

**IMPORTANT -THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**TOWN AND COUNTRY PLANNING ACT 1990 (TCPA 1990)**

**ENFORCEMENT NOTICE**

**Issued by: EXETER CITY COUNCIL (the Council)**

**1. ENFORCEMENT NOTICE - Change of Use**

**1.1 This is a formal notice** issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the TCPA 1990, at the Land. 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 the notice and the enclosures to which it refers contain important additional information.

**2. THE LAND TO WHICH THE NOTICE RELATES**

**2.1** Land at on the south-west side of Mill Road, Countess Wear, Exeter, shown edged and hatched red on the attached plan (the Land).

**3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

**3.1** Without planning permission, the material change of use of the Land from open space with nil use to an enclosed area for use as domestic amenity or garden space.

**4. REASONS FOR ISSUING THIS NOTICE**

**4.1** It appears to the Council that the above breach of planning control has occurred within the last ten years.

The Land was open wild uncultivated land without change until the recent enclosure with close boarded fencing. The Land is situated between the tributary to the river Exe in Riverside Valley Park and Mill Road, Countess Wear and is sited opposite Lime Kiln Lane. It is a natural gateway for local people to access and benefit from the tributary and wetlands which comprise the upper reaches of the Exe Estuary, an important protected wildlife habitat. The change of use is development likely to damage a site of nature conservation contrary to saved Local Plan LS4.

The Land is important in being on the fringe of an existing important wildlife habitat and supports local wildlife. The development will have a detrimental impact on the local environment and is will have an impact on local wildlife contrary to Local Plan Policy LS2 and Core Strategy CP11.

The enclosure of the Land would harm the existing point of access to the Valley Park and will damage the local distinctiveness and character of the immediate area contrary to saved Local Plan Policy L1.

The loss of public access to the Valley Park caused by the fencing enclosing the Land causes loss of a local access link to an existing habitat and is contrary to Core Strategy CP16

The fencing around the Land is visually damaging to the character and quality of the local environment and is therefore contrary to Core Strategy policies CP4, CP11 and CP17.

The Land is within Flood zone 3 and the fencing enclosure of the Land will contribute to the cumulative damage likely to occur in periods of local flooding, contrary to Local Plan Policy EN4 and Core Strategy CP12, and should be removed.

The Council consider that planning permission should not be given, because planning conditions could not overcome these objections to the development.

## **5. WHAT YOU ARE REQUIRED TO DO**

### **5.1** You must:

- (i) Stop using the Land or any part of the Land as a garden or as domestic amenity space
- (ii) Remove from the land all fencing around the Land in the position marked on the attached plan with a green line and leave the Land open to the public.
- (iii) Remove all items of a domestic or garden nature and leave the Land to return to its natural wild state.

## **6. TIME FOR COMPLIANCE**

**6.1** The period for compliance with the steps set out in paragraph 5 is 8 weeks from the date this notice takes effect.

## **7. WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on 27 November 2017, unless an appeal is made against it beforehand.

Dated: 24 October 2017

Signed: ..., *Andy Robbins*

Andy Robbins  
City Development Manager

on behalf of Exeter City Council, Civic Centre, Paris Street, EXETER, EX1 1JN

Nominated officer: Goran Molin, Project Manager, City Development

Telephone number: 01392 265251

## ANNEX

**EXETER CITY COUNCIL** has issued an enforcement notice relating to land at Mill Road and you are served with a copy of that notice as you have an interest in the Land. Copies of the notice have also been served on the parties listed at the end of this Annex.

### YOUR RIGHT OF APPEAL

You can appeal against this enforcement notice,

If you want to appeal against this enforcement notice you need to submit a copy of the enforcement notice a copy of your appeal and a plan and other documents in support of your appeal. You can do this:

- Online at the Planning Casework Service area of the Planning Portal (<https://www.gov.uk/appeal-enforcement-notice>); or
- By post to The Planning Inspectorate, Room 4a, Temple Quay House, 2 The Square BRISTOL BS1 6PN.

**You MUST make sure that the Planning Inspectorate receives your appeal before the effective date on the enforcement notice.**

Under section 174(2) of the TCPA 1990 you may appeal on one or more of the following grounds that:

- (a) In respect of any breach of planning control which may be 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.
- (b) Those matters have not occurred.
- (c) Those matters (if they have occurred) do not constitute a breach of planning control.
- (d) 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.
- (e) Copies of the enforcement notice were not served as required by section 172 of the TCPA 1990.
- (f) 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.
- (g) Any period specified in the notice in accordance with section 173(9) of the TCPA 1990 falls short of what should reasonably be allowed.

Not all of these grounds may be relevant to you.

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 £385. You should pay the fee to Exeter City Council.

If you decide to appeal, you should state in writing the ground(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, the enforcement notice will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, 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 under s179 of the TCPA 1990 and/or remedial action and a claim for the costs of the works by the Council under s178 of the TCPA 1990. Copies of these sections are attached.

### **Persons served with a copy of this enforcement notice are as follows:**

Mr Stephen James Akers  
Kiln House  
Lime Kiln Lane  
Exeter EX2 6LW

Ms Joanne Clare Howell  
Kiln House  
Lime Kiln Lane  
Exeter EX2 6LW

Ms Pamela Kay Vowles  
Straddlestones  
32 Ottrells Mead  
Bradley Stoke  
Bristol BS32 0AJ

Ms Debra Jane Hankin  
71 Malmains Way  
Park Langley  
Beckingham BR3 6SF

Ms Dena Louise Johns  
Gwynfa House  
Balaclava Road  
Glais  
Swansea SA? 9HH

Ms Clare Lorraine Ashton  
12 Little Meadow  
Bradley Stoke  
Bristol BS32 8AT

Person unknown



## **EXTRACTS FROM THE TOWN AND COUNTRY PLANNING ACT 1990**

### **178 - Execution and cost of works required by enforcement notice.**

- (1) Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may -
  - (a) enter the land and take the steps; and
  - (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them **in** doing so.
- (2) Where a copy of an enforcement notice has been served in respect of any breach of planning control
  - (a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice, and
  - (b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the local planning authority in taking steps required by such a notice to be taken,Shall be deemed to be incurred or paid for the use and at the request of the person by whom the breach of planning control was committed.

### **179 - Offence where enforcement notice not complied with.**

- (1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.
- (2) Where the owner of the land is in breach of an enforcement notice he shall be guilty of an offence.
- (3) In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.
- (4) A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
- (5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.
- (6) An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.
- (7) Where-
  - (a) a person charged with an offence under this section has not been served with a copy of the enforcement notice; and
  - (b) the notice is not contained in the appropriate register kept under section 188It shall be a defence for him to show that he was not aware of the existence of the notice.
- (8) A person guilty of an offence under this section shall be liable [on summary conviction, or on conviction on indictment, to a fine.]

- (9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence