

Dear Cllr Whitehead,

Thank you for your email and for passing the Parish concerns to me however unfortunately in this instance I cannot help.

As you may be aware, we advised Andy Boyce back in February 2024 that we have established a technical breach of planning control, in relation to the relocation of a tank under the open space area. It is the Planning Officer's opinion that should an application be submitted for this amendment it is likely to be supported and therefore serving an Notice to have it removed, is not considered expedient or necessary. I am advised by Roger (the Planning Officer) that the area of land in question is available for use. It is considered there is no specific amenity impact to a third party or house within the estate, in terms of odour, atmospheric pollution by gas or particulates noise, impact on enjoyment of property (DM01 – Amenity, NPPF paragraph 135: Accordant)

The siting of the tank does not unduly inhibit the ability to utilise the open space for its intended purpose. The tank is well hidden below ground and does not adversely affect the setting of the site or prevent use of the open space. The open space is available as per the s106 (DM10 Green Infrastructure Provision: accordant)

The siting of the tank does not present undue design or visual harm to the character of the estate or wider street scene (ST04 – Improving the quality of development, DM04 – Design NPPF part 12 – design: accordant)

Environmental Health have not raised objections in respect of the amended siting of the tank on the land.

In conclusion, the Planning Officer has assessed the technical breach against our planning policies and concluded that the works are acceptable. We do not seek the submission of a planning application or take enforcement action in respect of works that we conclude are acceptable. Government advice is that 'While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought'.

The advice continues by stating that 'enforcement action should always be commensurate to the breach of planning control to which it relates. (For example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control, which causes no harm to amenity in the locality of the site).'

The issue of who is responsible for the upkeep of the open space/ tank falls to the s106 covenant as a Civil matter for the Parish Council and developer. It is not an enforcement issue. **We will not be commenting on whether compensation is appropriate or due, this is between the Parish and the developer.**

I trust the above clarifies the position being taken and I am sorry we cannot assist any further with this matter.

Kind regards
Stacey

Stacey Salter | Planning Enforcement Officer (Development Management)
Strategic Development & Planning | North Devon Council | Barnstaple
stacey.salter@northdevon.gov.uk tel 01271 388797

