

Case No. ENF/16/00132/LIS

Grid Ref: 278424 103453

Address:

The curtilage listed Barn at Grid Reference 278425 103453 adjacent to Higher Furzeland, Furzeland Lane, Copplestone, called 'Orchard Barn'.

Alleged Breach:

Without listed building consent the execution of Works for the alteration and extension to the listed building namely the erection of a single storey extension and alterations to the exterior of the building.

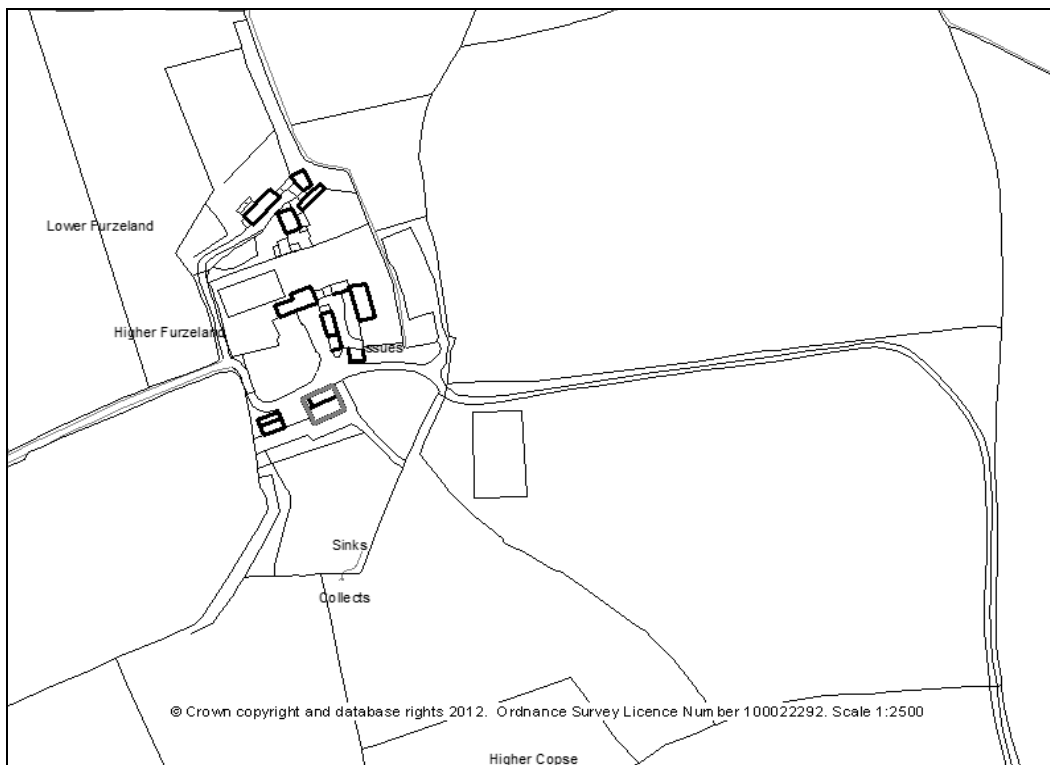
Recommendations:

That Members, having regard to the provisions of the Mid Devon 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) and all other material planning considerations in accordance with Section 38, Planning (Listed Building and Conservation Areas) Act 1990, should grant authority the issuing of a Listed Building Enforcement Notice to remove the unauthorised extension from the cod barn, including the wall plate and the means by which it was attached to the barn and in the event of failure to comply with any notice served, to authorise prosecution, or direct action.

Site Description:

Higher Furzeland is a small farm situated approximately 1.3 km north-east of Copplestone in open countryside within a lower valley location: the smaller hamlet of New Buildings lies just over 1 km to the east. The main farmhouse is Grade II* listed, and the building subject of this report, along with the other traditional farm buildings, is curtilage listed.

Site Plan:



Site History:

91/01020/OTHER	Listed Building Consent for the conversion of nearby barn into a dwelling including demolition of existing corrugated steel and concrete block lean-to.	DELETED
14/01955/FULL	Conversion of former threshing barn to dwelling and erection of replacement extension.	PERMIT
14/01957/LBC	Conversion of former threshing barn to dwelling and erection of replacement extension.	PERMIT

Development Plan Policies:

National Planning Policy Framework

NPPF, Chapter 7: Requiring Good Design. Of which paragraph 56 states: "The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people."

NPPF, Chapter 12: Conserving and Enhancing the Historic Environment. Of which paragraph 132 states: "When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting."

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.

Core Strategy 2026

COR2 - Local Distinctiveness

Allocations and Infrastructure Development Plan

COR18 - Core Strategy Policy on Countryside

Mid Devon Local Plan Part 3 (Development Management Policies)

Policy DM2 - High quality design

Policy DM11 - Conversion of rural buildings

Policy DM27 - Development affecting heritage assets

Policy DM31 - Planning enforcement

Reasons/Material Considerations:

On 5 February 2015, planning permission and listed building consent (ref: 14/01955 & 14/01957) was granted for the conversion of former threshing barn to dwelling and erection of replacement extension.

The scheme involved the demolition of a single storey attached agricultural workshop to an elevation of the cob barn. The conversion of the barn to a dwelling and the construction of a single storey side extension to the barn.

The aim of the deliberations culminating in an approved scheme for the change of use of the former threshing barn to a dwelling was the integration of a domestic extension into the fabric the former threshing barn that was both sympathetic to the agricultural nature of the building and also subservient to it. To achieve this, the extension was to have a shallow pitched metal roof projecting from the façade 700mm below the fascia so as to expose a large area of cob. And the bulk of the extension to comprise glass supported by thin black metal frames in order that the extension would appear to recede under the metal roof.

Both the planning permission and listed building consent was conditional and subject to four (4) conditions precedent. The conditions being:

3. Before any development commences, a full specification of works, together with a schedule of works required to secure the safety and stability of the building during the conversion period, shall be agreed in writing by, the Local Planning Authority. Such works shall where necessary include measures to strengthen any wall or vertical surface, to support any floor, roof or horizontal surface, and to provide protection for the building against the weather during the progress of the works. The agreed specification and schedule shall be strictly adhered to during the conversion of the works.

4. Before the commencement of the development hereby permitted details/samples of the materials to be used for all the external surfaces of the building shall be submitted to and approved in writing by the Local Planning Authority.

5. No works shall begin until joinery working details, including sections, mouldings, profiles for all new internal and external doors, windows and internal staircase to include 1:20 scale sample elevations and 1:1 scale joinery profiles, shall have been submitted to, and approved in writing by, the Local Planning Authority prior to their installation. Proposed timber treatment of all proposed external joinery shall also be first submitted to, and approved in writing by the Local Planning Authority prior to its use. Such works shall thereafter be carried out in accordance with such approved details and be so retained.

7. All internal and external plaster/render finishes shall be of lime putty mortar with no cement or other substitutes. No development works shall begin until a sample panel of lime render to be used of between 1 and 2 square metres in size (indicating colour and texture) to be used for the external walls of the building hereby permitted has been provided on site for inspection and agreed in writing by the Local Planning Authority. Such approved materials shall be so used and retained.

At the time of writing this report, none of the above conditions have been discharged. The conditions precedent mean that both the permission and consent to convert the threshing barn cannot not be implemented if the conditions were not discharged and would be technically lost.

In May 2016, it was brought to our attention that an extension had been built onto a side elevation of the former threshing barn. The concern of the caller being that it was bigger than that which was approved.

On 19 May 2016 a planning enforcement officer visited the site, met with the landowner and noted that an extension had been erected on one side of the former threshing. That the extension was not the one shown on the approved drawing - being larger and constructed in materials that differed drastically with those indicated on the approved drawing - dominating the former threshing barn in a way that detracted from the agricultural context of the building and its surroundings.

Section 7 Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Act") states:

"Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in a manner which

would affect its character as a building of special architectural or historic interest, unless the works are authorised."

Section 9 of the Act states: "If a person contravenes section 7 he shall be guilty of an offence."

The works - the extension - constituted unauthorised works, i.e. a criminal offence. Not because the pre-conditions had not been discharged, but simply because the extension did not have consent. Consequently, the landowner was cautioned in accordance the Police and Criminal Evidence Act, (PACE) and the codes of practice, before any questions were put to him. The landowners response was to say that he did not realise he had done anything wrong and that he changed the design to improve the energy performance rating.

The landowner was advised to carefully remove the unauthorised extension within the next 21 days and reminded that the planning permission and listed building consent for conversion of the barn was subject to pre-conditions, that the conditions had not been discharged, and that work should not be undertaken to convert the barn to a dwelling until the conditions had been discharged. On 26 May 2016, that advice was re-iterated in an email to the landowner.

On 9 June 2016 the site was visited by the enforcement officer accompanied by a Conservation Officer. On site, the conservation officer met with the landowner, viewed the extension and reminded him about the agonising deliberations, involving his architect, English Heritage and MDCC, on the design of the extension. The Conservation Officer advised the landowner how dismayed he was with the decision to go against professional advice and build something alien to the agricultural and historical context of the site.

In a follow up report to the enforcement team, the Conservation Officer stated that he had two main concerns:

- 1.The pitch of the roof which now masks a large area of the threshing bar. It is important that the extension is subservient to the barn.
- 2.The windows are raised on a rendered plinth apart from the opening doors. The approval showed floor to ceiling windows in a black thin metal frames. The aim of this was to make it recede under the roof. As constructed it looks like a farm shop and presents very strongly making the extension look as the principle element rather than the barn.

The Conservation Officer is supportive of action to bring about the removal of the unauthorised extension.

Definition of a Listed Building:

Section 1(5) of the Act: "In this Act "listed building" means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act—

- (a) any object or structure fixed to the building;
- (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948, shall be treated as part of the building.

Human Rights and Equality Issues:

The expediency of Enforcement action has been assessed with reference to guidance contained in 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).

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies. This will enable them to make an informed decision in respect of an application.

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: - This would not be appropriate as it would allow the unauthorised and unacceptable extension to remain in situ adversely affecting the character of the curtilage listed barn and its setting adjacent to the Grade II* listed farmhouse.

Invite an application to grant consent to regularise the change of use - This again would not be appropriate for the reasons outlined in the body of the report.

Recommendation: Issue a listed building enforcement notice

That Members, having regard to the provisions of the Mid Devon Development Plan and all other material planning considerations in accordance with Section 38, Planning (Listed Building and Conservation Areas) Act 1990, ("the Act") should grant authority to the Legal Services Manager to issue a Listed Building Enforcement Notice in respect of the alleged breach, which adversely affects the character the building as one of special architectural or historic interest, and also to take any legal action deemed appropriate including prosecution or Direct Action in the event of non-compliance with the notice.

Requirement of the Notice:

Remove the unauthorised extension from the cob barn, including the wall plate and the means by which it was attached to the barn.

Reasons for Issuing the Notice:

The Works relate to a building within the curtilage of a building included on the Statutory List of Buildings of Special Architectural Interest (Grade II*)

The Works constitute unsympathetic and inappropriate alterations which adversely affect the character and appearance of the building. Consequently, the Works are contrary to the advice contained in paragraphs 126 - 141 of the NPPF, Policy COR2 & COR18, Core Strategy, Policies DM2, DM11, DM27 & DM31 Mid Devon Local Plan Part 3.

Period for Compliance:

Twenty-eight (28) days after the notice takes effect.