

Case No. ENF/16/00131/AGTIE

Grid Ref: 300832 110224

Address:

Nethercott, Brithem Bottom, Cullompton, Devon

Alleged Breach:

Breach of condition (f) of planning permission 88/1726/OUT which states: the occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in the locality in agriculture, as defined in section 290(1) of Town and Country Planning Act 1971 (including any dependants of such person residing with him or her) or a widow or widower of such a person.

Recommendations:

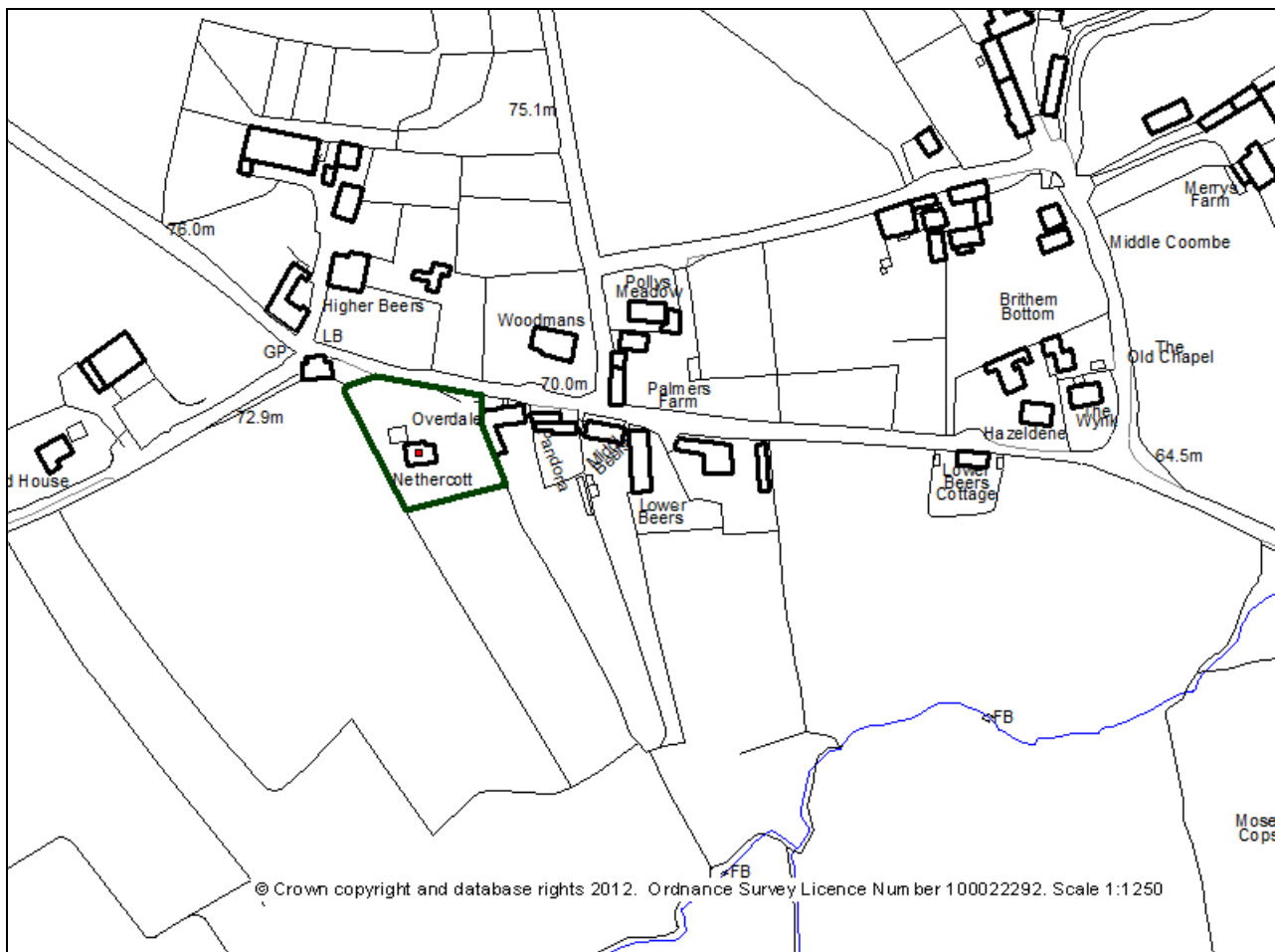
That Members, having regard to the provisions of the Mid Devon Development Plan and all other material planning considerations in accordance with Section 172 of the Town and Country Planning Act 1990 (as amended) shall grant authority to the Legal Services Manager to issue a breach of condition enforcement notice. In addition, that authority be given to the Legal Services Manager to take any legal action deemed appropriate including prosecution in the event of non-compliance with the notice.

Site Description:

Nethercott, Brithem Bottom, Cullompton, Devon

Nethercott is a modern three bedroomed detached house with a separate double garage, situated within the hamlet of Brithem Bottom.

Site Plan:



Site History:

87/00700/OUT	Outline for the erection of a dwelling, garage and construction of vehicular access	REFUSE
88/00360/OUT	Outline for the erection of dwelling, garage and access	WD
88/01786/OUT	Outline for the erection of an agricultural workers dwelling and alterations to vehicular access	PERMIT
89/00934/ARM	Detailed drawings for the erection of an agricultural dwelling and garage and alterations to vehicular access	PERMIT
15/01660/FULL	Removal of Condition (f) (agricultural occupancy), of planning permission 88/01786/OUT	REFUSE

Development Plan Policies:

National Planning Policy Framework

Mid Devon Core Strategy (Local Plan 1)

Policy COR 18

Mid Devon Local Plan Part 3 (Development Management Policies)

Policy DM10

National Planning Policy Framework - paragraph 55

National Planning Policy Framework - 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.

Reasons/Material Considerations:

The current owners of the property sought to vary condition (f) of planning permission 88/01786/OUT which restricts the use to agricultural occupancy. This was refused for the following reason in December 2015;

The application site is in the countryside where planning policies restrict the provision of isolated dwellings unless there are special circumstances such as the essential need for a rural worker to live at or near their place of employment. In the opinion of the Local Planning Authority, insufficient evidence has been submitted to demonstrate that the property is no longer required for an agricultural worker. No evidence has been provided to demonstrate that the property has been marketed for sale in an appropriate way for an appropriate period of time or at an appropriate price. No information has been received regarding any offers on the property or details of interest in the property since it has been marketed for sale or to let, and no substantive evidence has been submitted to indicate that there is no need for the agricultural occupancy condition on this agricultural workers dwelling.

In addition at the time of a site visit the house was currently let to an agricultural worker. The application is therefore considered to be contrary to policy COR18 Mid Devon Core Strategy (Local Plan Part 1) and policy DM10 Local Plan Part 3 (Development Management Policies).

No appeal against the refusal to vary this condition has been submitted, and the time limit for doing so has now passed. When the property was visited in relation to the planning application last year, the occupier indicated to the planning officer that he was employed in agriculture.

A complaint was made to the enforcement team in May 2016 that the property has been re-let and was no longer being occupied in accordance with the agricultural occupancy condition. A planning contravention notice has been served on the owner to ascertain whether this was the case, and based on the information provided it appears that the current occupation is in breach despite the owners of the property being aware of the planning restriction. Furthermore, the current tenancy on the property was prepared by Stags, who also acted as agent for the refused application to vary the condition.

The Council has established its position in relation to the property by the refusal to vary the agricultural occupancy condition under the recent application, and there has been no material change in circumstances since then. Officer opinion is that in order to maintain confidence in the planning system and the decisions made by Mid Devon District Council, the most appropriate way forward is to serve a breach of condition enforcement notice in relation to this matter, requiring the cessation of the occupation by those who do not meet the requirement of the condition. The occupiers of the property have been advised of the position, and a long compliance period is proposed to enable them to source alternative accommodation.

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:

Officers consider that this is not appropriate in this instance as permission has recently been refused for the removal of the agricultural occupancy condition.

Invite a planning application

As permission has already been refused, this is not considered to be appropriate.

Recommendation: Issue an Enforcement Notice

For the reasons set out in this report, that Members, having regard to the provisions of the Mid Devon Development Plan and all other material planning considerations in accordance with Section 172 of the Town and Country Planning Act 1990 (as amended) shall grant authority to the Legal Services Manager to issue a breach of condition enforcement notice. In addition, that authority be given to the Legal Services Manager to take any legal action deemed appropriate including prosecution in the event of non-compliance with the notice.

Reasons for Decision:

The property is in the countryside where planning policies restrict the provision of isolated dwellings unless there are special circumstances such as the essential need for a rural worker to live at or near their place of employment.

The property is currently occupied by persons who are not employed as agricultural workers, which is a breach of condition (f) of planning permission 88/1726/OUT, and which is also considered to be contrary to policy COR18 Mid Devon Core Strategy (Local Plan Part 1) and policy DM10 Local Plan Part 3 (Development Management Policies).

Steps Required:

Discontinue the occupation of the dwellinghouse by a person or persons who are not solely or mainly employed, or last employed in the locality in agriculture, as defined in section 290(1) of Town and Country Planning Act 1971 (including any dependants of such person residing with him or her) or a widow or widower of such a person.

Period for Compliance:

Six months from the date that the Notice takes effect.