

**Case No. ENF 14/00124/UDRU**

**Grid Ref: 290886 112555**

**Address:**

Land west of Rowey Bungalow, Plainfield Lane, Withleigh, Tiverton.

**Alleged Breach:**

Without planning permission, an unauthorised change of use has been undertaken namely the change of use of agricultural land to domestic garden.

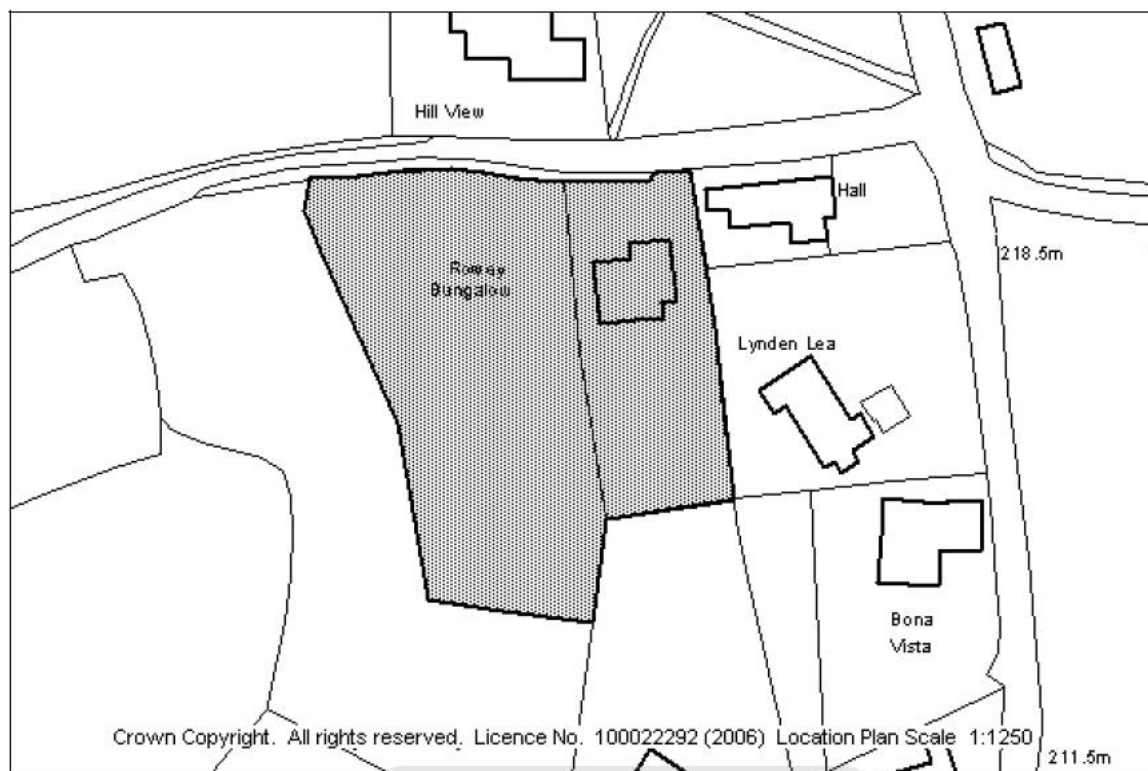
**Recommendation:**

- 1. The owner be advised that the regular domestic mowing of an agricultural field may constitute a breach of planning control and the Council will monitor the use of the site over the spring/ summer period to ensure a predominantly agricultural use is maintained on the land.**
- 2. No further action be taken at this time.**

**Site Description:**

Rowey Bungalow, Plainfield Lane, Withleigh, Tiverton is a detached bungalow to the west of Withleigh Village Hall. To the west of the residential bungalow and garden is an area of agricultural land the subject of this report.

**Site Plan:**



**Development Plan Policies:**  
DM 31 – Planning Enforcement

**Reasons/Material Considerations:**

Rowey Bungalow was built as an agricultural workers dwelling in the 1970`s. The agricultural occupancy condition was breached for a period in excess of ten years and a Certificate of Lawful Existing Use was issued which allows the lawful occupation of the property without compliance with the occupancy condition. Additionally an area of land to the south of Rowey Bungalow was granted a Certificate of Lawful Existing Use as garden following a breach of planning control for a period in excess of 10 years the certificate now permits the land to the south to be used as garden.

The agricultural land the West of the bungalow was formally separated from the dwelling and curtilage by way of a fence which was removed. Following a complaint in 2005, that the land was being used for domestic purpose, the alleged breach was investigated under ENF/05/00123/UCU. Part of the fence was replaced to form a partial barrier between the field and the Rowey Bungalow curtilage. In 2005 it was considered no breach had occurred at that time as the land was not used principally for a domestic purpose and that the removal of a physical barrier was not in itself a breach.

In 2011 following further complaints about the use and domestic maintenance regime of cutting and mowing the area regularly further investigations took place. Again it was alleged that the land was again being used for domestic purpose. The land at that time was maintained by the current owner, by regular mowing and strimming, it was not considered at that time that it was cut to a level that would be considered domestic and no paraphernalia associated with a domestic use was sited on the land. Therefore it was concluded that a change of use has not occurred at that time. The land owner confirmed that in his view the land was in agricultural use at the time.

Since 2011 further complaints have been received about the use and maintenance regime of the land to the west of Rowey Bungalow. A Planning Contravention Notice was issued in 2014 and that was returned by the owner stating the land was in agricultural use. Following the receipt of that Notice a further letter was sent to the owner asking the nature of the agricultural activities carried out on the land. A response was received at the end of 2014 stating that the land was used for keeping chickens and ducks.

The land to the west of Rowey Bungalow is only separated from the dwelling and its curtilage and garden by partial fencing. The barrier does not prevent free passage between the existing property/garden and the land to the west as the fence is not continuous. The land to the west is regularly mown by the property owner using a domestic sized `sit on` lawn mower, it is not cut using agricultural machinery. The cuttings have not been identified as being used for fodder or any other agricultural purpose. The owner is not employed in agriculture, but in the building industry. The land appears to be mown at least every two weeks, particularly during the summer months. While there is a small penned area in one corner for chickens and ducks they do not appear to have access to the rest of the field and apart from the use of this small area for chickens and ducks no agricultural activities appear to take place on the rest of the land.

The question that arises is whether the regular mowing is an agricultural activity or a domestic one. The grass is not cut for silage, the field is not used for grazing or as a chicken run, the land is not cultivated in any way nor is it left as set aside, the land is regularly mown, cut and strimmed but has no other domestic activities. So is the land in agricultural use or domestic use.

The evidence would suggest that the land is not predominantly in use for agricultural purposes. The land appears to be slowly being domesticated, all be it with a lightness of touch, by regular mowing, no other domestic activities are taking place,

Is a change of use taking place in planning terms. It is alleged by the complainants that change may be taking place from agriculture land to an area of regularly mown and managed garden which can have appearance of additional domestic curtilage for Rowey Bungalow. Is the regular mowing sufficient to establish a change of use?

Is the land being actively used for primarily agricultural purposes? No, a small area is used for ducks and chickens, the rest is mown regularly, but the grass cuttings are put to no agricultural purpose. Does the mowing in itself constitute a change of use? Is it being managed as an extension to the garden area of Rowey Bungalow, by regular cutting and mowing. Does the cutting and mowing constitute agriculture.

Has or is a change of use of land taking place. Currently your officers are not satisfied sufficient evidence is available to demonstrate a change from agriculture to garden has been undertaken.

Apart from regular mowing no other non-agricultural activities take place, while mowing fields is not commonly considered agriculture, the question arises is that in-itself sufficient to substantiate a change of use.

On the basis of the evidence to date officers consider it would be difficult to substantiate a change of use currently particularly as the owner himself has confirmed in a PCN and a letter the agricultural use of the land and some poultry is kept on part of the land.

There will remain concern from the complainants over the activities on this land and it suggested a further report be considered in September this year following the regular monitoring of the site over the summer months.

If the regular moving regime remains the case may need to be reconsidered

#### **Human Rights and Equality Issues:**

Any formal enforcement action could be considered to affect the land/property owner/occupiers human rights under the provisions of Article 8 and Article 1 of the First Protocol. The human rights of others have to be taken onto consideration. In this particular case, it is felt that there would be no breach of the human rights legislation if no action were taken with regard to the unauthorised development. Should Members resolve to take enforcement action, such action could impact upon the land owner.

#### **Options for action or remedy:**

The list of options available is as follows:

**Take no action** – This is the recommended action at this time,

**Invite an application to grant consent to regularise the development** – Granting permission to extend the garden would extend residential development into the countryside where there is a general presumption against development outside of defined development boundaries.

**Issue Enforcement Notice** – Your officers are not satisfied sufficient evidence exists at the current time to demonstrate a breach of planning has taken place.

**Reasons for decision:**

While the land is currently in partial agricultural use insufficient evidence exists at the present time to demonstrate that a breach of planning control has or is taking place. A further report be considered in September this year following the regular monitoring of the site over the summer months.