

**Case No.** ENF/16/00243/UDRU

**Grid Ref:** 269330 110461

**Address:**

6 Forestry Houses, Chenson, Chulmleigh, Devon

**Alleged Breach:**

Erection of two storey building in rear garden

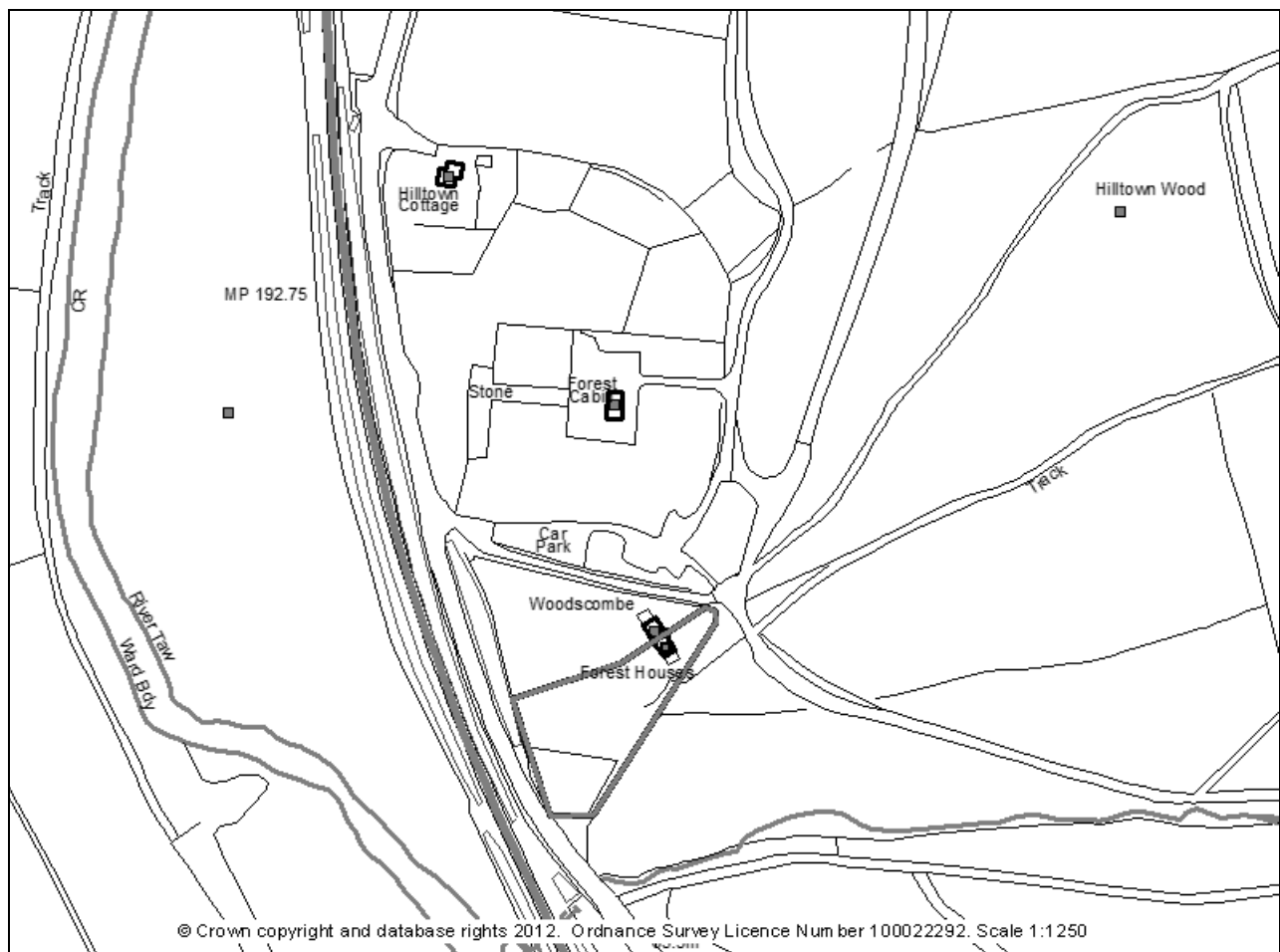
**Recommendation:**

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, ("the Act") should grant authority to the Legal Services Manager take all such steps and action necessary to secure the demolition and removal of the unauthorised development including the issue of an enforcement notice and prosecution and/or Direct Action in the event of non-compliance with the notice.

**Site Description:**

The site is located within the parish of Chawleigh 10, approximately 17 miles north-west of Cridton. The semi-detached property occupies a large elevated plot on the eastern side of the A377 surrounded to the north, east and south by Eggesford Woods.

**Site Plan:**



**Site History:**  
**None**

**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)**  
Policy DM13 - Residential extensions and ancillary development  
Policy DM31 - Planning enforcement

**Reasons/Material Considerations:**

In October 2016, a complaint was received by the enforcement team regarding the erection of a new building within the rear garden of 6 Forestry Houses. An initial site visit in November 2016 established that a two storey, timber clad building with single storey lean-to was under construction. The building comprises three openings at ground floor level and a new uPVC window at first floor level.

At the time of the site visit, the building was still to be completed and comprised two open plan spaces at ground and first floor level. However, the Council had received information prior to the site visit that a number of internal walls had recently removed. The landowner was not present during site visit, therefore, it was not possible to establish the validity of these claims at that time.

A Planning Contravention Notice (PCN) was served on the owner of the land requesting specific information in relation to the building under construction. The PCN was returned to the Council by the landowner, who stated that the two storey building will be used as a home gym at ground floor level, a children's play area at first floor level, while the single storey lean-to is to be used as a poly-covered greenhouse. Within the context of the PCN, the landowner stated that the building had been constructed on the foundations of an existing barn and whilst works first commenced in July 2015, they are currently on hold pending the outcome of the enforcement investigation.

The Council considers the building represents new development, rather than the reconstruction of an existing barn, for which planning consent is required owing to the two storey nature of the building. Whilst the erection of a two storey building in this location might be considered acceptable in planning terms, it is likely that the Council would seek to impose conditions that restrict the use of the building for purposes ancillary to the main dwelling.

Although not pertinent to this case, it is recognised that under Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, the landowner could erect a single storey building in this location without the need for planning consent, however, the landowner has failed to enter into discussions with the Council in this respect, therefore, the LPA has no alternative but to seek the removal of the entire structure.

The landowner was invited to submit a retrospective planning application for the retention of the building as built, yet despite several requests has failed to do so. Despite initial indications that the landowner would seek to regularise the development voluntarily, there has been no further communication with the Local Planning Authority since May 2017. On 20 June 2017, the landowner was advised in writing that the Council intended to prepare a report for the Planning Committee seeking authorisation to issue an Enforcement Notice. The LPA has received no response to this email and a site visit on 13 July 2017 confirmed that the building had not been removed.

It is your officer's view that the landowner has been given every opportunity to seek to regularise the unauthorised development voluntarily yet the breach of planning control remains. The failure of the landowner to submit a retrospective planning application for the building precludes the Council from imposing the necessary controls required to ensure that the building cannot be occupied as a separate unit of residential accommodation and its use and occupation generally. The Council is aware that a smaller unit of ancillary accommodation already exists on site and is keen to ensure that this larger unit does not, now or in the future, constitute a separate dwelling which could become immune from enforcement action through 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 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.

**Reasons for issuing the Notice**

It appears to the Council that this breach of planning control has occurred within the last four years. This breach is in relation to the erection of a two storey building on the land, without the benefit of planning consent. Without the necessary controls afforded by the imposition of planning conditions, the Council has concerns that the building may now, or in the future, be occupied as a separate unit of residential accommodation. The use of the building as an unfettered dwellinghouse would represent an over-development of the site and potentially have an adverse impact of the residential amenity of the immediate neighbours, and furthermore, would be contrary to policy controlling new development in the open countryside. The development is, therefore, considered to be contrary to policy COR18 of the Mid Devon Core Strategy 2026 and policies DM13 and DM31 of the Mid Devon Local Plan Part 3.