

Case No. ENF/17/00326/RURAL

Grid Ref: 299304 114336

Address:

Bradford Farm, Uplowman, Tiverton, EX16 7DQ

Alleged Breaches:

- 1 Unauthorised operational development in the permanent fixing of a shipping container on the land; and
- 2 Unauthorised material change of use from agriculture to a mixed use for agriculture and the storage of materials not required for agriculture

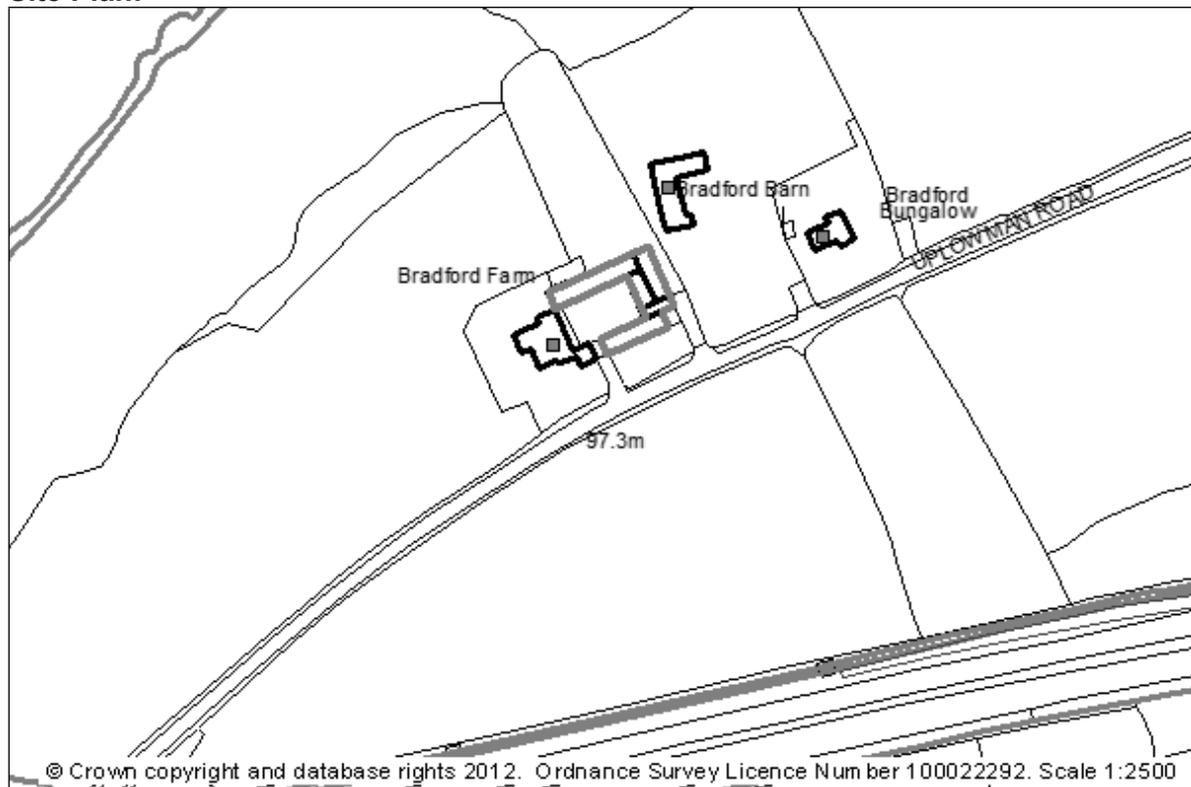
Recommendation:

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 and Monitoring Officer to take all such steps and action necessary to secure the removal of the unauthorised shipping container from the land and the cessation of the unauthorised use, including the issue of an enforcement notice and prosecution and/or Direct Action in the event of non-compliance with the notice.

Site Description:

Bradford Farm comprises an existing residential dwelling which sits to the east of a collection of agricultural buildings that form an enclosed courtyard. The unauthorised shipping container is situated on land to the north of these agricultural buildings, behind a timber fence forming the western boundary of the rear car parking area.

Site Plan:



Relevant Site History:

None

Development Plan Policies:

National Planning Policy Framework

Mid Devon Core Strategy (Local Plan 1)

COR18 – Countryside

Mid Devon Local Plan Part 3 (Development Management Policies)

Policy DM2 – High quality design

Policy DM31 – Planning enforcement

Reasons/Material Considerations:

In December 2017, a complaint was received by the enforcement team alleging unauthorised activities taking place at Bradford Farm, Uplowman. Discussions are ongoing in regard to regularising several of the issues raised, therefore, this enforcement report deals only with the specific issue to which it refers.

In June 2018, while visiting the site on an separate matter, the case officer noted that a shipping container had been placed on the agricultural land to the rear of Bradford Farm. The shipping container had been placed on a concrete base and behind a new boundary fence which separated the agricultural land from a recently formed car parking area and had been attached to the main services. When questioned, the landowner's agent advised that the shipping container represented a temporary structure that was being used in association with the building works being undertaken to the existing barns.

In September 2018, the case officer contacted the landowner's agent requesting a timeframe for the removal of the temporary shipping container as the permanent retention of the structure would require planning consent. A further site inspection on 29 October 2018 confirmed that the shipping container remained on site and was now being used as a secure chemical store. An email sent to the landowner's agent on 12 November 2018 confirmed that the design of the shipping container was out of keeping with the appearance, scale and character of the existing buildings and contrary to adopted policy. A request was made that the landowner's agent provide a timeframe for its removal by 23 November 2018.

On 25 November 2018, the landowner sent an email to the case officer stating that the shipping container was a portable container on moveable skids and as such, was not deemed a permanent structure that required planning consent. The landowner went on to confirm that he did not intend to provide a date for its removal.

It is your officer's view that the shipping container, by virtue of its size and physical attachment to the land, including its connection to the main services, represents a permanent structure which would require planning consent. The shipping container has remained in the same location in excess of 6 months with no indication that it is to be relocated. This form of development is not considered acceptable in this location owing to its detrimental impact on the visual amenity of the surrounding area.

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 removal of the unauthorised shipping container and the associated concrete base.

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 siting of a permanent structure, in this case a shipping container, without the benefit of planning consent.

The operational development, by virtue of its design, scale and degree of permanence represents an incongruous feature on the site which results in a detrimental impact upon the visual amenity of the immediate area. The development is, therefore, considered to be contrary to policy COR18 of the Mid Devon Core Strategy and policies DM2 and DM31 of the Mid Devon Local Plan Part 3