

Case No. ENF/16/00257/UDRU

Grid Ref: 294188 123177

Address:

Land to The North and East of 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 and land drainage works.

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 reinstatement of the land to its previous condition, 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:

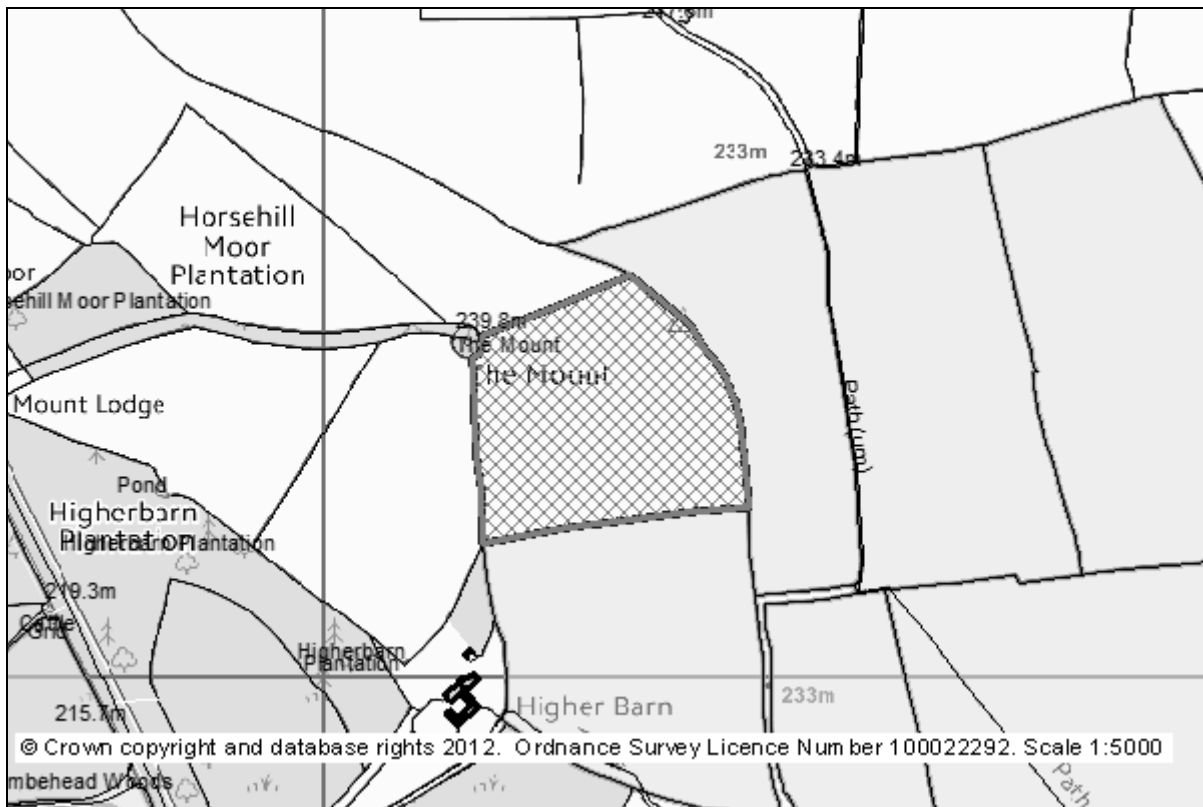
This report relates to the northern field on land to the east of Higher Barn, Bampton, as indicated on the plan below. There are also enforcement concerns in relation to the southern field which is the subject of a separate report.

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 northern field was in agricultural use prior of the works taking place, and is approximately 2.3 hectares in size.

Immediately to the north west of the site is a historic monument known as The Mount which is listed on The Historic England register.

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

Site Plan:



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)

DM2 - High Quality design
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 a Planning Enforcement Officer on the following Monday, 15th August where it was found that works were continuing.

This northern field has been completely reprofiled using heavy machinery, with the top soil removed and being stored in various piles, and a drainage system installed. Part of the hedgerow which divides this site from the field to the south has been removed.

Contact was immediately made with the owner, who advised that 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 intended use of this site was as a motorbike track and golf tee for the private use of the owner.

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 the land setting of the historic mount, and to 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 Temporary Stop 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.

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. It is considered that there are no planning policies that support the provision of a private motorbike/quad bike track or private golf facility on this land.

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, 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 setting of the historic Mount and the visual amenity of the area and the extensive nature of the works undertaken at the site.

Invite a planning application

Officers have already invited the owners of the land to make a planning application for the restoration of the land to its former condition. An application to restore the land has not yet been received. Given the extensive nature of the works and the detrimental impact on the setting of the historic mount and visual amenity of the area, it is considered that an application to retain the works 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 regard to:

- 1) Removal of drainage works including pipework, gravel and any other materials installed in relation to the drainage system;
- 2) Reprofile the site to natural land level/contour and condition, as existed prior to the unauthorised works taking place;
- 3) Re seed the site with grass (seed to be specified);
- 4) All remedial works required in steps 1-3 above shall be carried out in accordance with a written scheme of investigation for archaeological monitoring (to be provided by Historic Environment Service).

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 replanted. 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 Regulations and not by The Town and County 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.