

Case No. ENF/16/00140/UDRU

Grid Ref: 308268 117885

Address:

Longwood Farm, Burlescombe, Tiverton, Devon

Alleged Breach:

Unauthorised change of use of land from agriculture to a mixed use of agriculture and use for the siting of structures for human habitation.

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 a change of use enforcement notice, requiring the cessation of the land for residential purposes the removal of the wooden structures used for human habitation from the land together with all domestic paraphernalia associated with the use of the land for residential purposes. 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 site forms part of an agricultural field on the northern side of Longwood Lane, which runs between Burlescombe and the A38. It is located approximately 1.5km to the north east of Burlescombe village, within the open countryside.

Site Plan:



Site History:

14/00502/FULL Erection of an agricultural storage building - PERMIT

Development Plan Policies:

National Planning Policy Framework

Mid Devon Core Strategy (Local Plan 1)

COR 18 - Countryside

Mid Devon Local Plan Part 3 (Development Management Policies)

Policy DM2 - High quality design

Policy DM10 - Rural workers dwellings

Policy DM31 - Planning enforcement

Reasons/Material Considerations:

Planning permission was granted for an agricultural storage building on the site in July 2014, under reference 14/00502/FULL. A complaint was registered in September 2014 regarding a wooden structure had been constructed on the land which was being used for human habitation. The site was visited, and photographs taken, and it was concluded by the Enforcement Officer at that time that the development was permitted development as it was required temporarily in connection with the implementation of the above planning permission. Works appeared to have commenced on the construction of the agricultural building at that time.

The enforcement team were made aware of the continuing residential occupation of the land in June 2016, and a further site visit was carried out. At that time, there were three wooden buildings on the site; one appeared to be a dwelling, another was being used for domestic storage, and another in use as a composting toilet. There were also various other domestic items on the land, which suggested that it was being occupied. It was noted that very little progress had been made on the construction of the agricultural building, since the visit almost two years previously.

Subsequently, a planning contravention notice was served on the owner of the land, to help establish the position in relation to the use of the land. This was returned and confirmed that two adults are residing on the site within the largest wooden building. The site has changed ownership since planning permission was granted, and the current owner is of the opinion that there is the right to continue to reside on site in connection with the construction of the agricultural building.

Further communications by telephone with the owner of the site have confirmed that no real progress has been made on the building works on the site. There appears to be an issue with access to the site to bring in the necessary building materials for construction, which will necessitate a new track being installed; however this work will in itself be likely to require planning permission, which will lead to further delay.

Officers consider that the largest wooden structure could constitute a dwelling in its own right, which does not have planning permission, but which would be immune from enforcement action after a period of four years have elapsed, irrespective of any other building works that have taken place. The additional buildings that have been constructed are domestic in nature.

There does not appear to be any justification for the continued residential occupation at this time; construction work has not progressed to the extent that it is necessary for those involved to be living at the site. If planning permission were to be sought for the retention of the wooden structures, there would be a need to demonstrate that there was special justification, for example for the use by essential rural workers.

Officers now consider that it is necessary to commence formal enforcement action to secure the cessation of the residential occupation, and to ensure the removal of the domestic structures from the land, which are not appropriate within this rural location without substantial justification. Given that the Council has been aware of the position for some three years, timely action is required to prevent the matter becoming immune due to the passage of time.

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 Human Rights Act 1998. Therefore, Members need to be aware of the fact that the Human Rights Act 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. It is considered in this instance that the recommended course of action would be a proportionate response to the breach of control.

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'.

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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 the use of the land for residential purposes is not appropriate and therefore the service of an Enforcement Notice will prevent the use from becoming immune from enforcement action due to the passage of time. For this reason, it is not considered appropriate to take no action.

Invite a planning application

It is officer opinion that planning permission would not be granted for the reasons outlined in the above report, and therefore it would not be appropriate to invite an application.

Issue an Enforcement Notice

Officers consider that this is the most appropriate course of action for the reasons given in this report.

The Requirement of the Notice:

Cease the use of the land for human habitation.

Remove from the land the three wooden structures used for human habitation and associated domestic purpose together with all domestic paraphernalia associated with the residential use of the site.

Reasons for Decision:

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

The use of the land for residential purposes constitutes unsustainable development in a rural area, where new homes are restricted to those that can be specially justified, for example, for use by essential rural workers. That need has not been proven. Consequently, the development is contrary to the National Planning Policy Framework and Policies COR18 of the Mid Devon Core Strategy (Local Plan Part 1) and DM10 of the Local Plan Part 3 (Development Management Policies). Officers do not consider that planning permission should be given, because planning conditions could not overcome these objections to the development.

Period for Compliance:

Six (6) months after the notice takes effect.