

**Case No.** ENF/16/00180/NUDRU

**Grid Ref:** 294200 123088

**Address:**

Higher Barn, Bampton, Tiverton, Devon

**Alleged Breach:**

Without planning permission, within the last four years the carrying out of engineering operations on the land with the use of heavy machinery and plant including the excavation and re-profiling of land, land drainage works including formation of 3 drainage ponds and the erection of a blockwork building.

**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 an enforcement notice, requiring the re-instatement of the land to its previous condition, including the removal of the partially constructed building and drainage option in accordance with a detailed schedule of works the compilation of which to be delegated to the Head of Planning and Regeneration in conjunction with the Legal Services Manager. 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:**

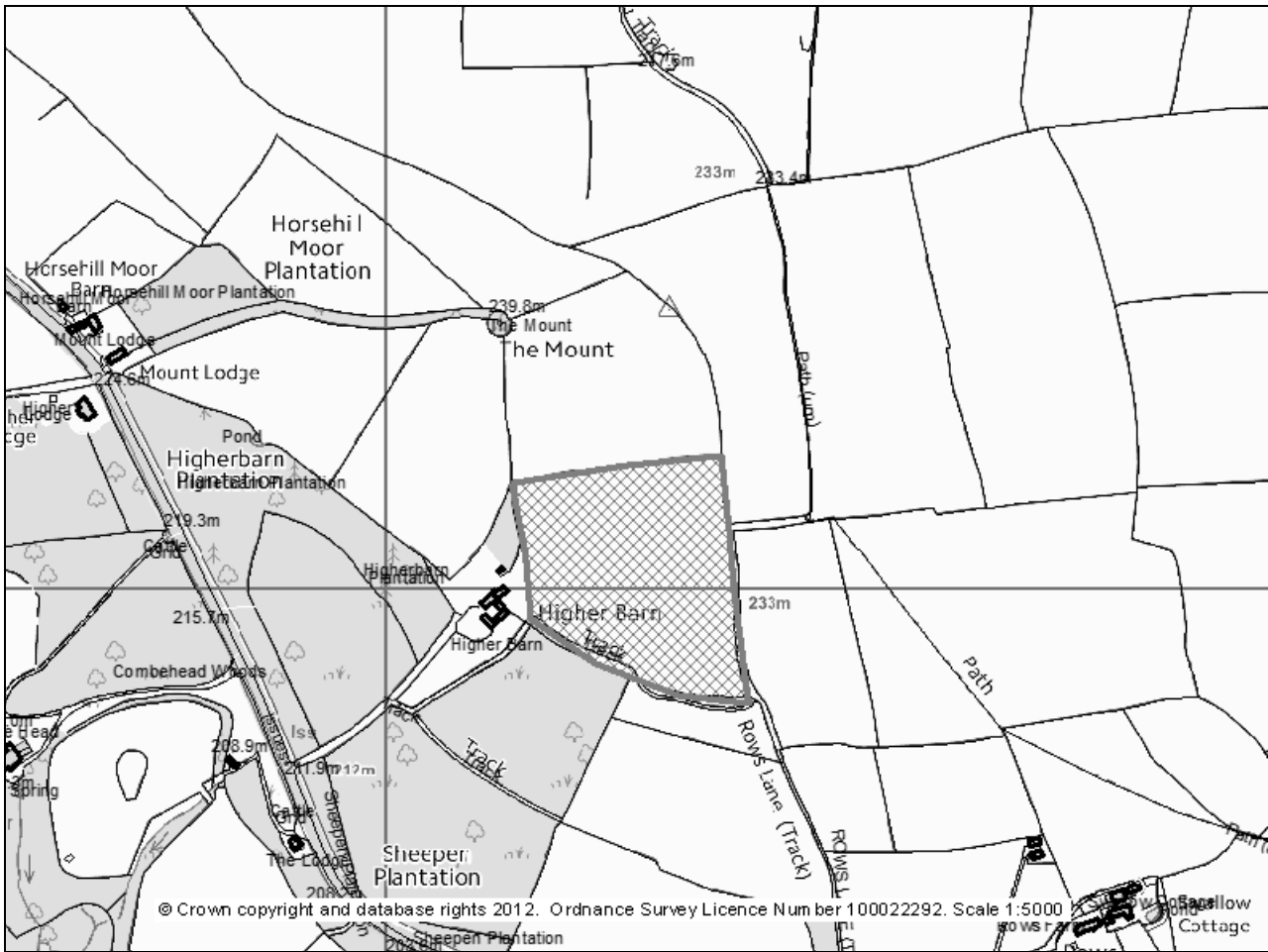
This report relates to the southern field on land to the east of Higher Barn, Bampton, as indicated on the plan below. There are also enforcement concerns in relation to the northern field which is the subject of a separate report.

This rural site is located approximately one mile to the north west of Bampton, and is both outside the settlement limit and within the open countryside, and is surrounded by agricultural land. It is accessed from the driveway to Higher Barn, which is accessed from the highway from Bampton to High Cross approximately 300 metres to the south. The southern field was in agricultural use prior of the works taking places, and is approximately 2.9 hectares in size.

There is a public right of way abutting the south east corner of the site, that meets with the Exe Valley way which lies approximately 50 metres to the east of site.

The load is within the same ownership as Higher Barn, which is an adjacent residential property.

**Site Plan:**



**Site History:**

07/00895/FULL	Conversion of redundant farm building to ancillary accommodation, erection of art and yoga studio, garage and barn	PERMIT
07/01139/FULL	Erection of replacement barn	PERMIT
07/01564/FULL	Erection of replacement dwelling	PERMIT
08/00980/FULL	Erection of replacement dwelling (Revised Scheme)	PERMIT
08/01023/FULL	Conversion of redundant farm buildings to ancillary accommodation, annexe, and utility area, garage and barn (Revised Scheme)	PERMIT
10/01072/FULL	Retention of replacement dwelling, conversion of barn to living accommodation and replacement of redundant outbuildings to be used as ancillary accommodation; erection of garden store/study (Revised Scheme)	PERMIT

**Development Plan Policies:**

National Planning Policy Framework

Paragraph 207 Enforcement

Paragraph 109 Conserving and enhancing the natural environment

**Mid Devon Core Strategy (Local Plan 1)**

COR2 - Local Distinctiveness

COR11 - Flooding

COR 18 - Countryside

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

DM31 - Planning Enforcement

DM24 - Tourism and Leisure Development

DM27 - Development affecting heritage assets

**Reasons/Material Considerations:**

The site was initially visited on 12th August 2016 by a planning officer following a complaint that there were extensive works taking place. The contractors working on site were advised that it appeared that there was a breach of planning control and that all activity should cease immediately. The site was then revisited by an Enforcement Officer on the following Monday, 15th August where it was found that works were continuing.

The southern field to which this field relates has been completely re-profiled using heavy machinery, with an extensive drainage system installed, which feeds into two ponds in the south west corner of the site, and a "wetland area" in the south east corner. In addition, a block work building has been partially constructed in the south west corner of the field, approximately fifty metres away north east of the house from the house and a section the hedgerow which divides this site from the field to the north has been removed.

Contact was immediately made with the owner, who advised that in his opinion he believed that these works were permitted development as he considered that the land was part of his garden, and that in his opinion no planning permission was required. The site was intended to be used as a private four hole golf course, with the building to be an orangerie and wet room.

Given the extent of the works undertaken at the site, it was considered necessary to serve a Temporary Stop Notice to protect the amenity of the surrounding land, and prevent further damage to this site within the open countryside. Following consultation with the Chair and Vice Chair of Planning Committee, and the two ward Members, a Notice was served on 17th August 2016, which required all works to cease.

Subsequently there have been several further visits to the site and consultation with Officers from Devon County Council who have provided guidance on archaeology and drainage. The site was also visited by the Enforcement Officer from DCC, who was unable to find any evidence that waste material had been imported into the site.

Negotiations have been ongoing with the architect and solicitor acting on behalf of the owner of the site, and it has been indicated that he wishes to continue with his plans to change the use of this agricultural field to a private four hole golf course, with the associated orangerie building and drainage work.

Policy COR18 from the Mid Devon Core Strategy provides clear guidance about the types of development that could be acceptable within the Countryside. Your Officers consider that the works undertaken do not enhance the character, appearance and biodiversity of the Countryside. In certain circumstances a golf course may be acceptable when being provided as a community facility; however in this instance a private facility on agricultural land is not considered appropriate.

The site is agricultural land and does not form part of residential curtilage of Higher Barn. The provision of a orangerie/wet room building if required, should be erected within the curtilage of the dwelling. The provision of the building in its current location has not been justified and is therefore contrary to Policy COR18 of the Mid Devon Core Strategy.

Policy COR11 seeks to ensure that development does not increase the risk of flooding of properties elsewhere. There appears to have been no formal assessment undertaken by the owner prior to the installation of an extensive drainage scheme at the site, nor consideration of the impact that it might have on neighbouring land. As there is no information available to establish the necessity or suitability of the drainage scheme. The works are considered to be contrary to this policy.

Given the scale of the breach of planning control and in accordance with the National Planning Policy Framework and Policy DM31 of the Local Plan Part 3, your Officers consider that it is proportionate, appropriate and in the public interest to serve an Enforcement Notice without delay, requiring the necessary remedial works to rectify the harm that has been caused.

### **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 this would not be an appropriate course of action due to the detrimental impact on the visual amenity of the site and the extensive nature of the works undertaken at the site.

Officers also consider that this would not be an appropriate course of action, as the agent acting on behalf of the owner has indicated that it would be their intention to submit an application to retain and complete the works that have been undertaken. Given the extensive nature of the works and the detrimental impact on the visual amenity of the site, it is considered that an application and the works and building would be contrary to both local and national policy, and would therefore not be likely to be considered favourably by the Council. Should an Enforcement Notice be issued, the owner of the property would have the right to appeal to the Planning Inspectorate on the basis that planning permission should be granted, where the planning merits of the works undertaken would be considered by the Inspector.

## **Issue an Enforcement Notice**

Officers consider that this would be the most appropriate way forward for the reasons discussed in this report.

## **The requirements of the Notice**

Delegated authority to the Head of Planning and Legal Services Manager to detail the wording of the works required with regards to:

- 1) Remove all drainage works including pipe work, gravel and stone gabions and any other materials used in relation to the drainage system;
- 2) Demolish the partially constructed blockwork building, along with all foundations and remove resultant materials from the site;
- 3) Reprofile the site to its natural land level/contour and condition as existed prior to the unauthorised works taking place;
- 4) Re-seed the whole site with grass (seed to be specified).

NB. The hedgerow that was removed will need to be replaced. The Local Planning Authority will need to serve a hedgerow replacement notice to ensure this hedgerow is replaced. The Local Planning Authority have written to the land owners regarding this. The hedgerow is not included on the Enforcement Notice as its replacement is required by The Hedgerow Regularised by The Town and Country Planning Act 1990 (as amended).

## **Reasons for Decision:**

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

The works that have undertaken, and proposed use of the site would not enhance the character and appearance of the open countryside and are therefore contrary to policy COR18 of the Mid Devon Core Strategy 2026.

## **Period for Compliance:**

3 months from the date that the Notice comes into effect.