

**Case No.** ENF/17/00072/RURAL**Grid Ref:** 317450 110777**Address:**

Land at NGR 317450 110777 (Tickle Penny) Clayhidon

**Alleged Breach:**

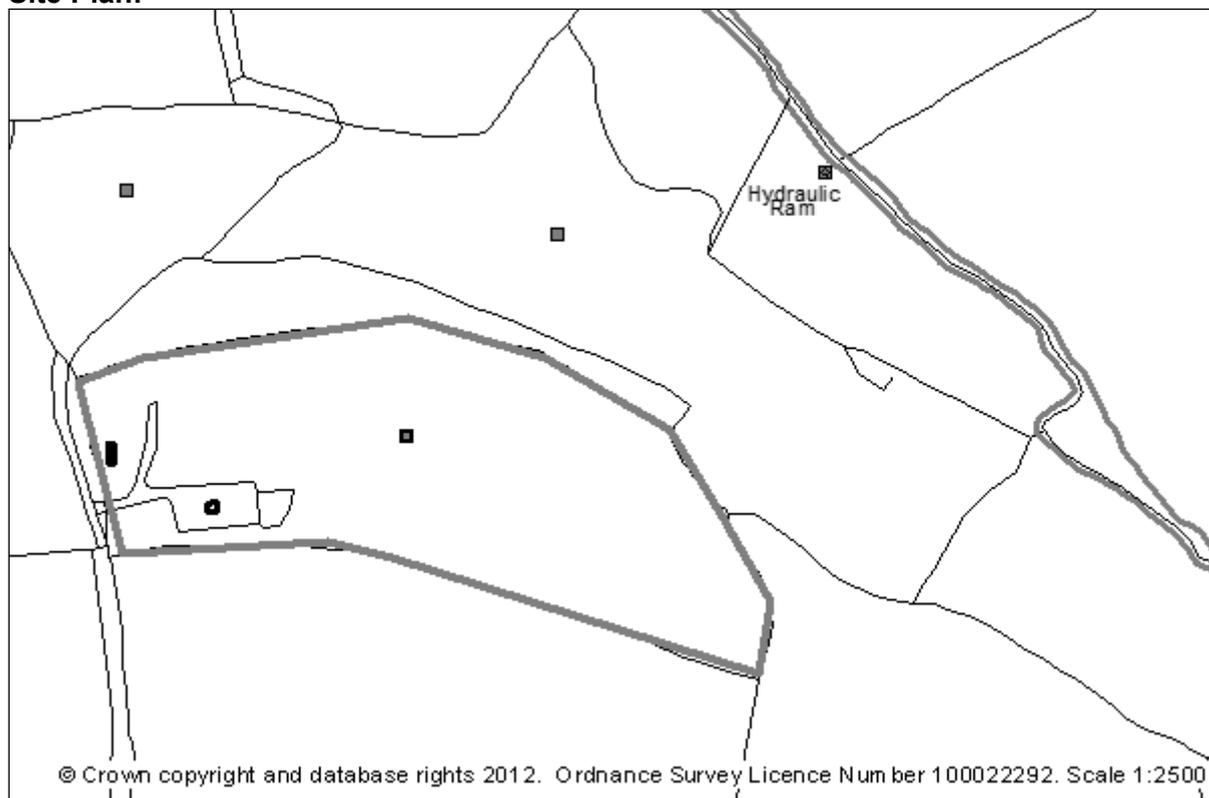
Unauthorised building operations concerning the construction of a mixed used building comprising a farm workshop, storage, smoker, cold store, food processing area, farm office, welfare facilities, kennels and stables

**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, 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 1.54ha and sits within the parish of Clayhidon. The land falls within the boundary of the Blackdown Hills Area of Outstanding Natural Beauty and comprises predominantly agricultural land and woodland. The site subject to this enforcement report forms part of a larger plot of land under the same ownership, which extends to the north, east and west of the area highlighted which comprises some 7.61ha in total. The topography of the land is such that it falls away to the north and east of the site and as a result, the unauthorised works sit in an elevated position at the top of the Bolham Valley.

**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 DM2 – High quality design

Policy DM22 – Agricultural development

Policy DM29 – Protected landscapes

Policy DM31 – Planning enforcement

**Reasons/Material Considerations:**

In March 2017, a complaint was received by the enforcement team regarding unauthorised building operations being carried out on the land at Tickle Penny (NGR: 317450 110777), Clayhidon.

As initial site visit established that a large concrete base had been laid towards the south-west corner of the site, upon which eight breezeblock pillars and one breezeblock tower structure were under construction. In addition to the operational development taking place on the site, sundry other items were being stored on the land including plastic water tanks, wooden pallets, metal poles, tarpaulins, insulating boards, a vehicle, trailer and sit-on lawnmower. On land to the north-west of the unauthorised development, a shepherds hut and washroom had been sited along with various items of domestic paraphernalia.

In June 2017, a Planning Contravention Notice (PCN) was served on the registered owners of the land requesting specific information be provided in relation to the development under construction. The PCN was returned to the Council by the father of the landowners (the developer) who stated that the intended use of the development was as a general purpose barn, with workshop, animal rearing and food storage areas and a water tower. The respondent confirmed that the operational development had commenced on site during 2015/2016 and that the shepherds hut had been sited on the land at the same time.

Within the context of the PCN, the respondent stated that he had previously been advised by a member of the planning department that planning permission would not be required for the construction of an agricultural building on land exceeding 5ha. While it is acknowledged that under Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, a developer can erect an agricultural building under the permitted development regulations, it is subject to a condition that requires the developer to have first, applied to the LPA for a determination as to whether prior approval is required for the siting, design and external appearance of the building.

In this instance, the developer failed to apply for prior approval before commencing on site, meaning that the building could not longer be considered permitted development. In addition, the developer submitted a sketch of the proposed building with the PCN which indicated that the proposal would include a second floor and include elements which could not be considered compatible with that of an agricultural building. For the reasons outlined above, the developer was advised that a retrospective planning consent would need to be sought in order to regularise the development.

The enforcement officer met with the developer on several occasions over the following months and in December 2017 a retrospective application (reference 17/01979/FULL) was submitted to the Council seeking to regularise the development under construction. The application was validated on 08.01.2018 with planning permission being sought as follows:

Retention of mixed use building comprising farm workshop, storage, water reservoir, smokery, cold store and food processing area, farm office, welfare facilities, kennels and stables. The application was refused on 24<sup>th</sup> April 2018 for the following reasons:

1. The applicant has not demonstrated that the proposed new building in this isolated location is justified by reason of need. The site is outside settlement limits in an isolated, elevated and unsustainable location. The Proposal is therefore, contrary to COR1 and COR18 of the Mid Devon Core Strategy, DM22 and DM20 of the Local Plan Part 3, and the NPPF.
2. The proposed design, height and scale of the building in this isolated and elevated location are considered to be inappropriate as they do not respect the local vernacular of the Blackdown Hills Area of Outstanding Natural Beauty (AONB). The proposal is therefore in conflict with COR2 and COR18 of the Mid Devon Core Strategy, DM29, DM22 and DM20 of the local plan part 3, Paragraphs 28 and 56 of the NPPF, and policy PD1/B of the AONB Management Plan.

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 design, scale and elevated position of the unauthorised development is considered inappropriate and fails to respect the local vernacular of the Blackdown Hills ANOB.

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 shepherds hut, washroom, motorhome and the items of domestic and building paraphernalia.

#### **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 the construction of a large concrete base, breezeblock pillars and a breezeblock tower without the benefit of planning consent. In addition, the breach concerns the unauthorised use of the land for the storage of materials associated with the construction work and for the siting of a shepherds hut, motorhome and associated domestic paraphernalia

The operational development, by virtue of its design, scale and elevated position within the Blackdown Hills ANOB represents an incongruous feature on the site that fails to retain the special character of the surrounding area. In addition, the developer has failed to satisfy the Council that a building of this scale is reasonably necessary for the purposes of agriculture. The development is, therefore, considered to be contrary to policy COR18 of the Mid Devon Core Strategy and policies DM2, DM22, DM29 and DM31 of the Mid Devon Local Plan Part 3.

The unauthorised use of the land for the siting of a shepherds hut, motorhome and the storage of domestic paraphernalia and building materials, 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 protected landscape. The change of use of the land is, therefore, considered to be contrary to policies DM2, DM29 and DM31 of the Mid Devon Local Plan Part 3 and policy COR18 of the Mid Devon Core Strategy.