

Case No. ENF/16/00098/UCU

Grid Ref: 278398 103443

Address:

Barn Orchard, Higher Furzeland, Coplestone, Crediton EX17 5NX

Alleged Breach:

Without planning permission the erection of a residential/domestic use building ("the breach").

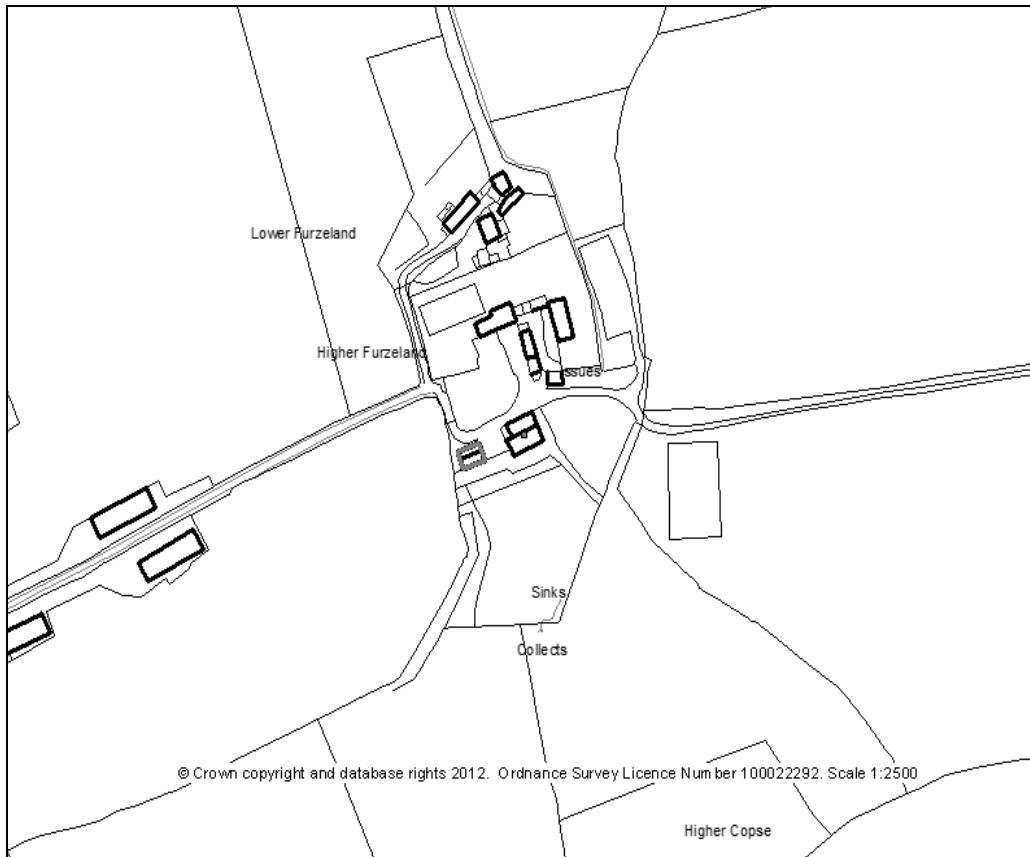
Recommendations:

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 172 Town and Country Planning Act 1990, should grant authority for the issuing of an Enforcement Notice in respect of the above breach of planning control.

Site Description:

Higher Furzeland is a Grade II* listed farmhouse within an informal group of traditional former farm buildings, listed Grade II, situated approximately 1.3 km north-east of Coplestone in open countryside within a lower valley location: the smaller hamlet of New Buildings lies just over 1 km to the east. The site called Barn Orchard, comprises a former threshing barn and the building subject of this report together with some agricultural land which was split from previously annexed land known as Higher Furzeland.

Site Plan:



Site History:

14/01955/FULL	Conversion of former threshing barn to dwelling and erection of replacement extension	PERMIT
14/01957/LBC	Listed Building Consent for conversion of former threshing barn to dwelling and erection of replacement extension	PERMIT

Development Plan Policies:

National Planning Policy Framework

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.

Paragraph 132 NPPF, advises that: "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. The more important the asset, the greater the weight should be.

NPPF, Chapter 7: Requiring Good Design. Of which paragraph 64 states: "Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

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)

Local Plan Part 3

Policy DM2 - High quality design

Policy DM10 - Rural workers dwellings

Policy DM27 - Development affecting heritage assets

Reasons/Material Considerations:

On or before 7 March 2005, the Grade II* listed farm house called Higher Furzeland, together with an informal group of farm buildings and associated agricultural land, was removed from a greater land title held by the persons subject of this report and registered with HMLR as Title: DN509330 under one of their names. On or before 04 January 2016, The Grade II* listed farm house together with adjacent agricultural buildings and the land immediately associated with them was annexed from that land title and registered under Title: DN665712. The remaining land, containing an historic cob barn and a C20 pole barn was then renamed by the landowner as Barn Orchard, Higher Furzeland.

In January 2016 conditional planning permission and conditional listed building consent was granted for the conversion of the historic cob barn to a dwelling. As is usual with any proposed development involving historic barns, the applicant was obliged to commission an Ecologist to undertake a 'Bat & Bird' survey of the cob barn.

The ecologist report stated:

"The proposed works to convert the barn could potentially disturb, injure or kill any bat present at the time of work and would destroy a barbastelle bat day roost, a brown long-eared bat maternity roost and a lesser horseshoe bat night roost. The work will therefore require a European protected species licence(EPSL) from Natural England once planning permission Has been granted."

The report went on to describe mitigation measures the landowner could employ to provide alternative roosting provision for bats. One of those was:

(a)"Providing a dedicated bat loft (above existing barn or other building on site) for all species affected. The loft should have an uncluttered roof void constructed in traditional 'cut and pitch' method, not using trussed rafters."

(b)"The roof would need to have a minimum apex height of 2.8m."

(c)"The replacement bat loft would need to be constructed prior to converting the existing barn."

The roof of the adjacent C20 pole barn was too shallow. So, in order to provide a building that had a roof void with a minimum height of 2.8m, so as to satisfy the mitigation advice and provide a habitat for the bats, the landowner demolished the pole barn and without planning permission erected a two storey timber clad building with a residential flat on the first floor and domestic equestrian facilities on the ground floor, broadly on the footprint of the former pole barn that stood on the site.

This unauthorised building resembling a dwellinghouse on one side and an industrial / storage building on the other and measuring approximately 20m long, 5m and 7m high, has a steep dual pitched slate roof with terracotta ridge tiles. It appears to have been constructed with a mixture of concrete block and timber and has been clad with light brown shiplap timber planks. At first floor level, on the southern elevation visible to persons visiting or accessing the Grade II* Higher Furzeland from Bewsley Hill, four white painted casement windows have been inserted. From the eaves of the northern elevation, a single storey lean-to extension has been constructed along almost the entire length of the residential use building. This lean-to extension is supported at one end by a block-work structure, measuring approximately 4m x 4m, whilst the remainder of its length, supported by timber posts, is open fronted.

The residential accommodation provided on the first floor of this new building includes a kitchen area comprising a sink unit with built-in two ring electric hob; a shower room / toilet; a living / dining room, containing a sofa, table, chairs, television and general domestic paraphernalia; and two bedrooms both containing double beds. The block-work structure on the ground floor houses a boiler and is used as an office.

Higher Furzeland is an historic farm group comprising a C16 three room and through passage farmhouse with C17 additions and improvements, listed Grade II*. Adjacent to its southern elevation are two cob buildings, namely a former coach house and stables and Linhay, both listed Grade II. Within that group, but not listed, is a former threshing barn which in 2016, was considered suitable for a sympathetic conversion to a dwelling. (ref: 14/01944/FULL and 14/01957/LBC).

Albeit that consent has been granted for the conversion of the former threshing barn to a dwelling, and the area of land on which the unauthorised building has been erected is within the red edged parcel of land for that new dwelling, the planning permission / listed building consent has not been

implemented. Therefore, the change of use of that parcel of land from agriculture to residential / domestic has not yet occurred.

Fall back considerations - Permitted Development:

This case concerns the erection of a new dwelling in the countryside, not the conversion of an existing rural building last used for agriculture. Consequently, Schedule 1, Part 3, Class Q - Agriculture to Dwelling, or, Class R - Agriculture to Class B1 business, is not a consideration.

Paragraph 55 NPPF, advises that: "To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities and that Local Planning Authorities 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. Policy DM10 - Rural Workers Dwellings: reflects and expands upon advice provided by paragraph 55 of the NPPF. The landowner has not demonstrated a need for a new dwelling in the countryside.

Paragraph 132 NPPF, advises that: "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. The more important the asset, the greater the weight should be."

Higher Furzeland farmhouse is a significant heritage asset and is listed Grade II*. The adjacent Coach House & Stables and the Linhay are part of that historic farm group and are Listed Grade II.

The design, mass and physical appearance of the new building resembles a pastiche of an East Anglia barn converted to a dwelling rather than the traditional cob barns associated with rural Devon. Consequently, it is at odds with the setting of these heritage assets, jarring with the vernacular buildings in the group and their rural context. The Conservation Officer (West Area) supports this view.

The new residential building constitutes unsustainable development in a rural area, where isolated homes are restricted for use by essential rural workers. In this case the land owner has neither proven that need nor sought to do so. In addition, the design, mass and physical appearance of the new building is at odds with the setting of this significant heritage asset, jarring with the vernacular buildings in the farm group called Higher Furzeland and the rural context in which it is set. Consequently, it is considered both necessary and in the public interest that an Operational Development Enforcement Notice is issued to bring about the removal of the unauthorised building from the land. This is the recommended course of action for Members consideration.

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 dwelling to remain in situ contrary to the advice contained in the NPPF and the policies contained in the Mid Devon Development Plan.

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:

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 Legal Services Manager to issue an Operational Development Enforcement Notice in respect of the alleged breach. He should also be authorised to take any and all legal action deemed appropriate including prosecution or Direct Action in the event of non-compliance with the notice.

Requirement of the Notice:

- (i) Demolish the building.
- (ii) Remove from the land the resulting debris together with all domestic paraphernalia associated the residential / domestic building.

Reasons for Issuing the Notice:

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

The residential building constitutes an unsustainable form of development in a rural area, where isolated homes are restricted for use by essential rural workers. That need has not been proven. In addition, the design, mass and physical appearance of the new building is at odds with the setting of the heritage assets, jarring with the vernacular buildings in the group and their rural context.

Consequently, the development is contrary to the advice given in the NPPF, Policy COR2 & COR18 of Mid Devon Core Strategy 2026 and Policy, DM2, DM10, DM27 of Mid Devon Local Plan Part 3 Development Management Policies.

The Council 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.