



IMPORTANT

THIS COMMUNICATION AFFECTS YOUR PROPERTY

**LISTED BUILDING
ENFORCEMENT NOTICE**

UNAUTHORISED WORKS

**5 Fortescue Road, Ilfracombe, North Devon,
EX34 9AD**

(HM Land Registry Title Number DN473131)

**PLANNING (LISTED BUILDINGS AND
CONSERVATION AREAS) ACT 1990 (AS
AMENDED) ("THE ACT")**

ISSUED BY: North Devon District Council
("the Council") being the Local Planning Authority for the
purposes of part 1 of the Act in which the listed building
described in paragraph one overleaf is situate.

1. THE LAND/BUILDING AFFECTED (shown edged red on the attached Location plan)

5 Fortescue Road, Ilfracombe, North Devon, EX34 9AD

("the building") being a listed building as defined in Section 1 of the Act.

2. THIS IS A FORMAL NOTICE which is issued by the Council in respect of the building because it appears to the Council that there has been a contravention of Section 9(1) of the Act with regard to work(s) that have been executed to the building. The Council consider it expedient to issue this notice, having regard to the effect of the works on the character of the building as one of special architectural or historic interest.

3. THE ALLEGED CONTRAVENTION

It appears to the Council that the following works, namely

Replacement of ornamental cast iron crestings on the bay windows and the porch on the front elevation of the building

"the works" have been executed to the building and the works involve a contravention of Section 9(1) of the Act in that they are works for the alteration of the building in a manner which would affect its character as a building of special architectural or historic interest and have not been authorised pursuant to Section 8 of the Act as no listed building consent has been granted in respect thereof.

4. WHEN YOU ARE REQUIRED TO ACT

The Council require that the steps specified in paragraph 5 below be undertaken in order to bring the building to the state in which it would have been if the works had not been executed within the period of 6 months from the date when this notice takes effect.

5. WHAT YOU ARE REQUIRED TO DO

1. Remove the ornamental crestings on the bay windows and the porch on the front elevation of the building as shown in photograph 1 appended to this Notice.
2. Reinstall the ornamental cast iron crestings on the bay windows and the porch on the front elevation of the building as shown in photograph 2 appended to this Notice
3. Make good any damage caused to the building from complying with steps 1 and 2 above.

6. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 26 September 2016 ("the effective date") unless an appeal is made against it beforehand.

Dated : 25 August 2016

Signed :

Solicitor, Head of Corporate & Community

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

EXTRACTS FROM THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 (AS AMENDED)

Appeal against listed building enforcement notice

39(1) A person having an interest in the building to which a listed building enforcement notice relates or a occupier may appeal to the Secretary of State against the notice on any of the following grounds-

- (a) That the building is not of special architectural or historical interest;
- (b) that the matters alleged to constitute a contravention of Section 9(1) or (2) have not occurred;
- (c) that those matters (if they occurred) do not constitute such a contravention;
- (d) that works to the building were urgently necessary in the interest of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
- (e) that listed building consent ought to be granted for the works, or that any relevant condition or such consent which has been granted ought to be discharged, or different conditions substituted;
- (f) that copies of the notice were not served as required by Section 38(4);
- (g) except in relation to such a requirement as is mentioned in Section 38(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- (h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
- (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
- (j) that steps required to be taken by a virtue of Section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building;

(k) that steps required to be taken by virtue of Section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms of the conditions of the listed building consent had been complied with.

(2) An appeal under Section shall be made either-

(a) by giving written notice of appeal to the Secretary of State before the date specified in the listed building enforcement notice as the date on which it is to take effect; or

(b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.

(3) Where such an appeal is brought the listed building enforcement notice shall [subject to any order under Section 65(3A)] be of no effect pending the final determination or the withdrawal of the appeal.

(4) A person who gives notice of appeal under this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed, a statement in writing -

(a) specifying the grounds on which he is appealing against the listed building enforcement notice; and

(b) giving such further information as may be prescribed.

(5) if, where more than one ground is specified in the statement, the appellant does not give information under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any grounds to which the appellant has failed to give such information within that time.

(6) Where any person has appealed to the Secretary of State under this Section against a notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(7) In this section "relevant occupier" means a person who -

(a) on the date on which the listed building enforcement notice is issued occupies the building to which the notice relates by virtue of a licence in writing; and

(b) continues so to occupy the building when the appeal is brought.

Execution of works required by listed building enforcement notice

42. (1) If any of the steps specified in the listed building enforcement notice have not been taken within the period for compliance with the notice, the authority may -

- (a) enter the land and take those 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 listed building enforcement notice has been served in respect of a building -

- (a) any expenses incurred by the owner or occupiers of the building for the purpose of complying with it, and
- (b) any sums paid by the owner of the building under subsection (1) in respect of expenses incurred by the local planning authority in taking steps required by it, shall be deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.

(3) Regulations under this Act may provide that all or any of the following sections of the Public Health Act 1936, namely -

- (a) Section 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds do sale);
- (b) Section 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises);
- (c) Section 294 (limit on liabilities of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act), shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a listed building enforcement notice.

(4) Regulations under subsection (3) applying all or any of section 289 of that Act may include adaptations and modifications for the purpose of giving the owner of land to which such a notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice.

(5) Regulations under section (3) may also provide for the charging on the land on which the building stands of any expenses recoverable by a local planning authority under subsection(1).

(6) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offence where listed building enforcement notice not complied with

43 (1) Where, at any time after the end of the period for compliance with the notice, any step required by a listed building enforcement notice to be taken has not been taken, the person who is then owner of the land is in breach of the notice.

(2) If at any time the owner of the land is in breach of a listed building enforcement notice he shall be guilty of an offence.

(3) An offence under this section 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 this section by reference to any period of time following the preceding conviction for such an offence.

(4) In proceedings against any person for an offence under this section, it shall be a defence for him to show -

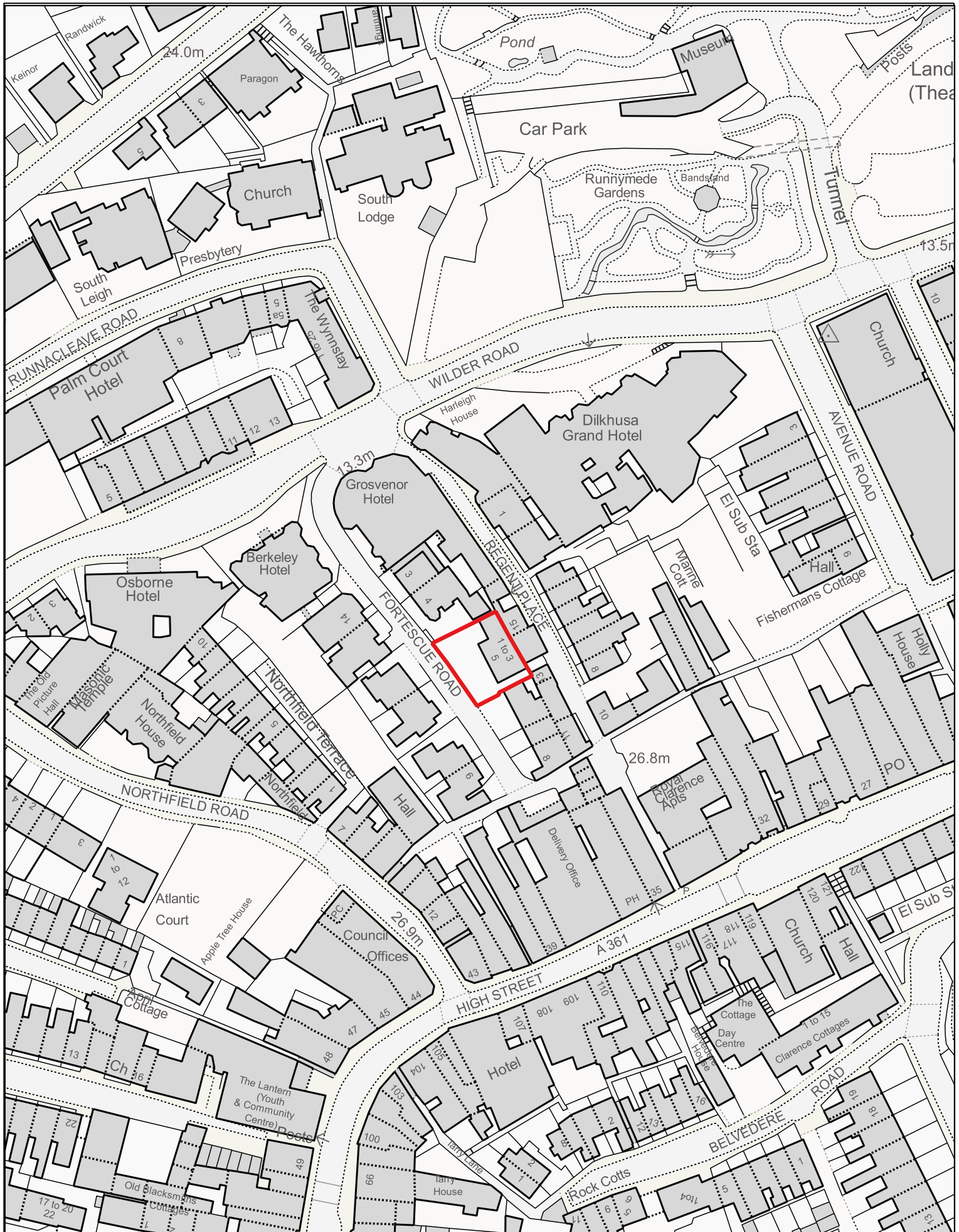
(a) that he did everything he could be expected to do to secure that all the steps required by the notice were taken; or

(b) that he was not served with a copy of the listed building enforcement notice and was not aware of its existence.

(5) A person guilty of an offence under this section shall be liable -

(a) on summary conviction or on conviction on an indictment to a fine.

(6) In determining the amount of any fine to be 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.



Lynton House, Commercial Road,
Barnstaple, EX31 1EA

Location Plan 9308 - 5 Fortescue Road, Ilfracombe EX34 9AD

Copy Supplied to:
Planning

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