

Case No. ENF/19/00053/COU

Grid Ref: 308087 112770

Address:

Agricultural Buildings on Ratash Lane, Uffculme

Alleged Breach:

Change of use of land and buildings to a use for human habitation with ancillary storage, with building works to one building to facilitate the use for human habitation and to the other to facilitate the storage of materials required or intended for use in the building works.

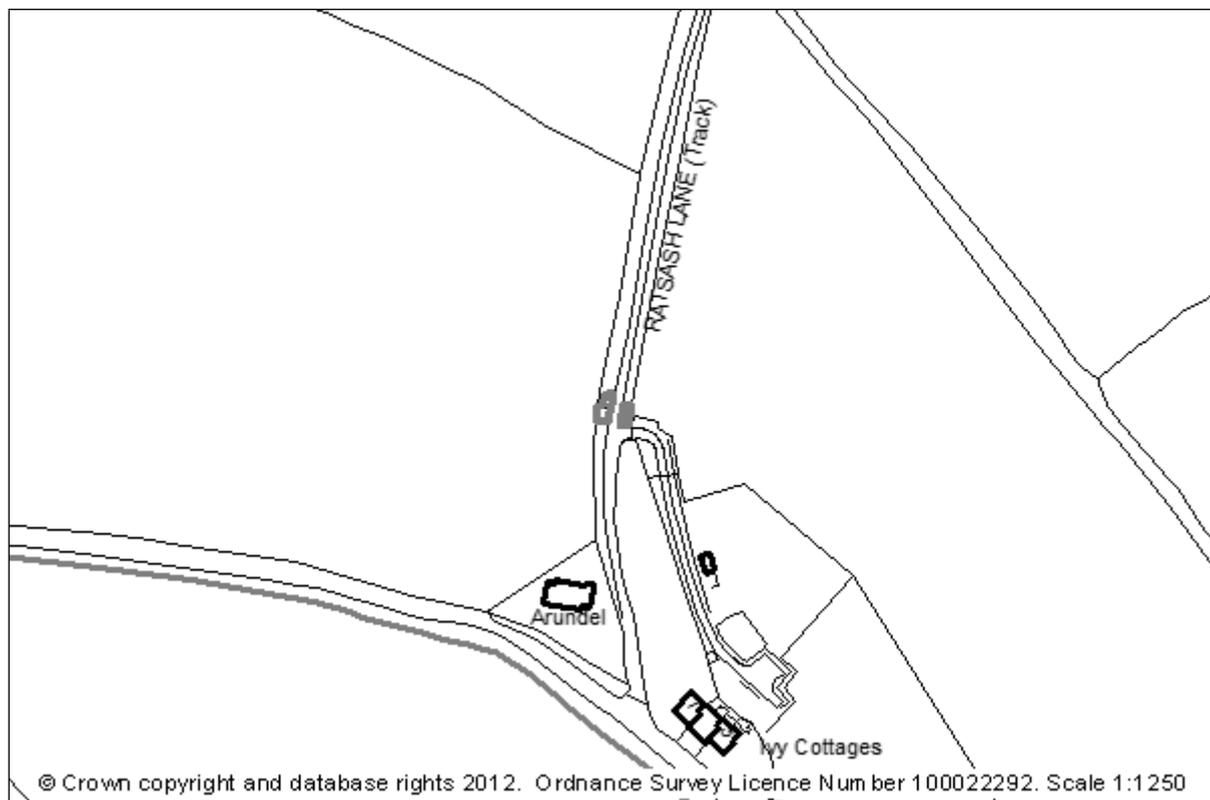
Recommendation:

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, 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 and is adjacent to both sides of a farm track called Ratsash Lane. It is situated to the North of Uffculme Road between Uffculme and Craddock. The surrounding area is largely open countryside, although there is a small collection of dwellings to the south of the site. The building which has been used for human habitation is located immediately adjacent to the trunk of a large oak tree and under the canopy of two oak trees that are both subject of a Tree Preservation Order (TPO).

Site Plan:



Site History:

14/00425/PNPD	Prior Notification for a Change of Use of agricultural buildings to D2 (Class M) - Withdrawn
14/00609/PNCOU	Prior notification for a Change of use of agricultural building to a dwelling house – Not Permitted
14/00030/WR	Appeal APP/Y1138/A/14/2223984 - Appeal Dismissed 01/12/2014

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 DM1- Sustainable development principles

Policy DM2 - High quality design

Policy DM22 - Agricultural development

Policy DM31- Planning enforcement

Reasons/Material Considerations:

On the 24th March 2014 a Prior notification for a change of use of agricultural building to a dwelling house and associated operational development was received under the application Ref 14/00609/PNCOU. This application was refused by notice dated 7 July 2014.

On the 24th August 2014 an appeal with the Planning Inspectorate was recorded against 14/00609/PNCOU. On the 1st December 2014 this appeal was dismissed 14/00030/WR APP/Y1138/A/14/2223984.

On the 22nd March 2017 a complaint was received by the enforcement team alleging unauthorised activities taking place namely the construction and habitation of a dwelling house. On the 13th December 2017 after many months of correspondence and meetings with the planning team, the land owner finally complied with requests to remove the accommodation and returned the structure to agricultural use.

Between October 2018 and February 2019 the Land owner has taken planning advice from four different Planning Officers at Mid-Devon District Council regarding the building of a structure for habitation. It is documented that on each occasion this advice was consistent stating that residential development would not be supported.

On the 31st January 2019, a complaint was received by the enforcement team alleging unauthorised activities taking place namely the construction of a dwelling house and habitation of the said dwelling. A second complaint was received a short time later. Both these complaints each documented that the dwelling was being inhabited on a regular basis.

On the 7th February 2019 a site visit to the location by a Planning Enforcement Officer confirmed the new construction without planning consent. A Planning Contravention Notice (PCN) was then sent to the land owner.

On the 19th February 2019 a Planning Contravention Notice (PCN) was returned by the land owner. The returned PCN confirmed that the structure was being used for habitation by the said land owner.

On the 27th February 2019 a meeting was held with the Land Owner to give instruction regarding the actions required to rectify the breach in planning. A period of one calendar month was given to allow time for compliance.

On the 28th March 2019 a further site visit was conducted by a Planning Enforcement Officer which confirmed that the unauthorised structure was still in place. No entry at this time could confirm habitation of the structure. A written request was sent and posted to the land owner requesting entry into the structure under Section 196A of the Town and Country Planning Act 1990. To date entry has not been gained into the structure.

The development as it has been constructed is considered to be harmful to the overall character and appearance of the countryside. The domestic accommodation, enclosed compound and storage of construction materials is not considered appropriate for this rural setting owing to its detrimental impact on the visual amenity of the surrounding area. The use of a building for human habitation in this location is not sustainable development. The location is beyond any defined settlement limit and is in the countryside where local planning policies do not generally support the provision of buildings (unrelated to an established and lawful dwelling) for human habitation. The development is contrary to Policies DM1, DM2, DM22 and DM31 of the Local Plan Part 3 Adopted 2013 and Policies COR2 and COR18 of the Mid Devon Core Strategy Adopted 2007.

It remains your officer's view that the unauthorised development represents a breach of planning control which could, if no action is taken, become immune from enforcement action through the passage of time. It is, therefore, proposed that an Enforcement Notice should be served, in respect of the unauthorised development.

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. This breach arises from the use of a building on the land for human habitation, including works to the building to facilitate that use. A second pre-existing building is being used for the storage of materials, including building materials. It appears that this storage facilitates, and is ancillary/incidental to, the use and adaptation of the other building for human habitation. Neither the use, nor the works to facilitate it, benefit from planning consent. The Council has concerns that the building may, with further works, become a dwelling and be occupied (whether permanently or intermittently) as such.

The use of a building for human habitation in this location is not sustainable development. The location is beyond any defined settlement limit and is in the countryside where local planning policies do not generally support the provision of buildings (unrelated to an established and lawful dwelling) for human habitation. The building which has been adapted for that purpose, is, by virtue of its domestic appearance and design, together with its siting, scale and mass, an incongruous feature on the site and is considered to be harmful to the overall character and appearance of the open countryside. The adapted building is considered to represent an over-development of the site that has an adverse impact of the visual amenity of the rural area. Furthermore, the building and its use for human habitation is contrary to policy controlling new development in the open countryside. The development is, therefore, considered to be contrary to Policies DM1, DM2, DM22 and DM31 of the Mid Devon Local Plan Part 3 and Policies COR2 and COR18 of the Mid Devon Core Strategy and the National Planning Policy Framework.