

**Case No.** ENF/16/00269/NUDRU

**Grid Ref:** 286844 111373

**Address:**

Pulsards Farm, Pennymoor, Tiverton, Devon

**Alleged Breach:**

Unauthorised carrying out of engineering operations and excavation works on agricultural land to create a slurry pit.

**Recommendations:**

That Members, having regard to the provisions of the Mid Devon Development Plan and all other material planning considerations in accordance with Sections 172 and 183 of the Town and Country Planning Act 1990, (as amended) should grant authority to the Legal Services Manager to issue a Stop Notice notice requiring the cessation of all works in connection with the creation of slurry pit or digestate storage facility at the site, and an enforcement notice requiring the cessation of all works in connection with the creation of a slurry pit or digestate storage facility at the site and reinstate the land to the same contours and levels as the surrounding agricultural fields.

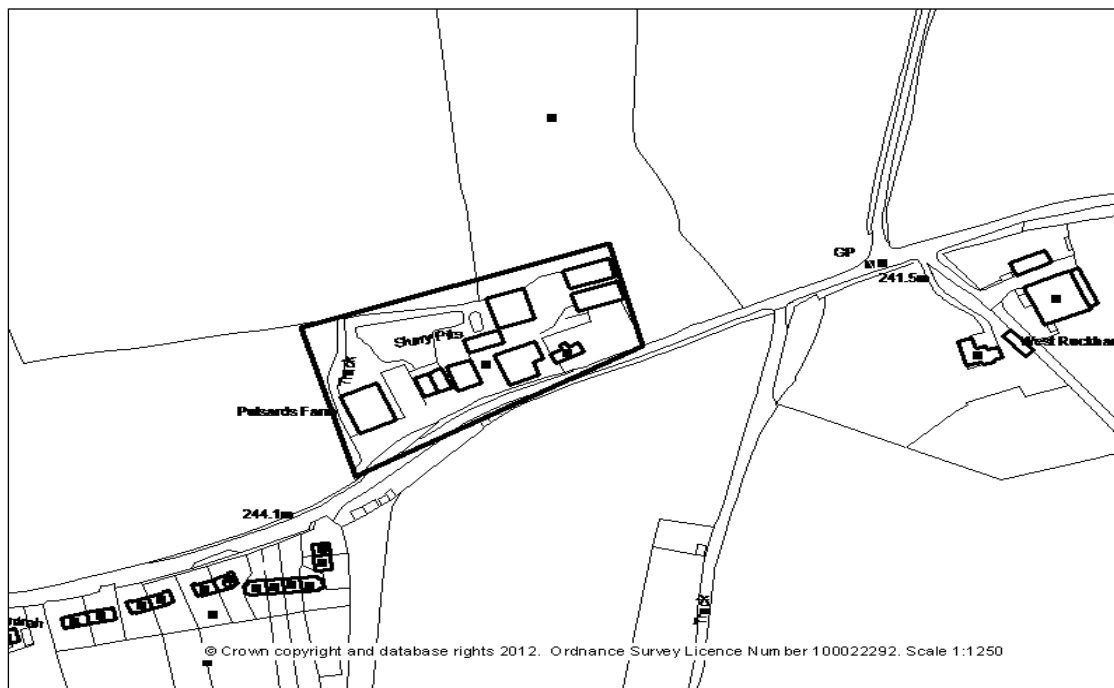
In addition, that authority be given to the Legal Services Manager to take any legal action deemed appropriate including prosecution or Direct Action in the event of non-compliance with the notices.

**Site Description:**

This matter relates to agricultural land at Pulsards Farm, Pennymoor, within the open countryside, which is located to the east of Pennymoor, to the north of the road between Pennymoor Cross and West Ruckham Cross.

The works are being undertaken on land to the north and west of the complex of farm buildings.

**Site Plan:**



## **Site History:**

78/000670/FULL Siting of two caravans – PERMIT – 12.07.78

80/000790/FULL Renewal of planning permission for siting of two caravans – PERMIT – 23.06.80

## **Development Plan Policies:**

National Planning Policy Framework

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

COR18 - Countryside

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

DM1 - Presumption in favour of sustainable development

DM2 - High Quality Design

DM22 - Agricultural Development

DM31 - Enforcement

## **Reasons/Material Considerations:**

The site was initially visited on 31st October 2016 by a Planning Enforcement Officer, following a complaint that there were excavation works taking place on site. From aerial photographs it appears that there has been a small slurry pit at the site for some time, which is believed to have been extended without planning permission in 2012. This has now been completely removed, and further excavation works have taken place to form a much larger and deeper lagoon, with the additional soil that has been excavated placed around the pit. In addition it appears that a hedgerow has been removed without consent.

It appears that the works were being undertaken without planning permission. It involves the excavation and works for provision of the storage of slurry or sewage sludge within 400 metres of a protected building (a dwelling not occupied in connection with the farm), and therefore cannot be permitted development. The sub tenant of the site was advised to cease all work in person, and the tenant was advised by telephone. Further complaints were received that works were continuing, and therefore a Temporary Stop Notice was served on 4th November, following consultation with the Chair and Vice Chair of Planning Committee.

The agent acting on behalf of the tenant responsible for the works has indicated that the primary use of the slurry lagoon is to be for the storage of digestate from various other sites within his control. This would be likely to increase the number of vehicle movements to and from the site, and it appears to your Officers that there has been no considerations given to the impact this would have on the local road network.

It is the view of your Officers that the works which are currently underway and the proposed final uses of the site are unlikely to be acceptable when considered in relation to development plan policies and other material considerations. It is considered that the works are contrary to the provisions of the National Planning Policy Framework para(s) 17, 6 and 109, the Mid Devon Core Strategy (Local Plan part 1) Policy COR18, Mid Devon Local Plan Part 3 Policies (Development Management Policies) DM1, DM2 and DM22.

The service of the Notices as recommended would not prevent the submission of a planning application for an alternative outcome for the site, which would be determined in the normal manner. This would allow for full consideration of the environmental and pollution effects of the development and the degree to which, if at all, they would be able to be mitigated and otherwise controlled by way of condition.

The agent acting for the tenant of the site responsible for these works has indicated that there has been no odour impact assessment carried out prior to their commencement.

A stop notice cannot be served independently of an enforcement notice. Once an enforcement notice is served, it will come into effect after 28 days. The purpose of serving the stop notice would be to prohibit further works in relation to the creation of the slurry pit ahead of the deadline for compliance with the enforcement notice.

The removal of the hedgerow is a separate matter, which will be dealt with in accordance with the Hedgerow Regulations 2007.

**Assessment of costs and benefits:**

Government guidance advises that a cost-benefits analysis be undertaken by the Council prior to the issuing of a Stop Notice. The purpose of the analysis is to determine the likely outcome of the prohibition specified on the person who carries it out, the local economy and balancing this against the benefit to be gained from the stopping of that activity. However, the Courts have confirmed that the recommendation to carry out such an analysis is advisory, and is therefore not binding if the Council can show adequate reasons for not following the advice.

Your officers have considered the likely effect of prohibiting the further works to construct a slurry pit at the site in detail. While this undoubtedly will have financial implications for the site operator, and to a lesser extent, the local company which the tenant has indicated was to bring digestate to the site; Officers consider this is justified in order to protect the amenity and living condition of nearby residential properties. The tenant has an interest in several other agricultural sites in the nearby area, where such a facility could potentially be located without the need for full planning permission, and without such a potential impact on nearby residents. It is also to be noted that the Stop Notice will only prohibit what is essential to safeguard amenity in this location; the other agricultural activities at the site will be unaffected. There will also be a financial implication for those on which the Notices are to be served in terms of the remedial works required; again your Officers consider that this is justified when balanced against the potential harm caused.

Section 186 of the Town and Country Planning Act 1990 (as amended) makes provision for the payment of compensation in respect of a prohibition contained within a stop notice only under specific circumstances. Specifically, compensation is payable where the related Enforcement Notice is quashed (unless this occurs as consequence of the granting of planning permission for the development), is varied so that any prohibited activity in the Stop Notice ceases to be a relevant activity in the Enforcement Notice or is withdrawn by the Council (other than because of the granted of planning permission for the development). Compensation would also be payable if the Stop Notice was withdrawn.

Therefore, there is a financial risk to the Council associated with the serving of a Stop Notice on land at Pulsards Farm, but having considered this point, your Officers are of the view that the risks of a valid compensation claim are minimal in this case.

### **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 that this would not be an appropriate course of action due to detrimental impact on the nearby residents and the wider area that would be likely to occur should works continue as in the same manner in which they were commenced.

**Steps Required:**

Officers consider that this would not be an appropriate course of action due to detrimental impact on the nearby residents and the wider area that would be likely to occur should works continue as in the same manner in which they were commenced.

**Invite a planning application:**

Officers consider that this would not be appropriate, as the works as commenced 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 a Stop Notice and 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 Stop Notice

Cease all works in connection with the creation of a slurry pit or digestate storage facility at the site.

The requirements of the Enforcement Notice

Cease all works in connection with the creation of a slurry pit or digestate storage facility at the site.

Reinstate the land to the same contours and levels as the agricultural fields to the immediate north.

**Reasons for Decision:**

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

The continuation of the unauthorised works would have an adverse impact on the living conditions of local residents and the local environment and is contrary to the provisions of the National Planning Policy Framework para(s) 17, 6 and 109, the Mid Devon Core Strategy Policy (Local Plan Part 1) COR18, Mid Devon Local Plan Part 3 Policies (Development Management Policies) DM1, DM2 and DM22.

**Period for Compliance:**

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