



IMPORTANT

THIS COMMUNICATION AFFECTS YOUR PROPERTY

ENFORCEMENT NOTICE

OPERATIONAL DEVELOPMENT

**74 Newport Road, Barnstaple, Devon, EX32 9BG
(HM Land Registry Title Number DN267763)**

**TOWN AND COUNTRY PLANNING ACT 1990
(As amended by the Planning and Compensation Act
1991)
("The Act")**

**ISSUED BY: North Devon District Council ("the
Council")**

LEGAL FILE NO: LS/DH/14099
PLANNING ENF NO: PD/FS/ENF/10182

1. **THIS IS A FORMAL NOTICE**, which is issued by the Council because it appears to it that there has been a breach of planning control, under Section 171A (1) (a) of the Act, at the land described below. The Council considers it expedient to issue this notice, having regard to the provisions of the development plan and to other material considerations.

2. **THE LAND AFFECTED**

74 Newport Road, Barnstaple, Devon, EX32 9BG (HM Land Registry Title Number DN267763) as shown edged red on the enclosed Location Plan.

("The Building")

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

Without planning permission and within the last 4 years, unauthorised Operational Development consisting of the replacement of the first floor bay window with a uPVC window to the front elevation of the Building.

4. **REASONS FOR ISSUING THIS NOTICE**

This Enforcement Notice has been issued to remedy the alleged breach of planning control. The Council considers it expedient to issue this notice for the following reasons:-

The installation of the uPVC window has already been the subject of the attached planning appeal Ref: APP/X1118/D/17/3178885, which was dismissed on the 8 December 2018.

The main issue considered was whether or not the development preserves or enhances the character or appearance of the Newport Conservation Area.

Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. This approach is reiterated in saved policy ENV16 of the North Devon Local Plan (adopted originally in July 2006, the 'LP').

The National Planning Policy Framework ('NPPF') similarly establishes that great weight should be given to the conservation of designated heritage assets, including Conservation Areas. It also sets out that any harm resulting from development should be weighed against its public benefits.

No 74 is a modest historic terraced property in commercial use at ground floor level with accommodation above. It falls within an area comprising a mix of main town centre and residential uses within the Newport Conservation Area ('NCA'). Whilst there is some variety in the design and historic integrity of nearby properties, the area nevertheless has a broadly consistent close knit pattern of development which reflects the Georgian and Victorian expansion of this area of Barnstaple.

Adjoining Grade II Listed No 73 Newport Road, the Old Dairy, is of particular significance. It is described in the NCA Character Appraisal (dated December 2009, the 'CA') as of at least seventeenth century origin and representing 'the oldest structure in anything approaching its original condition in Newport'. The first floor bay window of No 74 is readily visible from various vantage points along either side of Newport Road, including in conjunction with No 73.

The CA identifies that bay windows are characteristic features of the area, and that the replacement, cumulatively, of timber sash windows with modern units has been detrimental to the historic integrity of the NCA. The NCA Management Plan further explains the importance of retaining traditional features such as window joinery, and refers to the benefit of carefully considering the design and detailing of any window replacement.

Several nearby properties have uPVC windows. This may, in certain instances, have resulted from the exercise of permitted development rights from which No 74 does not benefit. However traditional timber windows are nonetheless present in the surrounding area, notably at No 72 Newport Road, and sash windows are commonplace. Moreover the existence of modern windows nearby does not justify allowing unacceptable development.

The uPVC bay window at No 74 has a standardised, engineered and comparatively bulky appearance on account of its materials, design and the limited detailing present. This is in contrast to an individual, crafted and finely detailed character that is represented in traditional windows within the NCA, such as at No 72.

The upper central pane of the bay window is also hung so as to open from the top rail (such that when open it would overhang the pavement along Newport Road). This method of opening is inconsistent with that of traditional sash windows, and would serve to exacerbate the modern and incongruous appearance of the bay window at certain times.

As the bay window projects from the principal elevation of the property, the development is highly visible, and more prominent in the street scene than other windows in adjoining Nos 75 to 78 (or other windows of No 74). In this context, and viewed in conjunction with No 73 in particular, the bay window fails to preserve the historic character or appearance of the area.

The bay window previously in place may have been in need of repair. However this does not justify the particular design of the window unit now present, and moreover any benefits from the new bay window are essentially private (including any reduction in ongoing maintenance and improved insulation).

The harm resulting from the development may fairly be described as less than substantial within the terms of the NPPF on account of the limited effect of the development on the NCA as a whole. However neither the benefits of the development, are sufficient to outweigh the public harm arising or to justify taking a decision other than in accordance with the development plan.

For the above reasons the development fails to preserve the character or appearance of the NCA, in conflict with LP policy ENV16 and relevant elements of the NPPF, and by consequence with LP policy ENV17 'Listed Buildings' which seeks to preserve the setting of Listed Buildings. Having considered the development plan as a whole, the approach in the NPPF, and all other relevant matters, it is concluded that the window should be replaced to match the timber window removed.

The Local Planning Authority considers that the unauthorised Operational development has occurred within the last 4 years and that the above reasons for issuing this Notice cannot be overcome by the use of Planning Conditions.

5. WHEN YOU ARE REQUIRED TO ACT

The Council requires that the steps specified in paragraph 6 below be undertaken within 6 months from the date when this notices takes effect

6. WHAT YOU ARE REQUIRED TO DO

1. Replace the unauthorised uPVC window with a traditional single glazed timber framed vertical sliding sash window as shown in the attached photograph.
2. Paint the replacement window with two coats of undercoat and two coats of gloss paint.
3. Make good any damage caused to the Building from complying with Step 1 above and remove the uPVC window and any associated debris from the curtilage of the Building.

7. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 2 April 2018 ("the effective date") unless an appeal is made against it beforehand.

Dated:

2 April 2018

Signed:

[Redacted Signature]

Solicitor, Head of Corporate & Community

On behalf of: North Devon District Council
Lynton House
Commercial Road
Barnstaple
Devon,
EX31 1DG

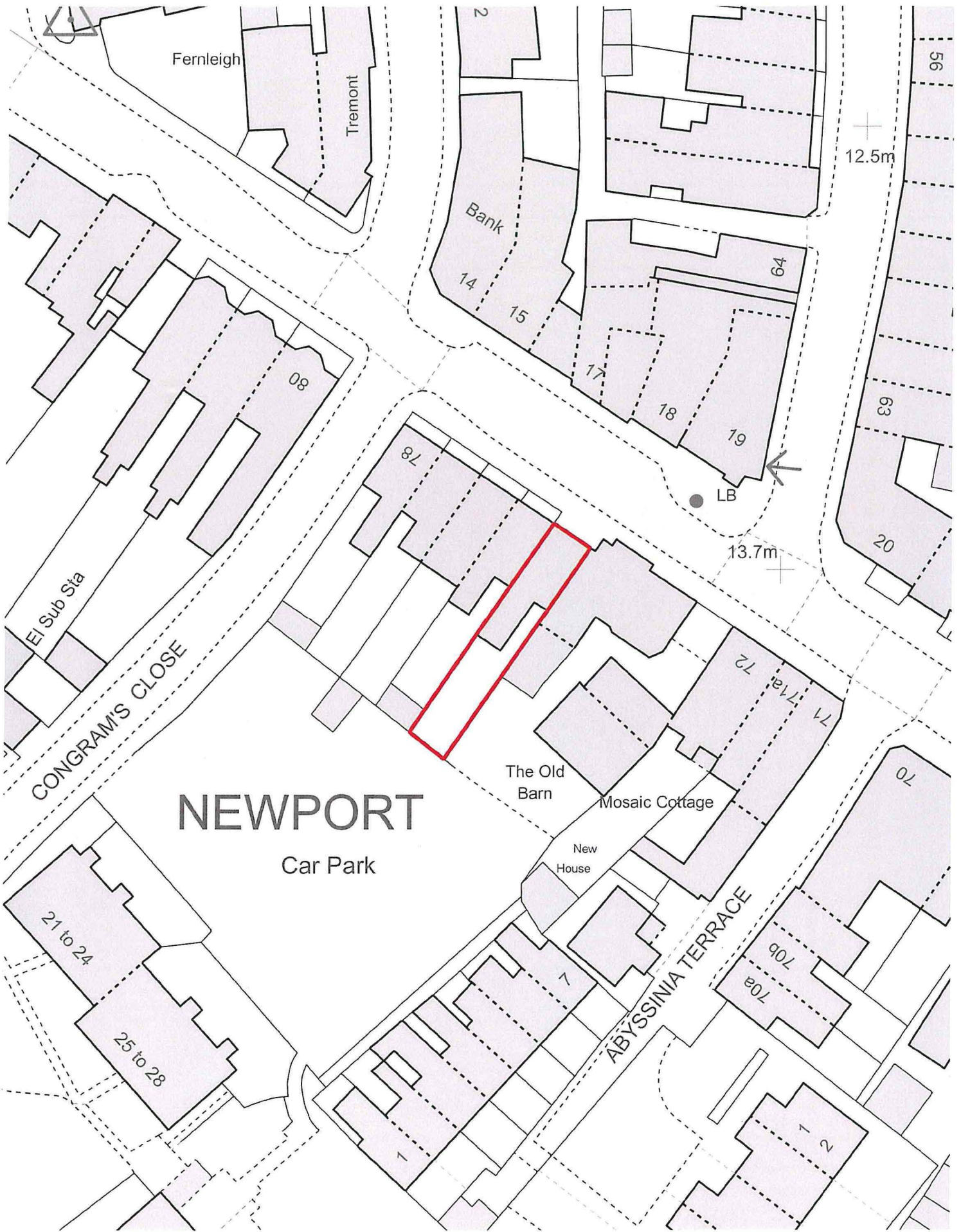
GUIDANCE NOTES FOR YOUR INFORMATION

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before the effective date. The attached Planning Inspectorate Guidance Sheet provides details of where you can obtain further information on the appeal process. Read it carefully. Please note that the fee payable for a Ground A appeal is £344.00 (2 x £172.00)

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[s] specified in the notice. Failure to comply with an Enforcement Notice, which has taken effect, can result in prosecution and/or remedial action by the Council.



Lynton House, Commercial Road,
Barnstaple, EX31 1EA

Enforcement 10182
74 Newport Road, Barnstaple EX32 9BG

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Appeal Decision

Site visit made on 4 December 2017

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8th December 2017

Appeal Ref: APP/X1118/D/17/3178885

74 Newport Road, Barnstaple EX32 9BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Johnny Sandbach against the decision of North Devon District Council.
 - The application Ref 62899, dated 28 February 2017, was refused by notice dated 20 June 2017.
 - The development is the replacement of a bay window with uPVC.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application form indicates that the development was completed on 4 February 2017. Permission is therefore sought retrospectively. The description of development in the banner heading above is that used in the Council's decision notice as this is more succinct and relevant to planning than that given on the application form.
3. The appellant has provided a photograph of No 74 before the development was undertaken. However, in the absence of visiting the area previously, I cannot determine how the development relates to the first floor bay window formerly in place at No 74. My decision therefore focusses on the appropriateness of the development at present.

Main issue

4. The main issue is whether or not the development preserves or enhances the character or appearance of the Newport Conservation Area.

Reasons

5. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. This approach is reiterated in saved policy ENV16 of the North Devon Local Plan (adopted originally in July 2006, the 'LP').

6. The National Planning Policy Framework ('NPPF') similarly establishes that great weight should be given to the conservation of designated heritage assets, including Conservation Areas. It also sets out that any harm resulting from development should be weighed against its public benefits.
7. No 74 is a modest historic terraced property in commercial use at ground floor level with accommodation above. It falls within an area comprising a mix of main town centre and residential uses within the Newport Conservation Area ('NCA'). Whilst there is some variety in the design and historic integrity of nearby properties, the area nevertheless has a broadly consistent close knit pattern of development which reflects the Georgian and Victorian expansion of this area of Barnstaple.
8. Adjoining Grade II Listed No 73 Newport Road, the Old Dairy, is of particular significance. It is described in the NCA Character Appraisal (dated December 2009, the 'CA') as of at least seventeenth century origin and representing 'the oldest structure in anything approaching its original condition in Newport'. The first floor bay window of No 74 is readily visible from various vantage points along either side of Newport Road, including in conjunction with No 73.
9. The CA identifies that bay windows are characteristic features of the area, and that the replacement, cumulatively, of timber sash windows with modern units has been detrimental to the historic integrity of the NCA. The NCA Management Plan further explains the importance of retaining traditional features such as window joinery, and refers to the benefit of carefully considering the design and detailing of any window replacement.
10. Several nearby properties have uPVC windows. The Council explain that this may, in certain instances, have resulted from the exercise of permitted development rights from which No 74 does not benefit. However traditional timber windows are nonetheless present in the surrounding area, notably at No 72 Newport Road, and sash windows are commonplace. Moreover the existence of modern windows nearby does not justify allowing unacceptable development.
11. The uPVC bay window at No 74 has a standardised, engineered and comparatively bulky appearance on account of its materials, design and the limited detailing present. This is in contrast to an individual, crafted and finely detailed character that is represented in traditional windows within the NCA, such as at No 72.
12. The upper central pane of the bay window is also hung so as to open from the top rail (such that when open it would overhang the pavement along Newport Road). This method of opening is inconsistent with that of traditional sash windows, and would serve to exacerbate the modern and incongruous appearance of the bay window at certain times.
13. As the bay window projects from the principal elevation of the property, the development is highly visible, and more prominent in the street scene than other windows in adjoining Nos 75 to 78 (or other windows of No 74). In this context, and viewed in conjunction with No 73 in particular, the bay window fails to preserve the historic character or appearance of the area.

14. The appellant explains, and the Council does not dispute, that the bay window previously in place was in need of repair. However this does not justify the particular design of the window unit now present, and moreover any benefits from the new bay window are essentially private (including any reduction in ongoing maintenance and improved insulation).
15. The harm resulting from the development may fairly be described as less than substantial within the terms of the NPPF on account of the limited effect of the development on the NCA as a whole. However neither the benefits of the development, nor any other matter brought to my attention, are sufficient to outweigh the public harm arising or to justify taking a decision other than in accordance with the development plan.

Conclusion

16. For the above reasons the development fails to preserve the character or appearance of the NCA, in conflict with LP policy ENV16 and relevant elements of the NPPF, and by consequence with LP policy ENV17 'Listed Buildings' which seeks to preserve the setting of Listed Buildings. Having considered the development plan as a whole, the approach in the NPPF, and all other relevant matters, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

2/12/2018

Google Maps



Image capture: Oct 2016 © 2018 Google

<https://www.google.co.uk/maps/@51.0721987,-4.0484677,3a,75y,227.15h,104.92t/data=!3m7!1e1!3m5!1srtwTU3xRRxhnU7AygWVagg!2e0!5s20161001T000000!7i13312!8i6656>

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