

3. This notice shall take effect subject to the provisions of Section 88(3) of the Town and Country Planning Act 1971, at the end of the period of 31 days beginning with the 25th day of August 1976.


SCHEDULE 1

Land at 97A Newport Road, Barnstaple, Devon which land is shown edged in red on the plan annexed thereto.

SCHEDULE 2

The making of a material change in the use of the said land, namely the use of the land for the storage of liquefied petroleum gas cylinders

Dated at Barnstaple this 23rd day of August 1976.


Deputy Secretary

North Devon District Council,
Civic Centre,
North Walk,
Barnstaple, EX31 1EA.

N O T E: YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES WHICH EXPLAIN YOUR RIGHTS OF APPEAL AGAINST THIS NOTICE. YOU SHOULD READ THEM CAREFULLY. An Enforcement Notice relating to this development has also been served on Fairway Motors (Barnstaple) Ltd., 97A Newport Road, Barnstaple, N. Devon.

NOTES

PENALTIES FOR NON-COMPLIANCE

1. You have been served with an enforcement notice which will come into effect at the expiry of the period stated in paragraph 3 of the notice. You then have the further period set out in paragraph 2 of the notice in which to comply with the requirements set out. If you fail to comply within that time you will be liable to prosecution and, on conviction, to a fine. The continuing contravention after conviction can lead to a further fine for each day the offence continues.

RIGHT OF APPEAL

2. You have a right of appeal against the notice to the Secretary of State for the Environment. If you do appeal, the notice will not come into effect until the appeal is finally determined.

WHEN TO APPEAL

3. An appeal MUST be made within the period at the end of which the notice is stated to take effect. This is the period set out in paragraph 3 of the notice. THE SECRETARY OF STATE HAS NO POWER TO EXTEND THIS PERIOD NOR TO ACCEPT AN APPEAL MADE OUT OF TIME.

HOW TO APPEAL

4. There are no special forms on which to make an appeal, but it should be made in writing and addressed to the Secretary of State for the Environment, Becket House, Lambeth Palace Road, London, SE1 7ER. and the envelope marked "Enforcement Appeal". You should state (a) the grounds on which the appeal is made, and (b) the facts on which those grounds are based. (It will help the Secretary of State in dealing with the preliminary stages of the appeal (see paragraph 7 below) if you enclose a copy of the enforcement notice or, failing that, state the name of the Council serving the notice, and the address of the property or location of the land enforced against. If you have also made, or are making, an appeal against a refusal of planning permission in respect of the same land, you should mention this as well).

GROUND ON WHICH AN APPEAL CAN BE MADE

5. An appeal can be made on one or more of the grounds set out in Section 88(1) of the Town and Country Planning Act 1971 - reproduced with other relevant sections of the Act below. In general, grounds (c) and (d) are mutually exclusive. Ground (c) can be pleaded only where the enforcement notice alleges one of the following types of breach:-

- a. the carrying out of building or other operations without planning permission; or
- b. failure to comply with a condition requiring the carrying out of building or other operations; or
- c. change of use of any building to use as a single dwellinghouse without planning permission.

STATING THE FACTS

6. The statement of facts in support of the appeal must be more than just a reiteration of the grounds set out in section 88(1) of the Act and must at least give the basic facts on which you rely in pleading those grounds. For example, where ground (c) or (d) is pleaded, you should give, as far as you are able, the actual date when the building or other operations took place, when the use commenced, or when the failure to comply with the condition occurred, as the case may be.

EXTRACTS FROM THE TOWN AND COUNTRY PLANNING ACT 1971

Appeal to the Secretary of State against enforcement notice.

SECTION 88

(1) A person on whom an enforcement notice is served or any other person having an interest in the land may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds:

- (a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged;
- (b) that the matters alleged in the notice do not constitute a breach of planning control;
- (c) in the case of a notice which, by virtue of section 87(3) of this Act may be served only within the period of four years from the date of the breach of planning control to which the notice relates, that that period has elapsed at the date of service;
- (d) in the case of a notice not falling within paragraph (c) above, that the breach of planning control alleged by the notice occurred before the beginning of 1963;
- (e) that the enforcement notice was not served as required by section 87(4) of this Act;
- (f) that the time required by the notice to be taken to remedy any breach of planning control;
- (g) that the specified period for compliance with the notice falls short of what should reasonably be allowed.

(2) An appeal under this section shall be made by notice in writing to the Secretary of State, which shall indicate the grounds of the appeal and state the facts on which it is based; and on any such appeal the Secretary of State shall, if either the appellant or the local planning authority so desire, afford to each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(3) Where an appeal is brought under this section the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(4) On an appeal under this section

- (a) the Secretary of State may correct any informality, defect or error in the enforcement notice if he is satisfied that the informality, defect or error is not material;
- (b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 87(4) of this Act to be served with the notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

(5) On the determination of an appeal under this section, the Secretary of State shall give directions for giving effect to his determination, including, where appropriate, directions for quashing the enforcement notice or for varying the terms of the notice in favour of the appellant, and the Secretary of State may

- (a) grant planning permission for the development to which the enforcement notice relates or, as the case may be, discharge any condition or limitation subject to which planning permission for that development was granted;
- (b) determine any purpose for which the land may, in the circumstances obtaining at the time of the determination, be lawfully used having regard to any past use thereof and to any planning permission relating to the land.

(6) In considering whether to grant planning permission under subsection (5) above, the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject-matter of the enforcement notice, and to any other material considerations, and any planning permission granted by him under that subsection may

- (a) include permission to retain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;
- (b) be granted subject to such conditions as the Secretary of State thinks fit;

and where under that subsection he discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

(7) Where an appeal against an enforcement notice is brought under this section, the appellant shall be deemed to have made an application for planning permission for the development to which the notice relates and, in relation to any exercise by the Secretary of State of his powers under subsection (5) above, the following provisions shall have effect:

- (a) any planning permission granted to the appellant shall be treated as granted on the said application;
- (b) in relation to a grant of planning permission or a determination under that subsection, the Secretary of State's decision shall be final; and
- (c) for the purposes of section 34 of this Act (local planning authority's register of planning applications), the decision shall be treated as having been given by the Secretary of State in dealing with an application for planning permission made to the local planning authority.

Penalties for non-compliance with enforcement notices

89 (1) Subject to the provisions of this section, where an enforcement notice has been served on the person who, at the time when the notice was served on him, was the owner of the land to which it relates, then, if any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken within the period allowed for compliance with the notice, that person shall be liable on summary conviction to a fine not exceeding four hundred pounds, or on conviction on indictment to a fine.

(2) If a person against whom proceedings are brought under the preceding subsection has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of the land, he shall, upon information duly laid by him, and on giving to the prosecutor not less than three clear days' notice of his intention, be entitled to have the person who then became the owner of the land for this section referred to as "the subsequent owner" brought before the court in the proceedings.

(3) If, after it has been proved that any steps required by the enforcement notice have not been taken within the period allowed for compliance with the notice, the original defendant proves that the failure to take those steps was attributable, in whole or in part, to the default of the subsequent owner,

- (a) the subsequent owner may be convicted of the offence; and
- (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the enforcement notice, shall be acquitted of the offence.

(4) If, after a person has been convicted under the preceding provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the enforcement notice, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding fifty pounds for each day following his first conviction on which any of the requirements of the enforcement notice (other than the discontinuance of a use of land) remain unfulfilled, or on conviction on indictment to a fine.

(5) Where, by virtue of an enforcement notice, a use of land is required to be discontinued, or any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations thereon, then if any person uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, in contravention of the notice, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding four hundred pounds or on conviction on indictment to a fine; and if the use is continued after the conviction, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding fifty pounds for each day on which the use is so continued, or on conviction on indictment to a fine.

(6) Any reference in this section to the period allowed for compliance with an enforcement notice is a reference to the period specified in the notice for compliance therewith or such extended period as the local planning authority may allow for compliance with the notice.

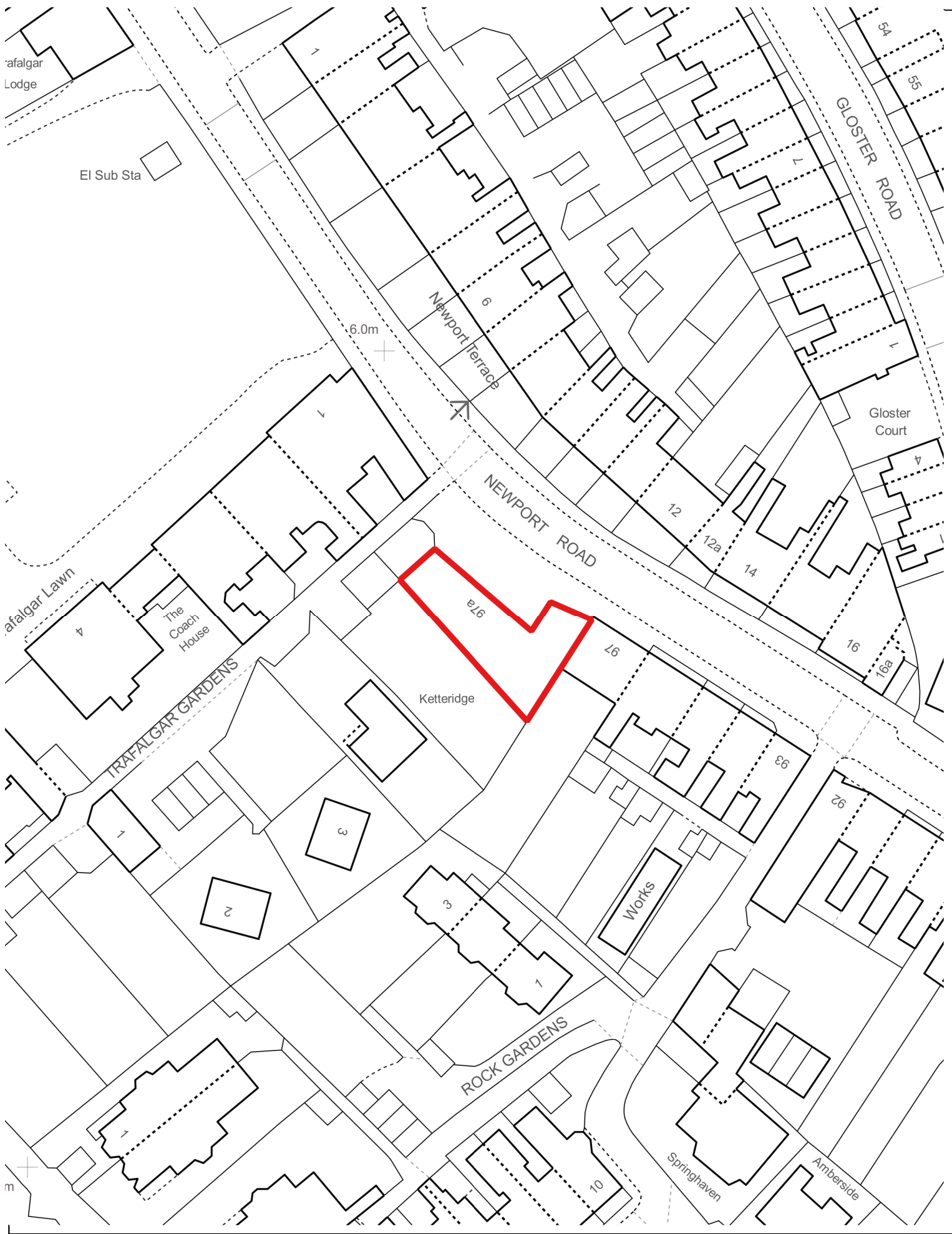
Execution by local planning authority of work required by enforcement notice.

91. (1) If, within the period specified in an enforcement notice for compliance therewith, or within such extended period as the local planning authority may allow, any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken, the local planning authority may enter upon the land and take those steps, and may recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

NOTE

Attention is also directed to the following Sections of the 1971 Act:

Section 9: (2)-(5) which contain supplementary provisions as to enforcement notices, Section 110 which contains supplementary provisions as to appeals to the Secretary of State and Section 243 relating to the validity of enforcement notices.



Lynton House, Commercial Road,
Barnstaple, EX31 1EA

Enforcement Notice 0800
97a Newport Road, barnstaple, EX32 9BE

Copy Supplied to:
ADD NAME
Scale: *ADD SCALE*
Date: *ADD DATE*