



IMPORTANT

THIS COMMUNICATION AFFECTS YOUR PROPERTY

ENFORCEMENT NOTICE

Operational Development & Material Change of Use

**Land at Huntshaw Barton, Huntshaw, Torrington, Devon,
EX38 7HH (HM Land Registry Title No's. DN470268,
DN475100, DN712420 & DN719802)**

Legal Ref: ENF/001/2021

Planning Ref: E/19/0235/UND

TOWN AND COUNTRY PLANNING ACT 1990

(AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991) ("THE ACT")

ISSUED BY: TORRIDGE DISTRICT COUNCIL ("THE COUNCIL")

1. **THIS IS A FORMAL NOTICE** which is issued by the Council because it appears to them that there has been a breach of planning control under Section 171A (1) (a) of the Act at the Land described below. It is considered expedient to issue this notice, having regard to the provisions of the development plan and to all other material planning considerations. The Annex at the end of this notice and the enclosures referred to therein contain important additional information.

2. **THE LAND AFFECTED**

Land at Huntshaw Barton, Huntshaw, Torrington, Devon, EX38 7HH (HM Land Registry Title No's. DN470268, DN475100, DN712420 & DN719802) as shown edged in red on the attached Location Plan (*"the Land"*).

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

(1) Without planning permission and within the last 4 years, unauthorised operational development consisting of engineering works to raise the level of the Land by virtue of the levelling of an earth bank and the laying of stone and hard core on the area shown hatched in blue on the attached Location Plan.

(2) Without planning permission and within the last 10 years, the unauthorised change of use of the Land from agricultural to the mixed use of Use Class B2 (*General Industrial*) and Use Class B8 (*Storage and Distribution*) on the area of the Land shown hatched in blue on the attached Location Plan.

4. **REASONS FOR ISSUING THIS NOTICE**

The Council considers that it is expedient to issue this notice for the following reasons: -

- The unauthorised development is contrary to the sustainability aims of the National Planning Policy Framework (NPPF) when read as a whole.
- The unauthorised development is contrary to Paragraph 180 of the NPPF which sets out that new development must be appropriate for its location taking into account effects and should, as detailed at (a), 'mitigate and reduce to a minimum potential adverse impacts resulting from noise and avoid noise giving rise to significant adverse impacts on health and the quality of life.' It is considered that there is a detrimental identified amenity impact arising out of the unauthorised B2 use, thereby the unauthorised development is considered contrary to para 180 of the NPPF.
- Paragraph 193 of the NPPF states that great weight should be given in decision making to the conservation of heritage assets, with greater weight being applied the more important the asset. The Council's Conservation Officer has identified the Grade II listed Barton Farmhouse and associated curtilage listed barns (including the converted Roundhouse and Stable barns) and Grade II* Listed St Mary Magdalene Church as being affected by the unauthorised development and that this harm arises out of the incremental impact the business has had on the appearance of the landscape that forms their setting. Historic England has also raised concerns on heritage grounds relating to the erosion of the historic rural landscape setting of the

Grade II* listed church. The Council's Conservation Officer and Historic England have both identified the unauthorised development as causing less than substantial harm to the designated heritage assets. Paragraph 194 of the NPPF states 'any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.' Historic England has indicated that the increasing extent and linear form of the unauthorised development as well as the unauthorised use of the land, is harmful to the significance of the Church of St Mary Magdalene. Historic England has expressed that the Church's rural landscape setting is an important contributor to its significance. Paragraph 196 of the NPPF states that where harm is caused to a heritage asset, that harm should be weighed against any public benefits of the proposal.

- NPPF Paragraph 170 advises that planning policies and decisions should contribute to and enhance the natural and local environment by (a) protecting and enhancing valued landscapes. The cluster of buildings that comprise the rural settlement of Huntshaw are closely related and sited on a ridge in the landscape making them visually prominent within this rural area. The Landscape Character Types (1F and 3H) for the site identify this characteristic. The impact of the engineering works and the resultant visual harm arising from the unauthorised development can easily be assessed. The re-grading of land to accommodate the proposed employment uses erodes the locally distinctive characteristics of the landscape and the associated machinery, vehicles, storage structures and other paraphernalia now openly visible within the landscape severely detract from the unspoilt character of the countryside.
- NPPF Paragraph 109 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Paragraph 110 requires applications for development to (d) allow for the efficient delivery of goods. The Local Highway Authority expressed in respect of planning application 1/1166/2019/FUL that *'the overall impact of the proposed development would be 'severe' and the development would not offer 'safe and suitable' access, which would be contrary to Paragraph 109 of the NPPF. Moreover, the proposed development does not "allow for the efficient delivery of goods", which is contrary to 110(d) of the NPPF'*.
- The unauthorised development is also contrary to the following policies in the North Devon and Torridge Local Plan 2011 – 2031: -
- Policy ST07: Spatial Development Strategy for Northern Devon's Rural Area (4): Developments in the countryside will be limited to that which are enabled to meet local economic and social needs. Huntshaw falls to be defined as a 'rural settlement' where Policy ST07 (3) allows appropriately located development of a modest scale to meet locally generated needs, however the development of this Land for the purposes of General Industrial / Storage and Distribution is not considered necessary to meet a specified local need.
- Policy DM14: Rural Economy supports small scale economic development in rural settlements. The Land covers an area of 0.12 hectares which narrowly exceeds the 1 hectare NDTLP definition of 'small-scale economic development.' The unauthorised development is associated within the existing agricultural contractors to the west so it is accepted that the total operation already goes well beyond the NDTLP 'small-scale' definition, however the NDTLP notes at Paragraph 13.93 that 'in supporting economic development it is important that safeguards ensure that proposals are appropriate in scale, type and design and would not result in development that

negatively impacts local residents.’ Paragraph 13.91 accepts that a range of employment activities, particularly associated with tourism, recreation and rural diversification can be accommodated in countryside locations without adverse effects on the character of the area. The unauthorised use for B2 and B8 purposes and associated operational development is not considered appropriate for this rural location, as evident by the conflicts with parts (d), (e) and (f) of this policy (as more particularly explained below).

- Policy ST04: Improving the Quality of Development requires that development will achieve high quality inclusive and sustainable design to support the creation of successful vibrant places. Aspects and principles of design are provided through the more detailed Policy DM04: Design Principles. The unauthorised development is considered to be in conflict Policy DM04’s requirements in parts (b) to ‘reinforce the key characteristics and special qualities of the area’, (d) to ‘contribute positively to local distinctiveness, historic environment and sense of place’ and (f) to ‘retain and integrate existing landscape features’.
- Policy ST14: Enhancing Environmental Assets states that the quality of northern Devon’s natural environment will be protected and enhanced by ensuring that development contributes to conserving and enhancing its local distinctiveness and protecting and enhancing local landscape character, taking into account key characteristics. Policy DM08A: Landscape and Seascape Character states that development should be of an appropriate scale, mass and design that recognises and respects landscape character of both designated and undesignated landscapes and seascapes; it should avoid adverse landscape and seascape impacts and seek to enhance the landscape and seascape assets where possible.’ DM14(f) requires proposals to ‘respect the character and qualities of the landscape and the setting of any affected settlement.’ The unauthorised works, by reason of their scale, siting and open nature, are out of keeping with the character and appearance of the surrounding landscape and form an incongruent, dominant feature within the open countryside in conflict with the identified Landscape Character Types 1F and 3H.
- Policy ST15: Conserving Heritage Assets states that great weight will be given to the desirability of preserving and enhancing northern Devon’s historic environment. Policy DM07: Historic Environment requires all proposals affecting heritage assets to be accompanied by sufficient information, in the form of a Heritage Statement, to enable the impact of the proposal on the significance of the heritage asset and its setting to be properly assessed. Part (2) of Policy DM07 advises: *‘proposals which conserve and enhance heritage assets and their settings will be supported. Where there is unavoidable harm to heritage assets and their settings, proposals will only be supported where the harm is minimised as far as possible, and an acceptable balance between harm and benefit can be achieved in line with the national policy tests, giving great weight to the conservation of heritage assets.’* Consistent with the position set out above in respect of the NPPF, and the positions expressed by Historic England and the Council’s Conservation Officer in respect of planning application 1/1166/2019/FUL, the open storage of large items of construction materials and other items is considered to cause less than substantial harm to the setting of designated heritage assets, namely the Grade II* Listed St Mary Magdalene Church and Barton Farmhouse and associated barns. The proposal is not considered to deliver such public benefits as to outweigh this identified harm. The unauthorised works therefore also fall to be in conflict with Policy DM14(f), which requires historic assets to be respected.

- Policy DM01: Amenity Considerations. The material change of use of the Land and the unauthorised operational development results in harmful levels of noise and disturbance from the operating of machinery and vehicles. This results in a significant impact on the amenity of neighbouring occupier's contrary to Policy DM01 which requires development to not significantly harm the amenities of any neighbouring occupiers or uses. Furthermore, Policy DM14(d) seeks to prevent economic development at rural settlements causing an adverse impact on the living conditions of local residents. Policy DM02: Environmental Protection (2) states development will be supported where it does not result in unacceptable impacts to (a) atmospheric pollution by gas or particulates, including smell, fumes, dust, grit, smoke and soot; (b) pollution of surface or groundwater (fresh and salt) including rivers, canals, other watercourses, waterbodies, wetlands, water gathering grounds including catchment areas, aquifers, groundwater protection areas, harbours, estuaries or the sea; (c) noise or vibration; and (d) light pollution. Policy DM04: Design Principles (i) requires development to ensure the amenities of existing and future neighbouring occupiers are safeguarded. The development of the site and storage of materials in the expanded area of the yard has already garnered a number of complaints from local residents. The settlement is in a rural location and is not suitable for the storage of such items as large concrete pipes and large fabricated metal structures. The movement of such items and the need for the use of mobile cranes to manoeuvre and test some of these items, along with the carrying out of industrial processes, especially in the early hours of the morning, detract from the amenity of the neighbouring dwellings.
- Policy DM05: Highways states that all development must ensure safe and well designed vehicular access and egress, adequate parking and layouts which consider the needs and accessibility of all highway users including cyclists and pedestrians. The road giving access to the site is by reason of its inadequate width, poor vertical alignment, poor horizontal alignment, limited passing opportunities and condition, is considered unsuitable to accommodate the increase and type of traffic likely to be generated, as expressed by the Local Highway Authority in respect of planning application 1/1166/2019/FUL. The unauthorised works also fall to be in conflict with Policy DM14(e), which requires the scale of employment to be appropriate to the accessibility of the site and the standard of the local highway network.

The Council considers that the above reasons for issuing this notice cannot be overcome by planning conditions.

5. WHAT YOU ARE REQUIRED TO DO

You must:

- (i) Cease the use of the Land for the unauthorised mixed use of Use Class B2 (*General Industrial*) and Use Class B8 (*Storage and Distribution*).
- (ii) Remove all machinery, equipment and other items from the Land.
- (iii) Remove the stone and hard core (including any subbase and membrane) from the Land.
- (iv) Reinstate the earth bank and restore the Land to its condition before the development took place and to its use for agriculture.

6. TIME FOR COMPLIANCE

The period for compliance with the steps set out in paragraph 5 is:

- (i) 6 months from the date this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 15th June 2021 (“the effective date”)* unless an appeal is made against it beforehand.

Dated: 13th May 2021 (date of issue)

Signed:

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Staci Dorey – Head of Legal and Governance (& Monitoring Officer) COUNCIL’s AUTHORISED OFFICER

On behalf of

Torridge District Council, Riverbank House, Bideford, EX39 2QG

Nominated Enforcement Officer: Grant McGill

Telephone Number: 01237 428 715

ANNEX

Torrige District Council has issued an enforcement notice relating to Land at Huntshaw Barton, Huntshaw, Torrington, Devon, EX38 7HH and you are served with a copy of that notice as you have an interest in the Land. Copies of the notice have been served on the parties listed at the end of this Annex.

YOUR RIGHT OF APPEAL

You can appeal against this enforcement notice, but any appeal must be **received** by the Planning Inspectorate (or be posted or electronically communicated at such time that, in the ordinary course of post or transmission, it would be delivered to the Planning Inspectorate) **before** the effective date. The attached Planning Inspectorate Guidance Sheet provides details of where you can obtain further information on the appeals process. Read it carefully.

Under section 174 of the TCPA 1990 you may appeal on one or more of the following grounds that:

- In respect of any breach of planning control which may have been constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.
- Those matters have not occurred.
- Those matters (if they have occurred) do not constitute a breach of planning control.
- At the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
- Copies of the enforcement notice were not served as required by section 172 of the TCPA 1990.
- The steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by such breach.
- Any period specified in the notice in accordance with section 173(9) of the TCPA 1990 falls short of what should reasonably be allowed.

If you appeal under ground (a) of section 174(2) of the TCPA 1990 this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay a fee of £1,404.00. You should pay the fee to Torrige District Council.

If you decide to appeal, you should state in writing the grounds(s) on which you are appealing against the enforcement notice and you should state briefly the facts on which you intend to rely in support of each of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the effective date and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.