



**IMPORTANT**

**THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**ENFORCEMENT NOTICE**

**OPERATIONAL DEVELOPMENT**

**100 – 101 High Street, Ilfracombe, Devon, EX34 9NH  
(HM Land Registry Title Number DN211864)**

**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")**

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**

100 – 101 High Street, Ilfracombe, Devon, EX34 9NH (HM Land Registry Title Number DN211864) as shown edged red on the enclosed Location Plan.

(“The Land”)

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 windows with uPVC windows to the front elevation of the Building

4. **REASONS FOR ISSUING THIS NOTICE**

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

This Enforcement Notice has been issued to remedy the alleged breach of planning control.

The replacement of the first floor bay windows with uPVC windows to the front elevation of the Building has been subject of a planning application reference 64150 which was refused 5<sup>th</sup> February 2018.

The main issue considered was whether or not the development preserves or enhances the character or appearance of the Ilfracombe Conservation Area and whether any overriding sustainability or amenity concerns would outweigh any harm resulting from the development.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires Local Planning Authorities to pay special attention to the desirability of preserving or enhancing the appearance or character of the designated conservation area within which a development is located.

These provisions are also echoed in the wording of Policy ENV16 of the North Devon Local Plan (NDLP).

In terms of general provisions of the development in respect of design, Policy DVS1 of the NDLP does not permit development that does not use the appropriate forms set out in Table 2B, including details, materials and character. Paragraph 4.4 of the supporting text defines character to be a 'place with its own identity', which is considered in an appeal case at No.77 High Street, Ilfracombe reference App/X1118/C/08/2078934.

It is also imperative, given the advanced stage of the emerging North Devon and Torridge Local Plan, which has been through Examination and several rounds of consultation, that the emerging policies are given weight when considering the development.

Emerging Policy DM04: Design Principles identifies the key consideration relating to good designs stating the following, which has been condensed to the particular point relevant to the development:

***'(1 ) Good design seeks to guide overall scale, density, massing, height, landscape, layout, materials, access and appearance of new development. It seeks not just to manage land use but support the creation of successful places and respond to the challenges of climate change. Development proposals need to have regard to the following design principles:***

- (a) are appropriate and sympathetic to setting in terms of scale, density, massing, height, layout appearance, fenestration, materials and relationship to buildings and landscape features in the local neighbourhood;***
- (b) reinforce the key characteristics and special qualities of the area in which the development is proposed;***
- (c) are accessible to all, flexible to adaptation and innovative;***
- (d) contribute positively to local distinctiveness, historic environment and sense of place;....'***

The principles are largely similar in their objectives to the wording of current policy DVS1 however with reinforcement of the requirement at paragraph 60 of the NPPF where there is a need for development to reinforce local distinctiveness without stifling innovation, originality or initiative through unsubstantiated requirement to conform to certain development styles or forms.

Emerging Policy DM07 reflects the wording and requirements of the NPPF at paragraph 128 and 134 as well as introducing further sustainability criteria in respect of improving efficiency of historic buildings and areas, but not at the cost of the historic fabric and setting of the identified asset.

Having identified the detailed policy context relating to the site, it is therefore necessary to identify the change in character from the unauthorised replacement windows with UPVC units. The lower boxing of the bay windows has been retained and repainted therefore improving the somewhat dilapidated appearance. In the process of these renovation works the traditional timber framed bays were removed and replaced with UPVC units.

The change in materials of such large prominent windows is clearly distinguishable from the public realm in which they are situated, which led to that change being brought to the LPA's attention through the enforcement procedure. In addition, replacement units, as with most UPVC replacements, host heavy frames, chunky glazing bars and have lost the definition of the profile of the windows, including that which results from the sliding sash mechanism. The introduction of a casement projecting outwards changes the visual appearance of the window. The step in profile has also been lost between the top boxing of the window and the window itself with the UPVC unit now flush and appearing integral to the boxing topped with the scalloped lead. The uniformity of the design and appearance of the new windows therefore removes part of the unique historic character of the Ilfracombe Conservation Area. These changes do not preserve or enhance the Conservation Area and therefore lead to less than substantial harm which must be weight in the balance against the public benefits of the proposals as required by Paragraph 134 of the NPPF.

In respect of the material consideration of previous appeal decisions for similar UPVC replacement windows in the Ilfracombe Conservation Area, one cited above for No.77 High Street and APP/X1118/A/13/2203534 for Harleigh House Hotel on Wilder Road. Both appeals clearly describe the visual changes between UPVC and timber units and the resulting harm that this has to the historic context of the area. A further appeal relating to the removal of a bay window in Newport Conservation Area reference APP/X1118/D/17/3178885 is also comparable in describing the changes between UPVC and historic timber windows.

Both of the Ilfracombe appeals also explore the presence of existing and possibly unauthorised UPVC units throughout the Conservation Area and whether this is setting precedent for their overall acceptability. As the host building also include UPVC on the second floor, this is wholly relevant, and these windows, whilst regrettable they have been changed, were never authorised and do not have the form and prominence of the bays windows currently being considered. The appeal decisions make it clear that the presence of UPVC within the Conservation Area is not a defining characteristic of quality which would appropriately justify the removal of timber windows.



The extract below from paragraph 8 of App/X1118/C/08/2078934 for 77 High Street, Ilfracombe makes clear the purpose and role of LPAs in seeking to safeguard historic character:

‘...It would be all too easy for this High Street to turn into any other by the use of standardised modern and utilitarian solutions, whether in the form of replacement shop fronts or windows, and the Council is right to address harmful changes by issue of an Enforcement Notice. This street might not be a ‘jewel of historic facades’ but it is a unique historic environment that fully justified its selection and categorisation as a CA. In this context the windows that have been installed at No77 compromise local distinctiveness rather than responding to or reinforcing it for reasons identified in paragraph 4 above.’

Great weight is however afforded to the preservation and enhancement of heritage assets through Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the policies of the Statutory Development Plan. The development as carried out is not considered to comply with Policies DVS1 and ENV16 of the NDLP or the emerging Local Plan policies DM04 and DM07. It therefore remains subject of paragraph 134 of the NPPF to weigh the public benefits of the proposals against the harm identified.

#### *Residential Amenity and Energy Efficiency*

The dilapidation and replacement of the windows are intrinsically linked to improving the overall efficiency of the building for the living conditions of its occupants, and in meeting sustainable development aims in respect of reducing the pressures of climate change, therefore making it a material consideration.

Energy efficiency is a design principle of Policy DVS1 in Table 2B and is also a criterion within emerging Policy DM07 specifically in respect of historic environments needing to adapt to the pressures of climate changes in a suitable manner. Regardless of the above provisions, there are now timber framed products on the market with energy efficient design and glazing which would seek to replicate the historic form of the windows removed in this case. Furthermore Heritage England guidance ‘Energy Efficiency and Historic Buildings - Application of Part L of the Building Regulations to historic and traditionally constructed buildings’ (Dec 2017) gives extensive views on improving thermal efficiency of historic properties and specific exemption for Building Regulations requirements are made for historic buildings (listed and unlisted) in order to ensure that historic environment isn’t compromised by standard Building Regulation requirements.

Given the above, whilst some benefits in improving the thermal efficiency and living costs for occupants of the accommodation would result, the weight afforded to this is limited in terms of a public benefit of the proposals.

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 notice takes effect

**6. WHAT YOU ARE REQUIRED TO DO**

1. Replace the unauthorised uPVC windows with traditional single glazed timber framed vertical sliding sash windows.
2. Paint the replacement windows with two coats of undercoat and two coats of gloss paint.
3. Make good any damage caused from complying with Steps 1 and 2 above and remove the uPVC window and any associated debris from the land shown edged red on the Location Plan.

**7. WHEN THIS NOTICE TAKES EFFECT**

This Notice takes effect on 21 June 2018 ("the effective date") unless an appeal is made against it beforehand.

Dated: 21 May 2018

Signed:

.....  
Chief Planning Officer

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

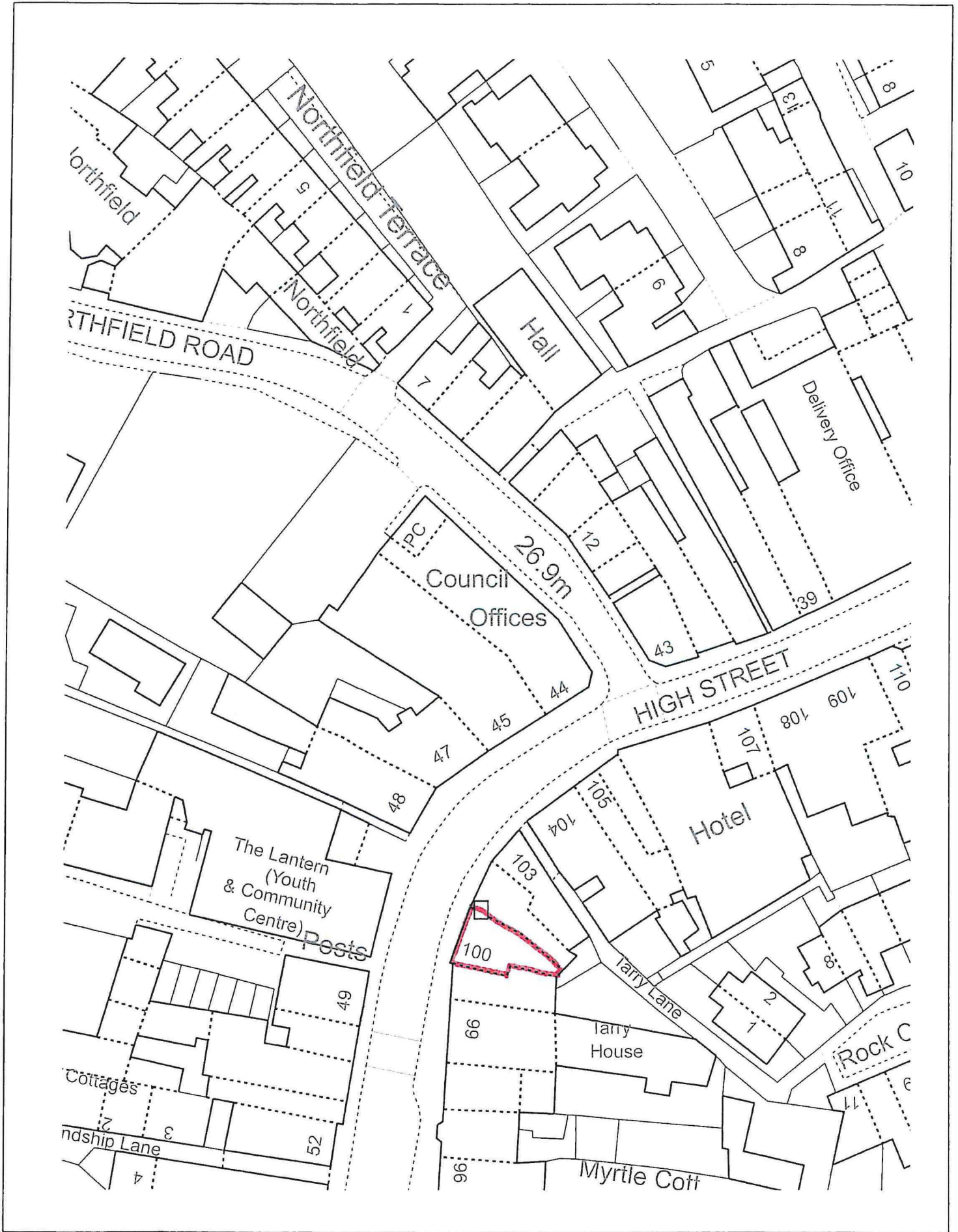
## **GUIDANCE NOTES FOR YOUR INFORMATION**

### **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 £412.00 (2 x £206.00)**

### **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

**UNAUTHORISED WORKS TO LISTED BUILDING - INSTALLATION OF UPVC  
WINDOWS AT 100 101 HIGH STREET ILFRACOMBE NORTH DEVON EX34  
9NH**

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