further building work had been carried out on site. There now appeared to be two refrigerated units in situ and the open loading bays had now been enclosed. It appeared that from this second site visit that this facility was now up and running and being used as a transfer station for frozen meat products/food distribution Unit. The labelling on the waste bins outside state “Animal By Products Category 3 - Not fit for human consumption”.

The landowner was again spoken with and a final deadline was set of March 1st 2018 in order that the Planning Application be amended to reflect the changes observed.

On the 5th March 2018 Mid-Devon Planning became aware that the Food Standards Agency approved a cold store at the location. It now appears that the site is being used to slaughter, process, package, store and distribute meat. Further investigations are on-going, but the change of use to a mixed use (as described in the Alleged Breach above) has taken place.

Members are advised that their consideration of this matter should be confined to planning considerations only. Other statutory regimes are there to address any other issues which arise from the development, e.g. environmental health and the environment agency.

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 ten years.

The Food Standards Agency has now approved a cold store at the location. The change of use of the land from agriculture to a mixed use for agriculture and the slaughtering, processing etc. of meat has now taken place – and the meat is then frozen and stored on site before onward distribution. The destination of the meat is not yet clear

In the absence of a valid planning application and any planning permission which might be granted in respect of such application, the Council is unable to understand the full nature and scale of the unauthorised development and whether it is an appropriate rural use within the meaning of policy COR18 of the Mid Devon Core Strategy 2026 or whether the development meets the development management policies in the Local Plan Part 3, including DM1 (sustainable development), DM4 (waste management), DM7 (pollution), DM20 (rural employment development). Furthermore, in

the absence of planning permission, the Council is unable to control the development through conditions.

It appears to the Council that the unauthorised development does not enhance the character, appearance and biodiversity of the countryside while promoting sustainable diversification of the rural economy.

Policy DM31 recognises that a failure to address unauthorised development can reduce the effectiveness of the Local Planning Authority and undermine public confidence in the planning system.

It appears that it is both proportionate and expedient to take enforcement action to address the harm caused by the unauthorised development.