

**Case No.** ENF/17/00180/COU**Grid Ref:** 292640 115444**Address:**

Annexe , Pitt Barn, Washfield , Tiverton

**Alleged Breach:**

Change of use of part of a building to a single dwellinghouse in breach of condition 7 to planning permission 07/00257/FULL;

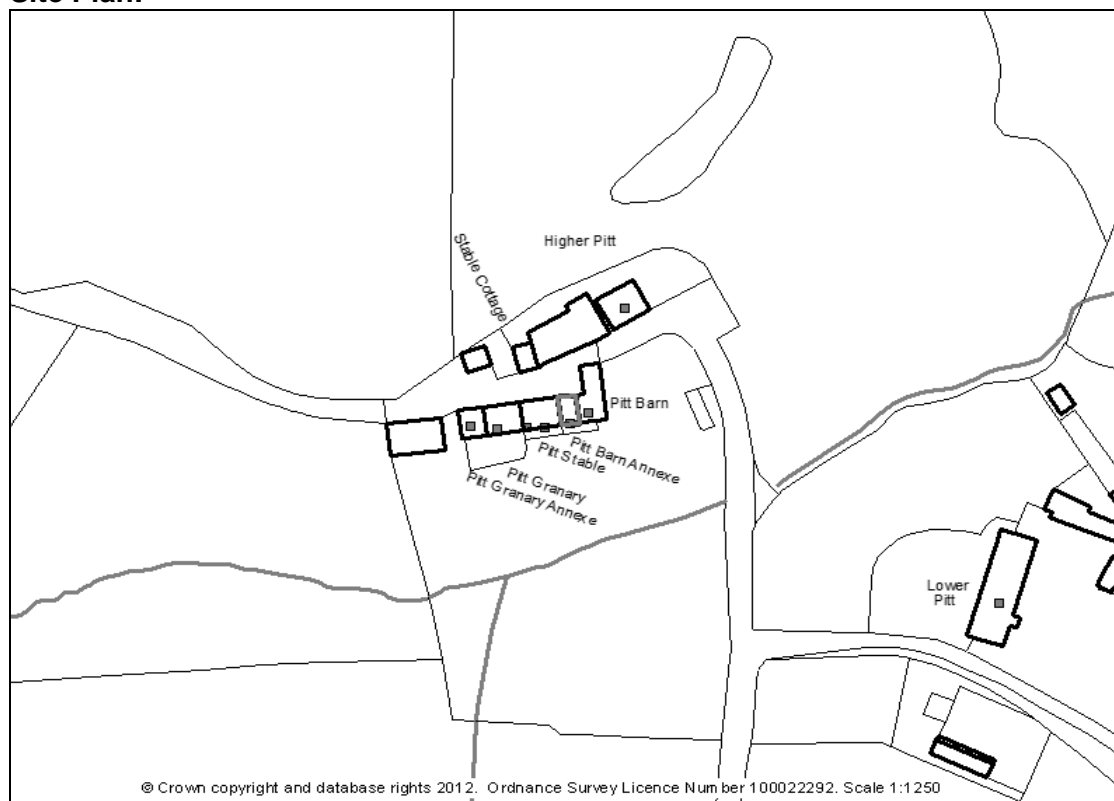
The areas indicated as work areas on the approved drawings shall be permanently retained for B1 purposes in connection with and ancillary to the occupation of the respective dwelling and shall not be used for additional residential accommodation or let, sold or otherwise occupied independently of the dwelling.

**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, ("the Act") should grant authority to the Legal Services Manager take all such steps and action necessary to secure the cessation of the unauthorised change of use, 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 Washfield, approximately 3 miles north-west of Tiverton. The site comprises a number of buildings which have been converted from redundant agricultural buildings at Higher Pitt Farm, Washfield. It is located in the open countryside lying to the north of the A361 North Devon Link Road.

**Site Plan:**

**Site History:**

07/00257/FULL – conversion of redundant farm buildings to 3 live/work units – PERMIT

**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)**

DM2 - High quality design

DM8 - Parking

DM11- Conversion of rural buildings

DM31 - Planning enforcement

**Reasons/Material Considerations:**

In 2007 conditional planning permission was granted for the conversion of redundant farm buildings to three live/work units at Higher Pitt Farm, Washfield.

It is understood the development commenced shortly after permission was granted and Council records suggest the three converted live/work units were occupied from late 2011/early 2012.

On 16th September 2013 it was brought to the attention of the Enforcement Team that the buildings had been converted to and were being occupied as six individual dwellings. The investigating Officer at the time undertook site visits and met with the owner and his agent and it was established that a breach of planning control had taken place - and by the owner's own admission the three work units were being let and occupied as separate dwellings without planning permission. The result was that there were six dwellings on site where there should be three.

At the end of 2014 the matter was left with the owner and his agent to submit a planning application. The matter remained dormant for some time and due to staff changes within the Enforcement Team and ongoing resource issues the case was not picked up before now.

It has been confirmed that no application was ever submitted for planning permission on the basis the Council was not chasing an application. Furthermore the breach of planning still exists in so much as the three work spaces are still being let and occupied as separate dwellings without planning permission.

Owing to the amount of time that has passed since the breach was confirmed in 2013 without any formal action being taken to secure the cessation of the unlawful use of the work units as dwellings, or to enforce compliance with condition 7 of the 2007 planning permission, and according to Council records, at least one of the work units has now been occupied as an independent dwelling for more than four years and is immune from any formal enforcement action. Insufficient evidence has been provided thus far that the other two units have been occupied for more than four years (on the balance of probability) and therefore their use as dwelling remains unlawful - albeit for a very short time as the window of opportunity for taking formal enforcement action expires very soon. Therefore, and to protect the Council's position, it is your Officer's opinion that formal enforcement action is commenced forthwith to secure the cessation of the unlawful use of the work units as dwellings. Given that the Council has been aware of the position since 2013, timely action is now required to prevent the matter becoming immune due to the passage of time.

Council records suggest that the Pitt Barn Annexe (the subject of this report) has been occupied since 7th September 2013 and therefore the last date it would be possible to issue an Enforcement Notice requiring the cessation of its use as a dwelling would be 6th September 2017.

### **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. Your Officers consider that planning permission would be necessary for the change of use described above and seek to assess its suitability as sustainable development. Furthermore a planning application would enable Officers to assess whether there is any policy support for the use of the unit as a dwelling and if necessary control that use with conditional permission.

Given the circumstances of this case the immediate serving of an Enforcement Notice is necessary to stop the clock. It is proposed that a period of three months is given before the Enforcement Notice takes effect instead of the usual 28 day period. This is to allow for the

situation to be regularised if possible before the Notice takes effect. In the event that either planning permission is granted or the use of the building as a dwelling is proven to be lawful then then Council would withdraw the Enforcement Notice.

The current unlawful use is considered to be contrary to policy COR18 of the Mid Devon Core Strategy 2026 and policies DM2, DM8, DM11 and DM31 of the Mid Devon Local Plan Part 3.