

**Case No.** ENF/15/00100/UCU

**Grid Ref:** 306705 114187

**Address:**

Land & Buildings at NGR 306655 224226 (Kerrells), Burlescombe, Tiverton

**Alleged Breach:**

Unauthorised material change of use of land from agriculture to a mixed use comprising agriculture and use as a caravan site for human habitation.

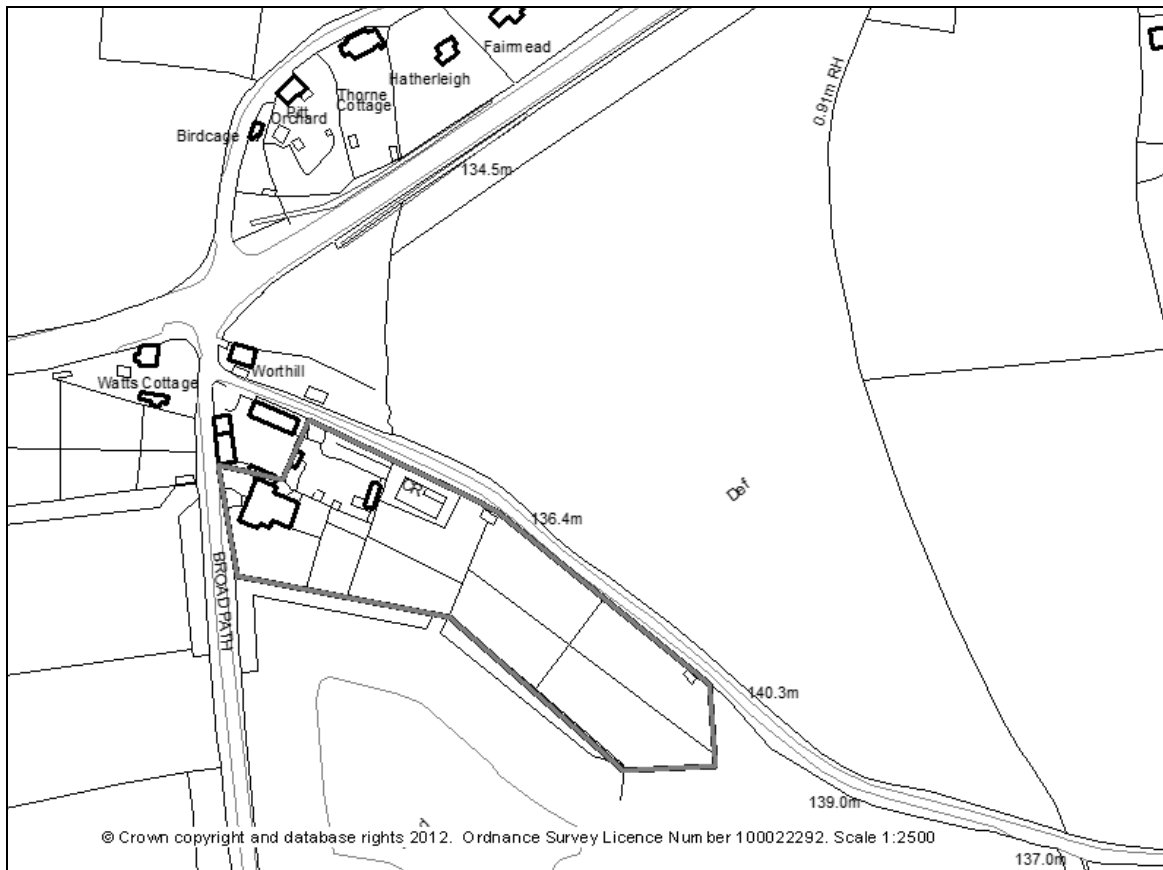
**Recommendations:**

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, (as amended) ("the Act") should grant authority to the Legal Services Manager to issue a change of use enforcement notice, requiring the cessation of use as a caravan site and the removal of 2x caravans from the land together with all domestic paraphernalia associated with the use of the land as a caravan site. . In addition, that authority be given to the Legal Services Manager to take any legal action deemed appropriate including prosecution or Direct Action in the event on non-compliance with the notice.

**Site Description:**

Kerrells is a smallholding comprising of approximately 2.4 hectares of agricultural land along with agricultural buildings. It is located to the south of the A38, some 1,100 metres north west of the Waterloo Cross roundabout within Uffculme parish.

**Site Plan:**



### Site History:

89/00051/OUT	Outline for the erection of three houses and alterations to vehicular access	REFUSE
91/01954/FULL	Erection of workshop and use of land in connection with the manufacture of agricultural buildings and related products, alternation to vehicular access and alterations to barn to form stabling for adjoining paddock	REFUSE
15/01775/CLU	Certificate of Lawfulness for existing use of caravan as residential dwelling for a period in excess of 10 years	REFUSE

### The Policies relevant to this report are:

The NPPF, Chapter 7, paragraph 55 advises that to promote sustainable development in rural areas, LPA's should avoid new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside. This aim is reflected in Mid Devon Local Development Framework policies.

NPPF, Decision-taking - "Effective enforcement is important as a means of maintaining confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

### Development Plan Policies:

Mid Devon Core Strategy 2026  
COR 18 - Countryside

### Mid Devon Local Plan Part 3 (Development Management Policies)

Policy DM2 - High quality design  
Policy DM10 - Rural workers dwellings  
Policy DM31 - Planning enforcement

### Reasons/Material Considerations:

A complaint was made to the enforcement team in August 2015 regarding two caravans being used for residential purposes at the site. This was confirmed by a site visit by your officers. The owner of the site indicated that the caravans had been on the site for a number of years, but was unable to provide specific dates at that time. A planning contravention notice was served on the owner of land which required her to provide specific information regarding the use of the caravans, and the length of time that they had been occupied.

The owner employed an agent to deal with this matter, who responded to the planning contravention notice on her behalf. The response confirmed that the caravans were in residential use, and that one of the units had been used continuously since August 2014, with the other having been sited since February 1998, and continuously occupied from March 2004 to the current time.

The agent stated that it was his intention to submit an application for a certificate of lawfulness in relation to the caravan that had been located on the site since 1998, then subject to that being granted, to submit a planning application to replace the older caravan with the newer unit. It was

agreed that enforcement action would be held in abeyance until the application for the certificate of lawfulness and if appropriate, the subsequent planning application, had been determined.

The application for a certificate of lawfulness was duly submitted but was refused on 18th April 2016 on the basis that the applicant had not demonstrated on the basis of probability that the caravan had been occupied continuously on a permanent residential basis for a period in excess of ten years. Contact has been made with the owner who has indicated that she will be appealing the decision to refuse the certificate of lawfulness, and that she does not intend to remove the caravans at the site. The owner is currently residing in one of the caravans; the other is rented to a family.

A caravan is permitted on agricultural land for the provision of temporary accommodation during a particular season when the occupier is employed in farming operations. However, in this instance, both caravans are occupied as a permanent place of residence, and the older unit is rented to a family, none of which are employed at the site. Officers are of the opinion that these residential caravans are unacceptable and constitute a change of use of the land to residential caravan site.

To secure the cessation of the unauthorised use of the land as a residential caravan site, and to ensure that it does not become immune from enforcement action through the passage of time, Members are requested to authorise enforcement action requiring the removal of the caravans together with all domestic paraphernalia associated with the use of the land as a caravan site.

### **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.

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

The list of options available is as follows:

**Take no action:** - officers consider that the use of the land as a caravan site is not appropriate and therefore the service of an Enforcement Notice will prevent the use from becoming immune from enforcement action due to the passage of time. For this reason, it is not considered appropriate to take no action.

**Invite a planning application** - It is officer opinion that planning permission would not be granted for the reasons outlined in the above report, and therefore it would not be appropriate to invite an application.

### **Issue an Enforcement Notice**

Officers consider that this is the most appropriate course of action for the reasons given in this report.

### **The Requirement of the Notice:**

Remove from the land all residential caravans together with all domestic paraphernalia associated with the use of the land as a caravan site.

### **Reasons for Issuing the Notice:**

It appears to the Council that the breach has occurred within the last ten years.

The use of the land as a residential caravan site constitutes unsustainable development in a rural area, where new homes are restricted to those that can be specially justified, for example, for use by essential rural workers. That need has not been proven. Consequently, the development is contrary to the National Planning Policy Framework and the Mid Devon Development Plan. Officers do not consider that planning permission should be given, because planning conditions could not overcome these objections to the development.

### **Period for Compliance:**

Six (6) months after the notice takes effect.

