

PLANNING COMMITTEE AGENDA – 3rd December 2014

Enforcement List

<u>Item No.</u>	Description
1.	13/00167/UDUR - Raised decking in back garden of property at 48 Cotteybrook, Tiverton, EX16 5BR
2.	14/00162/UNLD – Untidy land/building – Contrary to Section 215 of the Town and Country Planning Act 1990 at The Twyford Inn, 64-66 Bampton Street, Tiverton EX16 6AL
3.	14/00096/BRE – Breach of Condition 10 of Planning Permission 09/01115/MFUL. Fail to maintain attenuation ponds and waterways, Persimmon Development, Court Farm/Merchants Walk/Raleigh Drive, Cullompton
4.	11/00115/UNLD – Untidy land, garden – Contrary to Section 215 of the Town and Country Planning Act 1990 at The Firs, 5 Higher Mill Lane, Cullompton, EX15 1AG
5.	12/00027/NUNLD – Untidy land/building – Contrary to Section 215 of the Town and Country Planning Act 1990, Harlequin Valet Ltd, 19 High Street, Cullompton, EX15 1AB

Case No. ENF/13/00167/UDUR

Grid Ref: 294768 112464

Address:

48 Cottey Brook, Tiverton, Devon, EX16 5BR

Alleged Breach:

Without planning permission, an unauthorised development has been undertaken to the rear garden of 48 Cottey Brook. Namely the construction of a raised platform, steps and railings as shown on the attached plan and photographs.

Recommendations:

That the Legal Services Manager be authorised to take any appropriate legal action including the service of a notice or notices, seeking the removal of the structure from the land. In the event of any failure to comply with the notice served the additional authority to prosecute, take direct action and/or seek a court injunction.

Site Description:

48 Cottey Brook, Tiverton, Devon, EX16 5BR

Site Plan:



COMREP

Site History:

07/01975/FULL Retention of conservatory

PERMIT

Development Plan Policies:

National Planning Policy Framework

Mid Devon Core Strategy (Local Plan 1)

COR2, COR15

Mid Devon Local Plan Part 3 (Development Management Policies)

DM2, DM3, DM13, DM31,

Reasons/Material Considerations:

The attention of officers was drawn to this site in November 2013. A meeting was arranged with the owner to meet on site. The main issue was to consider the impact the part completed decking will have on neighbouring properties and the property itself.

It was made clear to the owner that Planning Permission would be required for the proposed raised decking area, steps and fencing. The owner was also informed that it would be unlikely that such consent would be granted for such a large and imposing structure due to issues with overlooking and loss of amenity to neighbouring properties unless he is able to establish an overriding requirement.

Further site visits and communication have been undertaken with the owner, and his agent. The last meeting indicated that the owner/agent is intending to submit a planning application to extend the rear of the property and remove part of the slopping garden, and provide a retaining wall to the rear and side of the garden area; this proposal would remove the raised deck area the subject of this enforcement action request.

No planning application has been received to date.

It is considered that enough time has elapsed for the owner to resolve the issues at 48 Cottey Brook by either removing the unauthorised structures or submitting an appropriate planning application.

Human Rights and Equality Issues:

The taking of any enforcement action could be said to affect the land/property owner/occupiers human rights under the provision of Article 8 and Article 1 of the First protocol to the Human Rights Act 1998.

In this case, the owner has made a free choice to construct the raised decking without any prior approval or discussion as to the merits of building the structures and has not subsequently attempted to gain planning permission for the unauthorised structures.

The Local Planning Authority believes it is pursuing a legitimate aim in seeking compliance with the provisions of the Town and Country Planning Act 1990 as amended so as to prevent demonstrable harm to the interests of acknowledged importance and to protect the environment

Options for action or remedy:

The list of options available is as follows:

Take no action:

This would not be appropriate as it could lead to the setting of a precedent allowing the construction of structures without planning consent.

Invite an application to grant consent to regularise the Development - It would be in appropriate to invite a planning application for the retention of the raised decking considering the likely refusal of such an application.

Issue Enforcement Notice to seek removal of the unauthorised structures from the land - This is the recommended course of action.

Reasons for Decision:

The Unauthorised development has been undertaken within the last four years. The development is contrary to Policies COR2 and COR15 of the Mid Devon Core Strategy (Local Plan Part1), Policies DM2, DM3, DM13, of the Mid Devon Local Plan Part 3 (Development Management Policies) and in line with Policy DM31 of the same document.

Steps Required:

1. **Remove the unauthorised structures from the land**

Period for Compliance:

Six months from the date the notice comes into effect.

Case No. ENF/14/00162/UNLD

Grid Ref: 295587 112808

Address:

The Twyford Inn, 64 - 66 Bampton Street, Tiverton, Devon

Alleged Breach:

Untidy land / building detrimental to visual amenity in contravention of Section 215 of the Town and Country Planning Act 1990 (as amended).

Site Description:

The Twyford Inn, 64 - 66 Bampton Street, Tiverton, Devon

Recommendation:

That in the event that acceptable progress is not made by 1st March 2015 to undertake works to address the appearance of the site, to authorise the Legal Services Manager to take the appropriate legal action including the service of a Section 215 Notice and in the event of a failure to comply with such a notice consideration of prosecution proceedings and/or direct action, or injunction proceedings. Such a notice requiring that steps should be taken to tidy the land

Site Plan:



Site History:

86/00131/FULL	Conversion of ground floor of existing cottage into bars, new toilet and kitchen extension at rear	PERMIT
89/02728/FULL	Internal/external alterations and improvements	PERMIT
90/00719/ADVERT	Consent to display illuminated signs	REFUSE
94/02103/FULL	Extension to dining room	PERMIT
97/00929/FULL	Construction of boundary wall following proposed demolition of outbuildings	PERMIT
97/00930/CAC	Conservation Area Consent for the demolition of outbuildings to rear prior to the erection of proposed boundary wall	PERMIT
98/01494/CAC	Conservation Area Consent for the demolition of outbuildings prior to the construction of boundary walls	REFUSE
98/01495/FULL	Construction of boundary walls following proposed demolition of outbuildings	REFUSE
99/02897/FULL	Change of use of area of land created by demolition of outbuildings to form an extension of existing beer garden use, with construction of replacement covered area at northern end of yard area	PERMIT
99/02898/CAC	Conservation Area Consent for demolition of outbuildings to facilitate extension of beer garden and construction of replacement covered area proposed under planning application number 4/52/99/2897	PERMIT

Development Plan Policies:

National Planning Policy Framework

Mid Devon Core Strategy (Local Plan Part 1)

COR2 - Local Distinctiveness

COR13 - Tiverton

Mid Devon Local Plan Part 3 (Development Management Policies)

DM2 - High quality design

DM3 - Sustainable design

DM16 - Town centre development

DM27 - Development affecting heritage assets

DM31 – Planning enforcement

1.0 BACKGROUND

- 1.1 The Twyford Inn 64 - 66 Bampton Street Tiverton Devon EX16 6AL which is located in a prominent position within Tiverton Conservation Area. The premises consisted of a mixed planning unit comprising a Public House and associated residential first floor accommodation.
- 1.2 A serious fire occurred at the premises on 14th April 2014 resulting in extensive fire damage which included the total roof loss and serious internal damage. Your Building Control Officers have been involved in relation to this matter along with your Environmental Health Officers. At the time the building was assessed and considered safe. It was secured by way of scaffolding, netting and Heras type fencing to the front and side elevation. Officers from Building Control have continued to monitor the building.

2.0 PLANNING ISSUES

- 2.1 The appearance of the building since the fire is cause for concern, particularly due to its prominent location in the Conservation Area and visible position from the town centre. Consideration of enforcement action under Section 215 of the Town and Country Planning Act 1990 in order to improve the appearance of the site is appropriate.

3.0 CURRENT SITUATION

- 3.1 The immediate post-fire issues with the building have been addressed by the previous owner and were overseen by Building Control Officers. These have included the erection of scaffolding, netting and heras fencing to the front and side perimeter of the building and the partial closure of Bampton Street in order to protect the public.
- 3.2 The remaining structure and fabric of the building together with the open, non-weather tight sides of the adjacent building (26 Newport Street) revealed by the collapse are clearly visible from the front on Bampton street and Newport Street. There is little left of the roof structure and this too is visible from public vantage points. The site is located in the Conservation Area and town centre of Tiverton. Its current derelict condition and appearance are considered unsightly and to detract from the amenities of the area and the character and appearance of the Conservation Area. It is necessary to improve this situation to address the detriment to amenity and prevent the situation deteriorating. Several options for action are considered below.
- 3.3 The National Planning Policy Framework paragraph 207 together with the following Development Plan policies are considered relevant.

Mid Devon Core Strategy (Local Plan Part 1)

COR2 - Local Distinctiveness

COR13 - Tiverton

Mid Devon Local Plan Part 3 (Development Management Policies)

DM2 - High quality design

DM3 - Sustainable design

DM16 - Town centre development

DM27 - Development affecting heritage assets

DM31 – Planning enforcement

- 3.4 The property changed hands on 7th November 2014 and is now owned by a local building company. Since then, tidying works to remove external debris have already taken place and other works to secure the site are proposed. Discussions have taken

place with the new landowner in order to understand his intentions with the property. It is understood that the intention is to redevelop the site rather than retain the existing structure. The owner is commissioning a structural engineer's report and will also be checking whether from a historic building conservation perspective there is anything of merit on the site (Conservation Area, but not a listed building). He proposes to draw up a planning scheme over the next 2-3 months for submission. Pre-application discussions are already taking place.

3.5 Productive discussions are taking place with the new owner of the site and it is expected that a redevelopment scheme will be forthcoming within a couple of months. The owner has also indicated his intention to undertake works to address the appearance of the site and to prevent it worsening in the short term and over the winter months. Short term works required are considered to be:

1. Remove the debris around the building and remove the temporary fencing and provide secure hoarding to the ground floor of the building including windows.
2. Maintain the scaffolding in a proper manner.
3. Remove the loose roof timbers and either store them in the building or safely remove them from site.
4. Support and protect existing walls to prevent further weathering and damage.
5. Safely remove debris and remaining building fabric from the site adjacent to the party wall to 26 Newport Street. Make good the party wall and fill pockets within the walls following any removal of joists and beams by cutting and inserting brick to fit. Apply two coats lime render with a smooth finish to exposed areas of the party wall.

The owner has indicated his intention to undertake much of this work.

3.6 It is not considered appropriate at this stage to secure the immediate demolition of the buildings on the site due to the impact that such a gap in the streetscene would have upon this prominent Conservation Area site and that in the current absence of planning permission for redevelopment. Investigation from a historic building conservation perspective of whether there is anything of merit on the site is also to take place shortly. Planning permission for demolition is also required.

4.0 **OPTIONS AVAILABLE FOR FURTHER ACTION OR REMEDY:**

4.1 **Take no action.**

4.1.1 The condition of the property has deteriorated after the fire. This will only continue to deteriorate if no action is taken. Whilst the external walls are currently considered stable (they are supported by scaffolding), water ingress if not addressed may affect this. **No action is not considered appropriate in this case as the visual amenity of the property is detrimentally affecting the town centre and Conservation Area of Tiverton.**

4.2 **Serve a notice under Section 215 Town and Country Planning Act 1990 (Untidy Land).**

4.2.1 A notice may be served under s215 of the Town and Country Planning Act where the local planning authority considers that the amenity of part of their area is adversely affected by the condition of land. The notice sets out works to remedy the condition of the land, but can only require works that relate to the visual appearance as seen from

public vantage points, or in this case, the front and side elevations. No other works can be required as they would be deemed excessive and as a result the notice could fail in the event of any subsequent appeal under the provisions of Section 217 (c). Structural condition therefore was not able to be addressed through this notice. A period of at least 28 days must be given for the works to be carried out from when the notice is served.

4.2.2 'That delegated authority be given to the Legal Services Manager to take the appropriate legal action, including the service of a Section 215 Notice, and in the event for a failure to comply with such a notice consideration of prosecution proceedings and / or direct action, or injunction proceedings. Such notice requiring that steps should be taken to tidy the land.

4.2.4 Officers consider that the appearance of the site and remains of the building clearly detract from the amenities of the area. A schedule of works to address this is as follows, but can only address the appearance of the site from the front and side elevations. This enforcement tool cannot require the wholesale redevelopment of the site nor the reconstruction of the whole building. It would therefore seek to remedy detriment to appearance in the short term. Constructive discussions are taking place with the new owner and it is expected that works to address the appearance of the site and to prevent its condition worsening in the short term will shortly take place. A planning application to redevelop the site is being drawn up and is expected to be submitted within approximately 3 months. The granting of a permission would secure a long term solution to the appearance of the site. Given the cooperation from the new owner, it is expected that works required under the proposed Section 215 notice will be undertaken voluntarily in the next few months. Authority to take formal s215 action is therefore intended to act as a backup in the event that these voluntary works do not take place as expected.

4.2.5 Steps required:

Section 215 notice to require that:

The Council requires the following steps to be taken for remedying the condition of the land.

1. Remove the debris around the building and remove the temporary fencing and provide secure hoarding to the ground floor of the building including windows.
2. Maintain the scaffolding in a proper manner.
3. Remove the loose roof timbers and either store them in the building or safely remove them from site.
4. Support and protect existing walls to prevent further weathering and damage.
5. Safely remove debris and remaining building fabric from the site adjacent to the party wall to 26 Newport Street. Make good the party wall and fill pockets within the walls following any removal of joists and beams by cutting and inserting brick to fit. Apply two coats lime render with a smooth finish to exposed areas of the party wall.

Reason:

To ensure the improvement to the visual appearance of the front elevation of the building so as to remedy the detriment to Tiverton Conservation Area.

4.2.6 Period for compliance:

Three (3) months after the notice takes effect. To allow for the works to be carried out.

4.2.7 Consideration was given to requiring that the scaffolding be moved so that it is internal to the building, thus allowing for the exterior scaffolding and netting to be removed. However this would also require the making safe and clearing of the interior in order to achieve this. Legal advice confirms this to be a step too far and difficult to justify. The external walls are currently stabilised by the exterior scaffolding.

4.3 **Compulsory Purchase.**

4.3.1 Local authorities have a range of legal powers to compulsorily acquire land in their area. Section 226 of the Town and Country Planning Act gives this power if it would facilitate the carrying out of development, re-development or improvement; or it is required for a purpose necessary to achieve the interests of proper planning of an area within which it is located. Where development, re-development or improvement is sought, compulsory purchase must only take place where the authority believes it to contribute to the promotion or improvement of the economic, social or environmental well-being of their area. A compulsory purchase order must be confirmed by the Secretary of State. If the owner objects, a public inquiry is held. The inspector's report and recommendation will be taken into account by the Secretary of State in his decision whether to confirm the order.

4.3.2 Further guidance on the use compulsory purchase powers lie within circular 06/2004. Important in any consideration of compulsory purchase is the following guidance taken from the circular:

- i) An order should only be made where there is a compelling case in the public interest and should be regarded as a last resort measure. The public benefit needs to outweigh the private loss as the human rights of the landowner will be interfered with, for which justification is required.
- ii) The authority should first seek to resolve the planning issue by other means.
- iii) The acquiring authority needs to show that it has a clear scheme for the use of the land, that the resources including funding are in place to achieve the scheme within a reasonable time-scale.
- iv) The authority will need to demonstrate that there is a reasonable prospect of the scheme going ahead and that impediments such as planning permission are in place or are unlikely to be withheld.
- v) The authority should first seek to acquire the land by negotiation. Informal negotiations with the owner can be undertaken in parallel with making preparations for compulsory purchase.

4.3.3 Legal advice has not been gained on the prospects of compulsory purchase at this stage. It is clear that this proposal is a 'last resort' stage which has not yet been reached and initiation of compulsory purchase at this stage would be premature. The Council would also need to put together a comprehensive scheme and demonstrate resources are in place to achieve it. Formal compulsory purchase action is not appropriate at this stage, particularly given the positive discussions being held with the owner.

5.0 **HUMAN RIGHTS AND EQUALITY ISSUES:**

5.1 Any of the actions taken as proposed or being considered in relation to this report could affect the land/property and the owner's rights under the provisions of Article 8, 6 and Article 1 of the First Protocol of the Human Rights Act 1998. However, the Local Planning authority feels it is pursuing a legitimate aim in seeking compliance

with The Town and Country Planning Act 1990 so as to prevent demonstrable harm to interests of acknowledged importance and to protect the environment. In this particular case the visual appearance of the front and side elevations of the property is considered to detrimentally affect the amenity of the area. In your Officers opinion that appearance could be made acceptable following compliance with a section 215 notice. The Human Rights provisions in relation to this case are qualified rights and the interference with those rights is considered to be proportionate so as to protect harm to the visual amenity identified. Your officers feel negotiations and communications have been carried out with the landowner in accordance with policies and that the service of any Section 215 Notice would be a proportionate and expedient way to resolve the matter in the event that voluntary works are not undertaken in a reasonable timeframe.

6.0 CONCLUSIONS

- 6.1 The immediate concerns relating to the safety of the site have been addressed. However there remains detriment to the amenities of the area due to the poor appearance of the site. In the short term it is expected that the owner will voluntarily undertake works to improve the appearance. However serving a s215 notice to secure works is proposed as a backup position in the event that satisfactory progress on these works does not take place over the next 3 months. A s215 notice will not secure the condition and appearance of the site in the long term. This can only be achieved through its redevelopment. Pre-application discussions are taking place. It should be noted that there is a right of appeal against a s215 notice which would suspend the requirements of the notice pending the determination of the appeal. This would result in delay. The process of appeal is to a Magistrate's Court not the Planning Inspectorate.
- 6.2 Should there be no reasonable attempt to comply with the requirements of the s215 Notice the Council will consider the preparation of a scheme for the use of the land with a mind to reconsidering the appropriateness of Direct action/compulsory purchase action. The Council will continue to work towards securing a long term solution to the site in addition to addressing the current detriment to the amenity.

Case No. ENF/14/00096/BRE

Grid Ref: 302248 107858

Address:

Persimmon Development, Court Farm/Merchants Walk/Raleigh Drive, Cullompton (as outlined in black on the attached site plan)

Alleged Breach:

Failure to comply with condition 10 of planning permission 09/01115/MFUL. Fail to maintain attenuation ponds and waterways. Contrary to Section 187A of the Town and Country Planning Act 1990.

Recommendations:

No further action (NFA) in relation to the failure to comply with condition 10 of planning permission 09/01115/MFUL. In relation to the 'filling' of the ponds only

Site Description:

The Persimmon development, known as the Court Farm development, is located between Millenium Way, to the east and Willand Road to the west.

Site Plan:



Site History:

09/01115/MFUL Erection of 80 dwellings and associated works on Land and Buildings at NGR 302231 107841 (Court Farm), Cullompton Granted 12th November 2010

Development Plan Policies:

Local Plan Part 3 (Development Management Policies)
DM31- Planning Enforcement

National Planning Policy Framework (NPPF)
Paragraph 207-Enforcement
Paragraph 206-Planning conditions

Reasons/Material Considerations:

On the 12th November 2010 planning permission was granted for the erection of 80 dwellings and associated works on Land and Buildings at NGR 302231 107841 (Court Farm) Cullompton, Devon. The planning permission for this residential development contained condition 10 which states:

'Provision shall be made for land drains to prevent the attenuation basins from filling with ground water. The floodplain corridor, as shown on the approved plans, shall be maintained, and kept free from obstructions to the flow of flood waters throughout the lifetime of the development, including during the construction phase. Such obstructions would include, for example, ground raising, landscaping alterations, inappropriate fencing, dense vegetation, play equipment etc.'

This condition was imposed following consultation with Environment Agency and to protect the functionality of the floodplain of the St George's Well stream and thus prevent an increase in flood risk.

Toward the end of July 2014 your enforcement officer was requested to investigate compliance with condition 10 as referred to in this report. In particular that the attenuation ponds and water ways were overgrown and contained various items that were considered to impede the water flow. It was felt by your officer that the overgrown vegetation was a breach of condition 10 and a letter was sent to the developer indicating a failure to comply with that aspect of the condition. On the 26th September 2014 a follow up site visit indicated that the attenuation ponds and basins, and associated water ways, had been cleared of overgrown vegetation and any obstructing material. This was considered to be in compliance with the condition as requested by the Local Planning Authority.

However, further concerns were expressed regarding the retention of water within the bottom of the basins/ponds. The complainants alleged that the retention of water within the ponds was also a breach of condition 10.

The condition actually states that *'provision shall be made for land drains to prevent the attenuation basins from **filling** (officer emphasis) with ground water.*

On no occasions, when the site has been visited, have the basins been **FULL OF WATER**. It has been noted that the outfall pipe work is slightly higher than the bottom of the basins and as a result some water is held until it fills to the level of the pipework, and then the basin water flows into the pipework and retained water leaves the basin.

It is your enforcement officers concern that in the event it were decided, by this committee, that a Breach of Condition Notice should be served, under the provisions of Section 187A, there is no

appeal provision in relation to this type of notice and the remedy would be to prosecute the recipient (developer) for non compliance in the Magistrates Court. It is apparent to your officer that there would be a defence to this prosecution in that the basins do not **FILL** with water but hold enough water until it is allowed to flow out through the pipework.

Your enforcement officer has consulted with the Environment Agency in relation to the enforceability of condition 10, as to whether or not that Agency would support any such prosecution. Whilst there have been helpful responses from the Agency they have not indicated whether or not they are prepared to support such a prosecution. The Environment Agency have declined to attend at this meeting

Members should bear in mind that when a planning condition is imposed upon a planning permission it should be in line with Paragraph 206 of the National Planning Policy Framework (NPPF) which states Planning conditions should only be imposed where they are necessary, Relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

The Planning Practice Guidance introduced on 6th March 2014, Use of Planning Conditions provides the below guidance in relation to the imposition of planning conditions, the conditions imposed should be;

1. Necessary,
2. Relevant to planning,
3. Relevant to the development to be permitted. Those conditions should also be:
4. Enforceable,
5. Precise, and
6. Reasonable in all other respects

It is your officer's view that condition number 10 is not enforceable, nor precise enough so as to prevent the basins from being wet at the bottom below the outflow level. In fact it is your officer's view that if it is felt a Breach of Condition Notice should be served, every time water appears in these basins that would technically be a breach of that condition/notice and an offence. That cannot be the intention of the condition as water is continually flowing through into and out of these basins in this particular location. The condition is designed to prevent the basins from filling with water. It would have to be asked 'what would any notice require?' The notice can only require and reflect the condition imposed. So in this case the basins should not fill with water. At no stage has it been suggested that this breach has actually occurred. The only concern raised is that the basins hold a small amount of water in the base.

In addition even if the Members of this committee were to disagree with the officer view and require that a Breach of Condition Notice should be served, failure to comply with that notice is a criminal offence. The Legal Services Manager would have to consider, prior to any prosecution, the Code for Crown Prosecutors which states that, 'at the evidential stage prosecutors *must* be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. The prosecutor must consider what the defence case may be, and how likely it is to affect the prospects of a conviction. A case which does not pass the evidential stage must **not** proceed, no matter how serious or sensitive that may be'. There are additional tests also.

As a result of the above it is your officer's view that the Local Planning Authority would be exposed to a high degree of risk, and in a difficult position to defend any action taken by way a Legal challenge to the service of any Breach of Condition Notice. Therefore your officer recommends that no further action (NFA) should be taken in relation to the alleged breach of condition 10.

As a result of this investigation officers are in consultation with the developer regarding the construction of the basins. In addition officers in Development Management will review the

conditions, in conjunction with the Environment Agency, proposed for use in similar circumstances to see if they are appropriate, and in accordance with the Planning Practice Guidance, as detailed above.

Human Rights and Equality Issues:

Any of the enforcement action taken as proposed, and in this case the consideration of the service of a Breach of Condition Notice, could be considered to affect the land/property and the owners Human Rights under the provisions of Article 8 and Article 1 of The First Protocol of the Human Rights Act 1988. However the Local Planning Authority feels that it has conducted an investigation into allegations in relation to a breach of the Town and Country Planning Act 1990 so as to prevent demonstrable harm in the interests of acknowledged importance to protect the environment. In this particular case it is your officers view that no further action should be taken. However, in the event that Members decide a notice should be served the developer should be informed of that decision; they would have the opportunity to legally challenge (Judicial Review) the decision to serve any such notice, but not appeal the notice itself. It is your officer's view that the investigation has currently been carried out in line with Paragraph 207 of the NPPF and Policy DM31 Local Plan Part 3 Development Management Policies October 2013.

Options for action or remedy:

The list of options available is as follows:

Take no action:

The no action option is believed by your officer to be appropriate in these circumstances as the service of a Breach of Condition Notice would not be proportionate in relation to the 'filling' aspect and wording contained within the condition. That wording within the condition is not enforceable, precise, or reasonable in all other respects, and that the Local Planning Authority would be at risk of legal challenge if such a notice were to be served.

In the event Members decide that a notice should be served that notice would need to be a Breach of Condition Notice issued under the provisions of Section 187A of the Town and Country Planning Act 1990 (as amended). That notice can only reiterate the wording of the condition exactly and the requirements must only reflect the wording contained within the condition.

Reasons for Decision:

Your officers recommend that no further action is taken in this case due to the circumstances outlined in the report.

Steps Required:

The steps required, in the event a notice is to be served, would be to replicate exactly those requirements contained within condition 10.

Period for Compliance:

Three (3) months if considered appropriate or any other time period the committee feel appropriate.

Case No. ENF/11/00115/UNLD

Grid Ref: 302187 107480

Address:

'The Firs', 5 Higher Mill Lane, Cullompton, EX15 1AG

Alleged Breach:

Untidy land detrimental to amenity and in contravention of Section 215 Town and Country Planning Act 1990 (as amended).

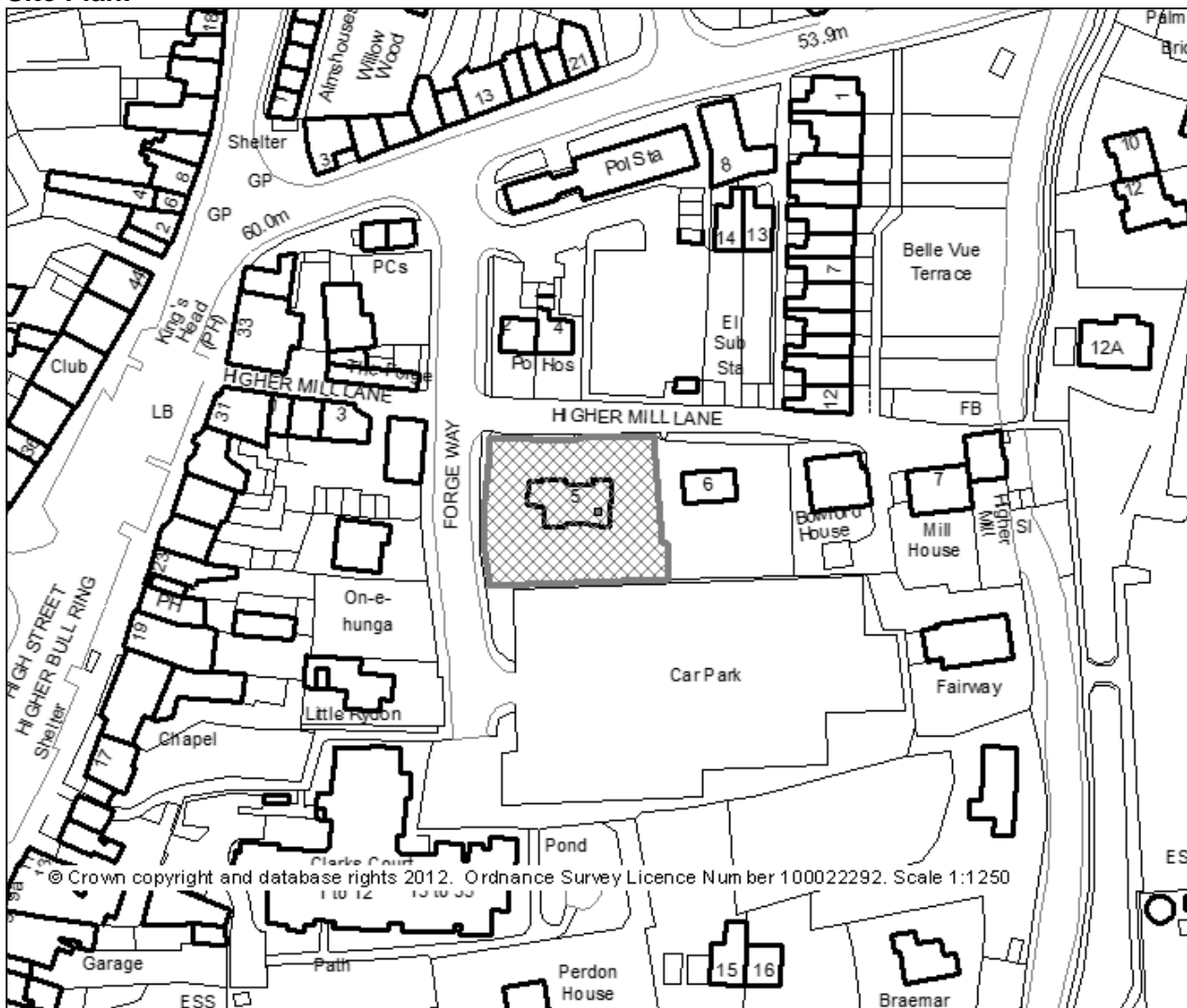
Recommendation:

To delegate authority to the Legal Services Manager to take the appropriate legal action including the service of a Section 215 Notice (Untidy Land) and in the event of a failure to comply with such a notice the consideration of prosecution proceedings and/or direct action, or injunction proceedings. Such a notice to require that steps should be taken to tidy the land.

Site Description:

5 Higher Mill Lane, known as 'The Firs', is on the junction of Higher Mill Lane and Forge Way and to the north of this Local Authority's pay and display car park.

Site Plan:



Site History:

No relevant planning history in relation to this matter.

Development Plan Policies:

Mid Devon Local Plan Part 3 (Development Management Policies) Adopted October 2013
DM31-Enforcement

Reasons/Material Considerations

'The Firs', 5 Higher Mill Lane, is a detached single storey dwellinghouse situated on a large plot, it has two road frontages, to the north and west, and a southern frontage which is adjacent to Mid Devon District Council pay and display car park. Information was received by your officers regarding the condition and overgrown nature of the garden surrounding 'The Firs' sometime ago. The situation has not improved, and in fact has worsened. It is now almost physically impossible to get to any entrance doors of the property and the garden has grown over the retaining boundary walls and fences and is affecting the amenity of passers by and neighbouring properties. This is considered to be contrary to Section 215 (Untidy Land) of the Town and Country Planning Act 1990 (as amended).

Protracted attempts to contact and negotiate a solution with the property owner have failed and it is now felt that the only solution is to present this report seeking the authority to serve the Section 215 notice in an attempt to resolve the matter.

Members should be made aware that in the event a notice is served and upheld any future prosecution, if considered appropriate, for non-compliance may not achieve the desired result and it is entirely possible that a further report will be presented to committee by way of update and seeking authority for direct action.

Your officer has hand delivered several letters to the property one of which resulted in a telephone discussion with the property owner who indicated that he would attempt to carry out works to resolve the issue but this has not materialised.

Human Rights and Equality Issues:

Any of the enforcement action taken or as proposed, or as being considered in relation to this report could affect the land/property and the owners/occupiers rights under the provisions of Article 8 and Article 1 of The First Protocol of the Human Rights Act 1998. However the Local Planning Authority feels it is pursuing a legitimate aim in seeking compliance with the Town and Country Planning Act 1990 so as to prevent demonstrable harm in the interests of acknowledged importance and to protect the environment and amenity. In this particular case various attempts have been made by various officers from different sections of this Local Authority to contact the property owner in an attempt to have the land tidied. This has been unsuccessful. The Human Rights provisions in relation to this case are qualified rights and the proposed interference with those rights is considered to be proportionate so as to prevent harm to the amenity identified. Your officers also feel that negotiations and communications have been carried out as much as is possible in line with the National Planning Policy Framework (NPPF) Paragraph 207 and that the proposed action is considered proportionate. The consideration of whether the proposed action is appropriate and proportionate has also been considered in accordance with Policy DM/31 Planning Enforcement Local Plan Part 3.

Options for action or remedy:

The list of options available is as follows:

Take No Action:

No action is not considered appropriate as the condition of the land is adversely affecting the amenity of the area.

Formal Enforcement Action:

Issue enforcement notice to require that the land is tidied.

Formal enforcement action by way of the service of a Section 215 Notice (Untidy Land) Town and Country Planning Act 1990 (as amended).

Your officers recommend formal enforcement action for the reasons set out in this report.

Steps Required:

1. Rubbish and waste items not connected with the lawful use of the site shall be removed from the land to a lawful disposal site.
2. All overgrown vegetation (excluding mature trees) situated within the red line of the notice and the boundaries of the site shall be cut back to ground level. All the resulting material removed to a lawful disposal site.

Period for Compliance:

Six (6) months after the date on which this Notice takes effect (which cannot be less than 28 days).

Case No. ENF/12/00027/NUNLD

Grid Ref: 302110 107451

Address:

Harlequin Valet Ltd, 19 High Street, Cullompton, Devon EX15 1AB.

Alleged Breach:

Untidy land. Failure to comply with requirements of Section 215 Notice contrary to Section 216 Town and Country Planning Act 1990 (as amended).

Recommendations:

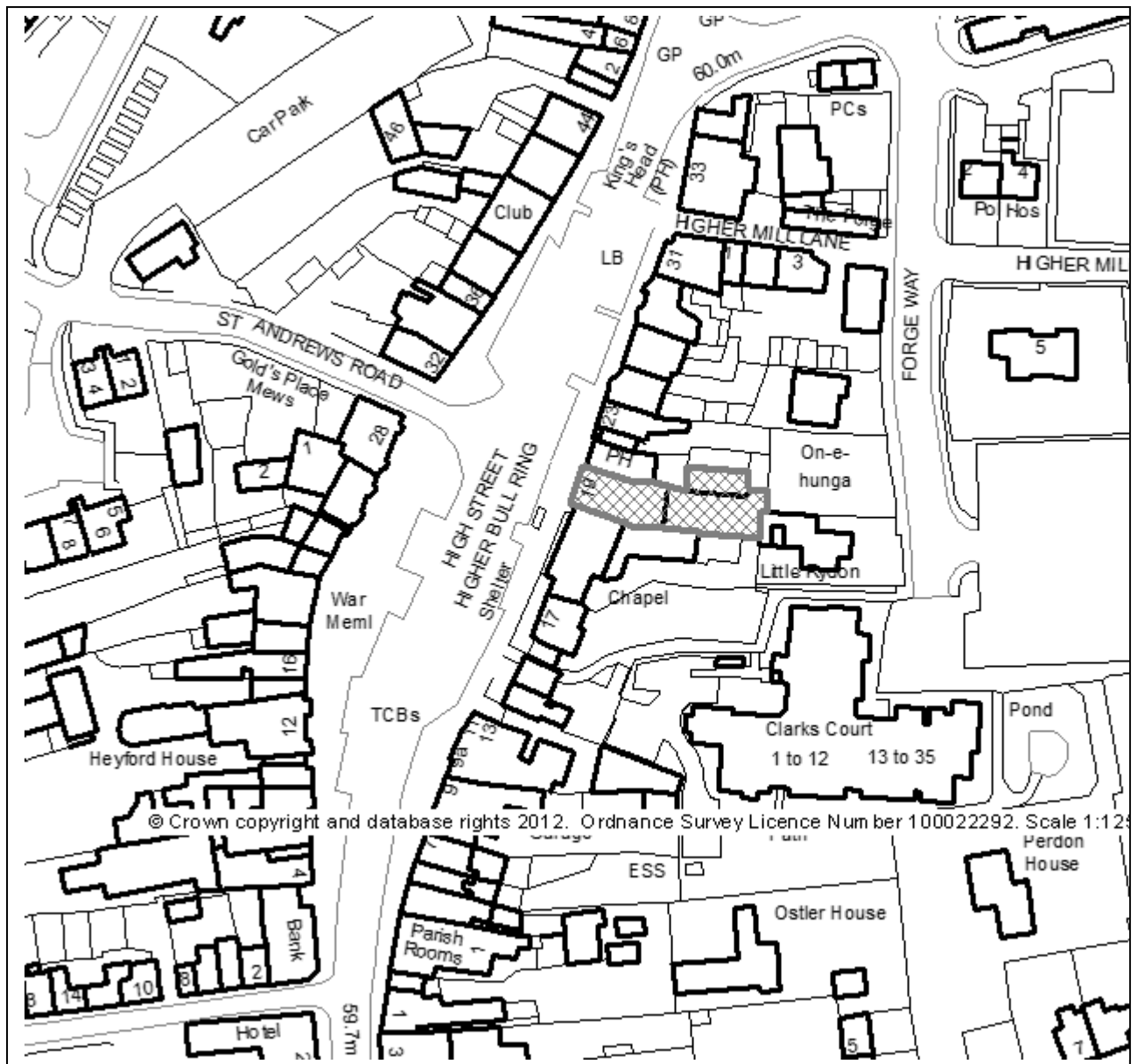
To authorise the Legal Services Manager and the Head of Planning and Regeneration to take the appropriate legal action as a result of a failure to comply with a Section 215 Notice, namely:

1. Direct action under the provisions of Section 219(1) of the Town and Country Planning Act 1990 to allow the Local Planning Authority to enter the land and take those steps, and recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.
2. In the event of direct action costs being incurred, the registering of a charge against the property with Land Registry, and in addition in the interim, under the provisions of the Land Charges Act, the placing of an estimate of the charge that will become due on a property.
3. The continuation of prosecution proceedings in relation to the land owner for failure to comply with the requirements contained within the Section 215 enforcement notice dated 20th March 2014 contrary to Section 216(2) Town and Country Planning Act 1990 (as amended).

Site Description:

Harlequin Valet, 19 High Street, Cullompton, is located in a prominent position to the east of the Higher Bull Ring and within the Cullompton Conservation Area. Prior to a severe building fire the premises used to consist of a mixed planning unit, of retail and residential.

Site Plan:



Site History:

09/00710/FULL	Erection of extension and alteration to provide 1 retail unit and 5 flats and the erection of a single storey dwelling to the rear	Granted November 2009
12/01534/FULL	Application to replace extant planning permission 09/00710/FULL (to extend time limit). Erection of extension and alterations to provide 1 retail unit and 5 flats, and erection of 1 single-storey dwelling to rear (Revised Scheme)	Granted January 2013 Implemented 9 th July 2013
13/00763/FULL	Erection of 6 apartments and 1 single storey dwelling	Granted 14 th February 2014 – Not implemented

20th March 2014 Section 215 Notice issued, notice took effect on 1st May 2014 (no appeal) three (3) months to comply continued failure to comply.

15th October 2014 Prosecution of land owner for failure to comply with the Section 215 Notice contrary to Section 216(2) at Exeter Magistrates Court, Guilty plea.

Development Plan Policies:

Not applicable.

Reasons/Material Considerations:

Members will be aware of the history of this site which includes a report presented to them on the 5th March 2014 in relation to the service of a Section 215 (Untidy Land Notice). Members resolved to serve the notice, and also resolved that in the event of a failure to comply with such a notice consideration should be given to prosecution proceedings and/or direct action, or injunction proceedings.

Members will also be aware that following that committee resolution a Section 215 (untidy land) Notice dated 20th March 2014 was issued and served. That notice took effect on 1st May 2014 and had a compliance period of 3 months.

The Section 215 Notice was not complied with and as a result the Local Planning Authority prosecuted the land owner for his failure to comply with the Section 215 Notice under the provisions of Section 216(2) of the Town and Country Planning Act 1990 (as amended). That prosecution took place on the 15th October 2014 at Exeter Magistrates Court where the land owner pleaded guilty.

Members should note that the Legal Services Manager has been further instructed to continue with prosecution proceedings under the provisions of Section 216(6) which states:

'If, after a person has been convicted under previous provisions of the section he does not as soon as practicable do everything in his power to secure compliance with the notice he shall be guilty of a further offence for each day following his first conviction on which any of the requirements of the notice remain unfulfilled'.

On the 23rd October 2014 your enforcement officer again visited the site and noticed that the Section 215 Notice had not been complied with. As a result Legal Services have been instructed in relation to this offence.

As a result of the above there is a continued failure to comply with the requirements of the notice and this report is to seek further authority from the Members of the committee, if they feel it is appropriate and proportionate, to require that direct action under the provisions of Section 219 of the Town and Country Planning Act 1990 should take place.

Members should note that the only way the Local Planning Authority can ensure compliance with the notice would be to instruct a contractor to carry out the requirements of the notice itself. Quotes from contractors have been received and they are included within Part 2 of this report. Those quotes in relation to the proposed direct action are contained within Part B of this report, which due to the financial issues, not only for the council, but for the landowner, is to be presented to members under the provisions of Part 2 of this agenda.

Members should consider whether a failure to pursue direct action in this case, and any other similar cases, would seriously undermine the planning enforcement function, and the credibility of the Local Planning Authority would be questioned.

The inclusion of this section of the report within Part 2 is as a result of the Access of Information Act for the exclusion of the press and public, that under Section 100A(4) of the Local Government

Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act, namely information relating to the financial or business affairs of any particular person (including the authority holding that information).

Human Rights and Equality Issues:

Any of the enforcement action taken as proposed and referred to in this report will affect the land/property and owners human rights under the provisions of Article 8 of The First Protocol of the Human Rights Act 1988. However, your officers feel that the Local Planning Authority would be pursuing a legitimate aim in seeking compliance with the extant Section 215 Notice and in accordance with the Town and Country Planning Act 1990, so as to prevent demonstrable harm to the interests of acknowledged importance and to protect the environment and in this case the amenity of the area. In this particular case the matter is considered to be a breach and a failure to comply with the enforcement notice contrary to Section 216(2), a criminal offence. The original Section 215 enforcement notice was not appealed at the Magistrates Court. The Human Rights provisions in relation to this case are qualified rights and the interference with those rights is considered by your officers to be proportionate so as to protect the harm to the amenity identified. The current land owner is fully aware that a failure to comply with the enforcement notice is a criminal offence due to his guilty plea when he attended at the Magistrates Court hearing on the 15th October 2014. In addition your officer and the Legal Services Manager were present at that hearing when the Clerk of the Magistrates Court informed the land owner that his continued non-compliance would also be a contravention of Section 216(6) of the Town and Country Planning Act 1990.

Members have to make a decision as to whether it is reasonable and proportionate to pursue direct action having regard to the importance of all the planning issues concerned in the Human Rights circumstances and other relevant factors. Members should consider the question of the need to continue enforcing planning control in the general public interest. The degree and flagrancy in relation to this continued breach would also be a relevant factor. If conventional enforcement measures have failed, (in this case continued prosecution), over a period of time this will also be a relevant factor. Members should consider that in the event of a legal challenge to any proposed action, or decision by the members of this committee, costs in relation to that Legal challenge should be considered a factor.

Options for action or remedy:

The list of options available is as follows:

Take no action:

A no action option is **not** thought to be appropriate in these circumstances due to the fact that the notice has been served, it has not been complied with, a successful prosecution has taken place, and the notice is still extant, and its requirements remain outstanding.

Formal Enforcement Action by either of the following options or both:

1. Continue to prosecute the land owner for his continued daily failure to comply with the notice under the provisions of Section 216(6) of the Town and Country Planning Act 1990 (as amended).
2. Enter the land and take direct action in order to seek compliance with the notice, and the specific requirements contained within that notice, under the provisions of Section 219 Town and Country Planning Act 1990 (as amended). In addition recover from the person

who is the land owner any expenses reasonably incurred by the Local Planning Authority in so doing.

Period for Compliance:

The period for compliance is dependent upon the decision taken.