

Case No. ENF/16/00147/UDRU

Grid Ref: 302825 109470

Address:

Land at Grid Reference 302809 109606, Willand Road, Cullompton, Devon

Alleged Breach:

Untidy land caused by the unauthorised storage of unroadworthy vehicles, container, trailer, tyres and various other discarded items.

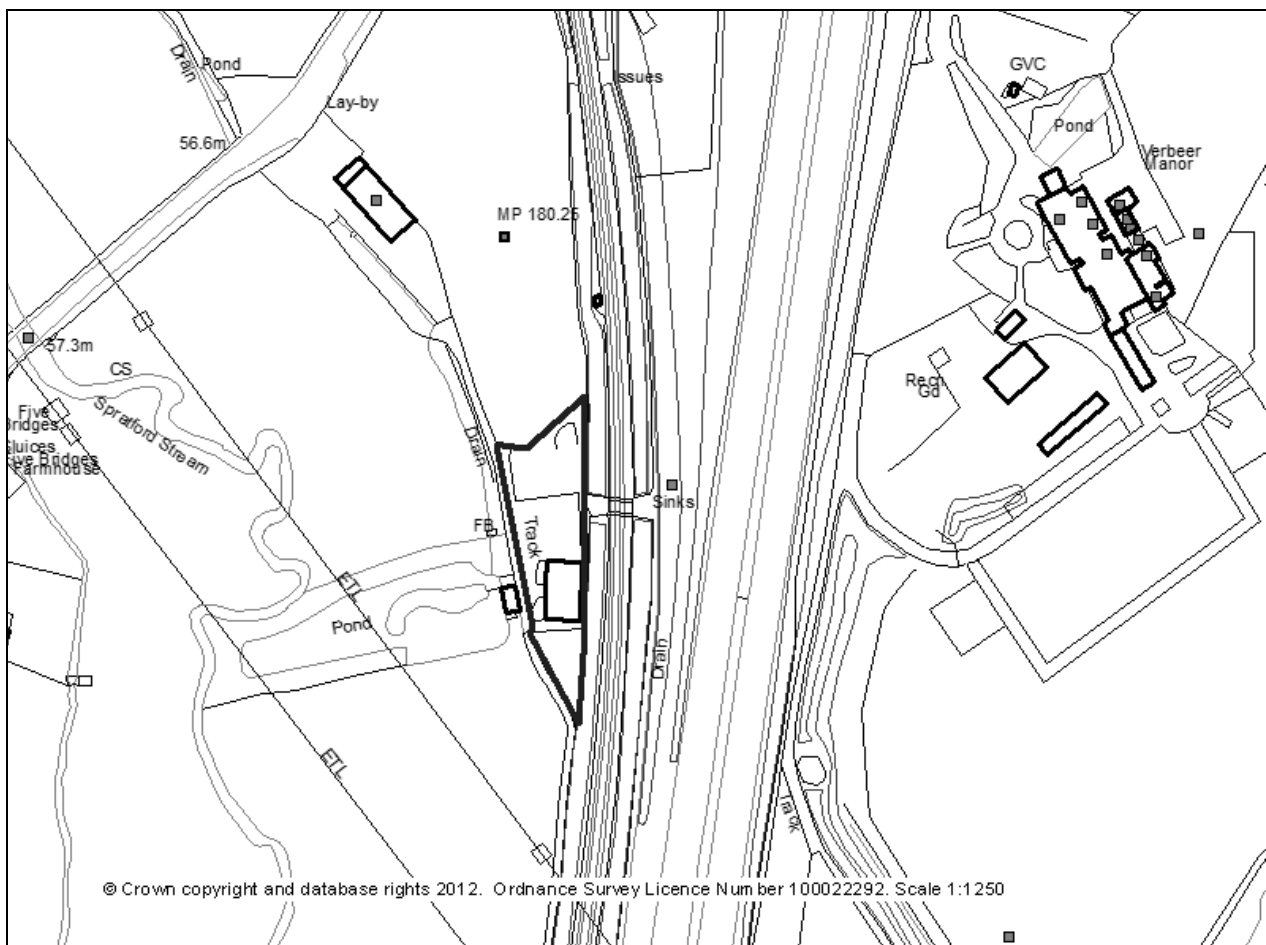
Recommendations:

That the Legal Services Manager be authorised to take any appropriate legal action, including the service of a notice or notices seeking the improvement of the appearance of the land. In addition, in the event of the failure to comply with any notice served, to authorise prosecution, direct action and/or authority to seek a court injunction.

Site Description:

The site is located within the open countryside, approximately 700 metres to the south west of Willand. The site is accessed via a track that runs from the B3181 from Willand to Cullompton, through the Culm Valley Car Sales site. The M5 lies some 75 metres to the east, with the car sales premises to the north, and is otherwise surrounded by agricultural land.

Site Plan:



Site History:

00/01315/FULL	Retention of polytunnel (retrospective application)	PERMIT
06/02118/PNAG	Prior notification for the erection of a storage building	NO OBJECTION
13/00813/FULL	Change of use of land and buildings to building and farm supplies merchant (Sui Generis Use)	WITHDRAWN
14/00772/FULL	Extension to car sales area	PERMIT
14/01353/PNCOU	Change of Use Under Permitted Development Order 2013 - Class M Change of Use of redundant agricultural building (not more than 500sqm) to Use Class B1 for car valeting use including yard outside immediate area	PERMIT

Development Plan Policies:

National Planning Policy Framework paragraphs 17, 109 and 207.

Mid Devon Core Strategy (Local Plan 1)

COR2 - Local Distinctiveness

COR18 - Countryside

Mid Devon Local Plan Part 3 (Development Management Policies)

DM31 - Planning Enforcement

Reasons/Material Considerations:

A change of use approval for prior approval for change of use under The General Permitted Development Order Part 3, Class M was issued in October 2014 in relation to a building on the site. This related to the change of use of a redundant agricultural building for car valeting use including the yard immediately outside the building. At that time, the owner of the land indicated that the car valeting use was to be in conjunction with the sales unit at Westcountry Car Sales Ltd, as it was within the same ownership.

The Council received a complaint in mid 2015 regarding the parking of cars in a poor state of repair in the area surrounding the car valeting building. This has since escalated and the condition of the land has continued to deteriorate. Checks carried out on the vehicles, which includes both cars and lorries, indicate that some haven't been able to have been driven on the public road for in excess of two years due to a lack of MOT and/or road tax. In addition, there are various other items contributing to the unsightly appearance of the land, including tyres, a trailer and horsebox, an apparently redundant metal portacabin type building and various plant and machinery. There is also an unreasonable amount of various rubbish on the land.

The car sales unit has recently been leased to a new operator who has confirmed that the car valeting building and the area surrounding it is completely separate from his business.

The Enforcement Officer for the area has attempted to negotiate with the owner of the land, but this has been unsuccessful. A planning contravention notice was served on the owner in June, in an attempt to enter into dialogue about how this matter could be resolved, but despite reminders, no response has been received. Your Officers now consider that as the informal attempts to resolve this matter have failed, it is now appropriate to commence formal action to resolve this matter.

The site is visible from the Willand to Cullompton Road and the railway line and its current appearance is considered to detract from public amenity.

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:

This is not considered to be an appropriate course of action. There is no justification for the land to remain in such a condition and have a detrimental impact on the visual amenity of the area. To allow the current situation to persist is contrary to current planning policy.

Issue a Section 215 Notice seeking works to remove all vehicles, waste and discarded materials from the land

This is considered by your Officers to be the appropriate course of action.

The Requirements of the Notice

Remove from the land to a place of authorised disposal all vehicles, waste and discarded materials. Items to be removed include cars, lorries, trailers, horseboxes, metal containers, domestic appliances and all other discarded items.

Reasons for Issuing the Notice

The land has become unsightly and is having an adverse impact on the visual amenity of the surrounding open countryside. The owner of the land has failed to engage in informal discussions with regards to resolving this issue, and therefore formal action is considered necessary to bring this matter to a conclusion.

Period for Compliance:

Two months from the date the Notice takes effect.