

Case No. ENF/15/00171/UCU

Grid Ref: 310657 113330

Address:

Land at NGR 310656 113326, (Hillmoor), Culmstock, Devon

Alleged Breach:

Untidy site causing an adverse effect on the visual amenity of the area arising from the unauthorised change of use of the land from agriculture to a mixed use of agriculture and the storage of business and domestic materials.

Recommendation:

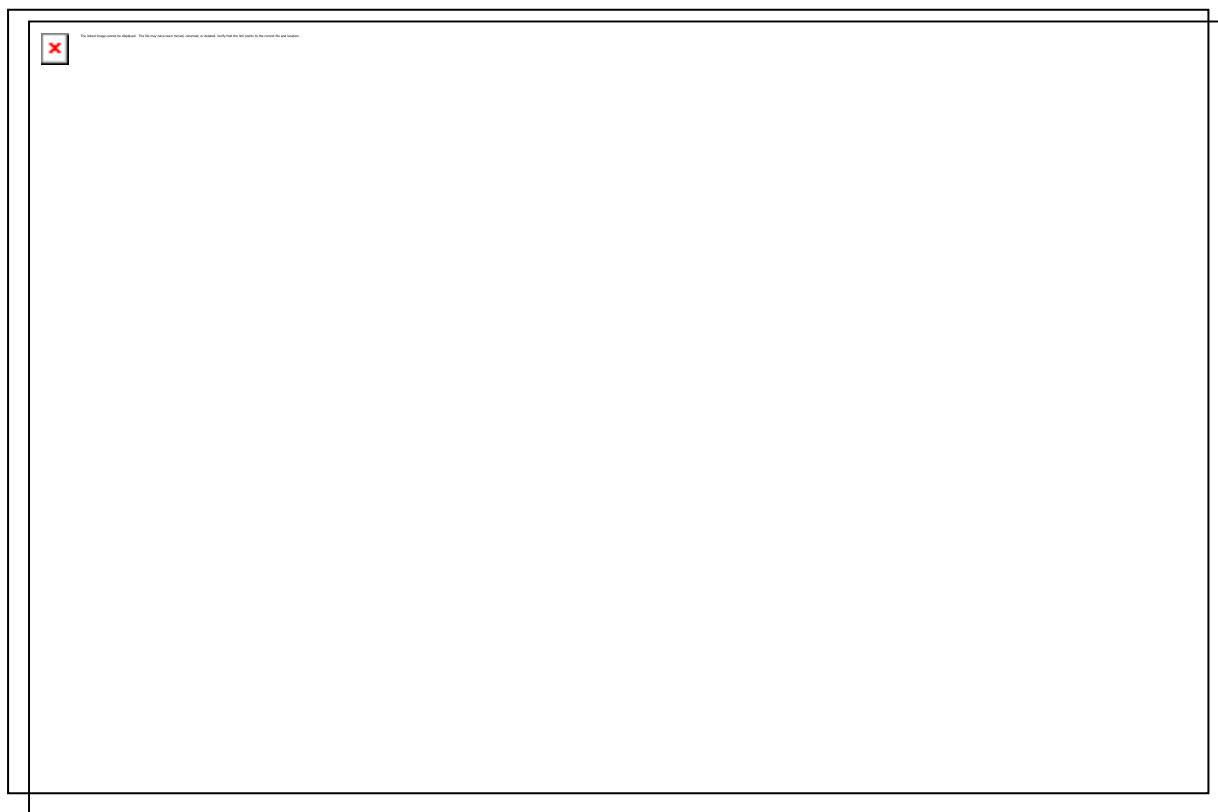
That Members, having regard to the provisions of the Mid Devon Development Plan and all other material planning considerations in accordance with Section 215, Town and Country Planning Act 1990, ("the Act") should grant authority to the Legal Services Manager to take all such steps and action necessary to secure the improvement of the appearance of the land, including the issue of a Section 215 (Untidy Site) Notice and prosecution and/or Direct Action in the event of non-compliance with the notice.

Site Description:

Land at NGR 310656 113326, (Hillmoor), Culmstock, Devon

The site, which forms part of Hillmoor Common, is located within the parish of Culmstock, to the south-east of the village centre and to the south of Hemyock Road (B3391). The site is accessed via a lane off Hemyock Road and falls outside of the settlement boundary and approximately 400m to the north of the boundary of the Blackdown Hills AONB.

Site Plan:



Site History:

16/01241/CLU Certificate of lawfulness for the existing use of land PERMIT
for parking in excess of 10 years

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 DM20 - Rural employment development

Policy DM31 - Planning enforcement

Reasons/Material Considerations:

Members will recall passing a resolution authorising the issue of an enforcement notice for the unauthorised change of use of the land from agriculture to a mixed use of agriculture and use for business and domestic storage on 29 March 2017. The notice was issued on 27 April 2017 and subsequently appealed by the landowner on the grounds that the land had been used for the storage of materials for a period in excess of 10 years and therefore, immune from any enforcement action. The Planning Inspectorate agreed to the landowners request that the matter be heard at a public inquiry and a date was set for November 2017.

Following discussions between the enforcement officer and legal services, it was felt that a public inquiry into this matter was disproportionate with a potential to incur unnecessary costs. Furthermore, Members are advised that in November 2016, an application for a Certificate of Lawfulness for the existing use of the land for storage purposes (reference 16/01241/CLU) was refused by the LPA as the landowner was unable to provide sufficient evidence to support his claims that the land had been used continuously for this purpose for a period of 10 years or more. Having previously considered the evidence submitted with the CLU, your officers having been advised by legal services considered there to be little merit in revisiting the same evidence in a public inquiry. A decision was taken to withdraw the enforcement notice, but to seek to address the issue by other planning enforcement means; namely the issuing of a Section 215 notice.

Your officers recognise that the ongoing storage of materials on the land is having a detrimental impact upon the visual amenity of the locality. Your officers seek to secure improvement of the condition of the land by the removal of all the domestic and business materials, i.e. all those materials not reasonably required in relation to the lawful use of the land for agriculture. It is, therefore, proposed that a Section 215 (Untidy Site) Notice should be served, securing an improvement in the condition of the land. Members are advised that failure to comply with the terms of the Section 215 Notice is an Offence for which the landowner may be prosecuted in the Magistrates Court. In addition, the LPA may also elect to carry out the works in default and recover the costs from the landowner.

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 instigate enforcement action 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:

The breach of planning control concerns an untidy site where the condition of the land is having a detrimental impact upon the visual amenity of the locality.