

# PLANNING COMMITTEE

CHAIRMAN: Cllr Dennis Smith

**DATE:** 26 September 2017  
**REPORT OF:** Business Manager – Strategic Place  
**ITEM:** 8.

## ENFORCEMENT REPORT

**REFERENCE NO:** 12/00345/ENF

### **DESCRIPTION OF DEVELOPMENT**

**TEIGNMOUTH:** The Buntings, Higher Woodway Road, Teignmouth

## **OBSERVATIONS**

### Site History

1. On 7 May 2014 an Enforcement Report was placed before the Planning Committee relating to various activities at land off Higher Woodway Road, Teignmouth. This related to the residential use of the existing barn and the unauthorised change of use of the surrounding land from an agricultural use to a mixed use for agriculture and the production of charcoal and sale of logs. At the Meeting the Members resolved to serve an Enforcement Notice requiring the residential use of the barn to cease together with cessation of the commercial use of the land for the production and sale of charcoal and log sales. A period of six months for compliance was also agreed.
2. Following the Committee Meeting the decision of the committee was challenged by a Judicial Review. Although this was eventually dismissed it was clear from the ongoing enforcement investigation being carried out that there had been some discrepancies between the matters reported to committee resulting from the original investigation and the Owner's explanation of the matters. As such it was considered that additional investigations should be carried out. Furthermore, it was disputed that there was a breach of the planning legislation particularly regarding the residential use of the barn and the charcoal production. It was claimed that the barn was not being used for residential purposes and the sale of charcoal was only the sale of surplus charcoal and was not at a level that amounted to a change of use of the land.

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3. To help resolve the matter a site meeting was carried out on 27 February 2015. It was clear that the land was being used for agricultural purposes with the majority of the caravans and various paraphernalia being used to house livestock or store items associated with the owner's agricultural activities. As for the alleged residential use of the barn, having inspected the inside of the building it was clear that there was no evidence of it being used as a dwelling house.
4. At the time there was also concern being raised about the appearance of the site, particularly when viewed from public viewpoints into the site. At the time of the February visit it was noted that there was a line of strong plastic bags containing timber being stacked and stored adjacent to the public footpath that runs along the southern boundary of the land. At that time it was considered the line of bags of timber was being used to form a means of enclosure and it was considered that no further action should be taken irrespective of the appearance of the bags of timber as existed at that stage.
5. Whilst on site the owner passed the Officers a planning application for Prior Approval under Part 3 Class MB (a) and (b) and paragraph N of the GPDO for the change of use of the agricultural building from agricultural use to a dwelling. However, due to insufficient information the application was not subsequently validated. Despite chasing up the necessary additional information this was never submitted so the application was never validated and eventually the application and fee were returned to the Applicant.
6. Complaints continued to be received about the residential occupation of the site so in order to assess the use of the barn and the caravans sited on the land the Council served a Planning Contravention Notice (PCN) on 9 November 2015. However, this was never returned. On 7 July 2016 a further PCN was served to obtain the information previously requested with a request for additional information but again this was never returned despite a chasing letter from the Council's Solicitor.
7. As it is an offence under the planning legislation not to return a PCN the Council pursued legal proceedings. This resulted in the matter going before the Courts in March 2017. At the hearing it was agreed that the case would be adjourned for 4 weeks for the PCN to be completed and returned.
8. In April 2017 the PCN was returned and from the information given it was clear that the existing barn was being used for residential purposes and it was claimed that there had been a residential use of the land since 2011. It seems currently the original barn is being used for residential purposes along with a caravan sited next to the barn. As it is clear from the PCN that a planning breach relating to the residential use of the barn and caravan is occurring and the Council is still receiving complaints about the state of the site it is necessary to consider what action should be taken, if any, to resolve the planning breaches.

### Appearance of the site

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9. With regard to the appearance of the site it has been noted this has continued to deteriorate with the increase in the number of vehicles, moveable structures and caravans etc. being brought onto the land. In addition it seems that the number of commercial vehicles has increased. It has also been noted that where there had been previously a linear line of bags of timber forming an enclosure adjacent to the Public Footpath this is no longer the case. The bags no longer form a linear boundary feature and are now clearly visible within the site. They are being used to store timber, builder's rubble and building materials. They cannot now be claimed to be fulfilling the primary purpose of a means of enclosure and can therefore no longer be considered permitted development.
10. To resolve the matter the Council has advised the owner in writing to tidy up the site on a number of occasions but to date there is little evidence of the appearance of the site improving. If anything the overall appearance has become worse and is now having a detrimental impact on the amenity of the surrounding area. It is therefore recommended that a notice under section 215 Town and Country Planning Act 1990 be served for:
  - a. The removal of all the bags of logs, timber, rubble, building materials, etc. currently located near the southern boundary of the site and in the open elsewhere within the site
  - b. Removal of all building materials and machinery and all other items currently stored in the open fields other than materials or machinery that are reasonably required for regular agricultural purposes within the unit
  - c. Removal of any items stored in the yard area that are not reasonably necessary for agricultural purposes taking place on the site

### Residential use of the barn and caravan/s

11. It is clear from the PCN that there is an unauthorised use occurring on the land by the use of a caravan and agricultural barn for residential purposes. It is therefore necessary to consider enforcement action. The Council has discretion to take enforcement action, when the Council considers it expedient to do so having regard to the development plan and any other material considerations. The NPPF at paragraph 003 states that *"In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control."*
12. With regard to the unauthorised residential use of the barn and caravan no formal planning application has been submitted for the use but it is clear that a family consisting of two adults and two children are currently living in the barn and caravan. Although no planning permission or deemed consent has been granted for the residential use of the barn, when deciding whether to take enforcement action to stop the use, consideration should be given to the fact that if the planning application for Prior Approval for the change of use of an agricultural building (the barn) from agricultural use to a dwelling had been validated and determined, it is highly likely that it would have been approved as there was no grounds to refuse it. This is a consideration when determining

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whether it is expedient and proportionate to take enforcement action and further whether such action is in the public interest. Since Government policy is to allow the change of use of agricultural buildings to residential use it is not considered expedient or proportionate to take enforcement action in respect of the use of the barn for residential purposes.

13. Therefore, it is considered that the current occupiers should be allowed to continue using the existing agricultural building for residential purposes but action should be taken against the use of the caravans sited on the land for residential purposes. Although it had been hoped to carry out an up to date site inspection prior to this report being written that has not been possible because officers have not been able to get onto the site for reasons that cannot be disclosed in a public report. It has not therefore been possible to identify which of the caravans are being used for residential purposes. Prior to taking enforcement action this matter will be discussed with the Owners to see whether agreement can be reached to remove the caravans by agreement with the residential use of the land being limited to the barn. However, it has not been appropriate for officers to agree this position with the Owners in advance of member approval.
14. It should be noted by Members that if the Council decides not to require action to be taken to remedy the whole of a breach of planning control then there is an "under enforcement" in respect of the breach of planning control not enforced against. The effect of the under enforcement is that if the requirements of the notice have been complied with then planning permission is deemed to be granted for those remaining operations or use. In summary if the Council decides not to take enforcement action against the residential use of the barn then, subject to the rest of the notice being complied with, the use of the barn for residential purposes becomes lawful.

### Agricultural building constructed under Permitted Development Rights

15. In 2012 the Council received a complaint relating to evidence that had been used to support an Agricultural Notification (reference 11/01313/AGR) for a barn to house livestock feed and associated implements that had already been granted on appeal on 21 February 2012. The complaint stated that there had been an error made relating to the amount of land which formed the agricultural holding. In order for the barn to be considered 'permitted development' the holding had to be more than 5 hectares. However, it seems that part of the land indicated as being within the holding was not in fact owned by the applicants. As this means that the size of the holding is less than 5 hectares the barn should not have been granted under the Agricultural Notification process. As it appeared that there was a discrepancy over the information submitted as part of the application, which called into question the validity of the decision, the Council contacted the owner to make them aware of the Council's concerns. Furthermore, the owner was advised not to proceed with the construction of the agricultural building.
16. Towards the end of 2012 it was noted that ground works had commenced on the building without resolving the extent of the land within the agricultural unit.

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As it was considered planning permission may be required for the building the owner was contacted to clarify the extent of the land that comprised the agricultural unit. Although this was never resolved a further legal opinion indicated that the works could proceed as set out in the Agricultural Notification as any issues over the extent of the land should have been dealt with during the application process.

17. Although no further action could be taken in respect of the Prior Approval that had been granted it became clear that the building being constructed had a roof consisting of different roofing materials than were approved, which meant it wasn't in accordance with the terms of the Prior Approval. The materials detailed on the application form indicated a green or grey roof. That under construction consisted of different colours and was considered to have a detrimental impact on the surrounding area. The owner was contacted and advised to change the materials to one colour. From a recent visit to the area it was noted that this has been undertaken so no further action was necessary.
18. More recently concerns have been raised about the size and location of the building. To determine whether the size and location of the building are correct a site inspection was proposed but again this has been held in abeyance due to the access issue with the site. However, it is proposed that a site inspection will be carried out as soon as is reasonably possible. Should it be determined there is a variation to the approved plans the matter will be discussed with the Ward Councillors / Chairman of the Planning Committee to agree whether further action should be taken.

### The Human Rights Act 1998

19. The Owners are using the barn and caravans as their home. As such, the courts will view any decision to take enforcement action as engaging the occupiers' rights under Article 8 ECHR (right to respect for private and family life and home) and Protocol 1 Article 1 (peaceful enjoyment of possessions). The service of an Enforcement Notice requiring the unauthorised residential use to cease would represent a serious interference with these rights. However, it is permissible to do so "insofar as is in accordance with the law and necessary in a democratic society for the protection of rights and freedoms of others".
20. The courts have held that provided a balanced and proportionate approach is taken, having regard to all relevant considerations and not giving irrational weight to any particular matter, the UK planning system (including the enforcement process) is not incompatible with the Human Rights Act.
21. Tackling breaches of planning control and upholding Local Plan policies is clearly in accordance with the law and protects the District from inappropriate development. There are not believed to be any overriding welfare considerations at this time in view of the recommended course of action:
  - The personal circumstances of the occupiers have been considered and fully taken into account.
  - There are not understood to be any current education issues
  - There is no known social services involvement

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- Officers have been advised that there are ongoing welfare issues to be considered, these have been taken into account in the recommendation not to enforce against the residential use of the barn to minimise the impact on the family, although the justification for under enforcement relates to other matters as set out in this report.
22. Members are therefore advised that the recommended enforcement action would be:
- (i) in accordance with law – s.178 (1) T&CPA 1990
  - (ii) in pursuance of a legitimate aim – the upholding of planning law and in particular policies S22 (Countryside) and EN2 (Undeveloped Coast) of the Teignbridge Local Plan 2013 - 33
  - (iii) proportionate to the harm and therefore not incompatible with the Human Rights Act.

### Conclusion

23. The unauthorised siting of residential caravans on the land is clearly contrary to development plan policy and the untidy condition of the land is detrimental to the character of the Undeveloped Coast. The development is also considered contrary to the advice contained in the National Planning Policy Framework. It is now considered appropriate to secure the cessation of the use of the land for the siting of residential caravans and to ensure that the appearance of the site is improved.

### **RECOMMENDATION**

The Committee Members are recommended to resolve

1. That an Enforcement Notice be served to cease the unauthorised use of the land for the siting of residential caravans with a compliance period of six months.
2. That a notice under section 215 Town and Country Planning Act 1990 be served for:
  - a. The removal of all the bags of logs, timber, rubble, building materials, etc. currently located near the southern boundary of the site and in the open elsewhere within the site
  - b. Removal of all building materials and machinery and all other items currently stored in the open fields other than materials or machinery that are reasonably required for regular agricultural purposes within the unit
  - c. Removal of any items stored in the yard area that are not reasonably necessary for agricultural purposes taking place on the site

WARD MEMBERS: Cllr Russell and Fusco, Teignmouth

