

Copy to Mr. Samuelson / 6/3/74
L.C.

E.1.

Breach of planning control

Operations or change of use without planning permission.

IMPORTANT. THIS NOTICE AFFECTS YOUR PROPERTY

**DEVON COUNTY COUNCIL
TOWN AND COUNTRY PLANNING ACT, 1971—Section 87**

ENFORCEMENT NOTICE

To Henry Bernard Samuelson and Anita Jill Waring Samuelson
of 8, Burrows Close, Braunton, Devon.

WHEREAS the *[operations] ~~XXXXXX~~ [change of use] specified in the First Column of the Schedule hereto constitute development of the land specified in the said Schedule within the meaning of the Town and Country Planning Act, 1971.

AND WHEREAS the said *[operations] ~~XXXXXX~~ [change of use] has/have been carried out without the grant of planning permission under Part III of the said Act, of 1971 and it appears to the Local Planning Authority that a breach of planning control within the meaning of Section 87 of the Town and Country Planning Act 1971 has taken place.

NOW THEREFORE the Barnstaple Rural District Council, acting for and on behalf of the Devon County Council as Local Planning Authority, do hereby give you, as *owner and occupier of the said land, notice pursuant to the provisions of Section 87 of the said Act of 1971 that the steps specified in the Second Column of the said Schedule are required to be taken for restoring the said land to its condition before the said [operations] ~~XXXXXX~~ [change of use] took place.

Such steps are required to be taken within Two months from the date on which this notice takes effect.

This notice shall take effect 31 days after the date of the service hereof/on the ~~XXXX~~ XXXX

Dated this sixth day of March 19 74

Signed [Signature]
Clerk of Barnstaple
R.D.C.

(Address of Council)
**Civic Centre,
BARNSTAPLE,
Devon.**

SCHEDULE

Column 1	Column 2
Operations XXXXXX (including description of land)	Steps required to be taken
Enlargement of a small door and window in the front wall of the building known as The Old Corn Store in Church Street, Braunton to form a new doorway access to the said building.	Reinstate and restore the said front wall of the building to its former condition by the filling in of the new door with materials matching the existing wall so that only the former doorway access and small window are retained.

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NOTES.

Attention is particularly drawn to the following extracts from the Town and Country Planning Act, 1971.

SECTION 23(9)

Where an enforcement notice has been served in respect of any development of land, planning permission is not required for the use of that land for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.

SECTION 87(8)

Subject to section 88 below, an enforcement notice shall take effect at the end of such period, not less than twenty-eight days after the service of the notice, as may be specified in the 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:—

- 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;
- that the matters alleged in the notice do not constitute a breach of planning control;
- in the case of a notice which, by virtue of section 87(3) of the 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;
- 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 1964;
- that the enforcement notice was not served as required by section 87(4) of this Act;
- that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control;
- 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—

- 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;
- 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—

- 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;
- 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—

- 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;
- 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:—

- any planning permission granted thereunder shall be treated as granted on the said application;
- in relation to a grant of planning permission or a determination under that subsection, the Secretary of State's decision shall be final;
- 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.

SECTION 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 £400 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 prosecution not less than three clear days' notice of his intention, be entitled to have the person who then became the owner of the land (in 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,—

- the subsequent owner may be convicted of the offence and
- 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 £50 for each day following his first conviction on which any of the requirements of the enforcement notice (other than the discontinuance of the 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 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 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 liable on summary conviction to a fine not exceeding £400 or on conviction on indictment to a fine not exceeding £1,000; and if use is continued after the conviction, he shall be liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £200 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 allowed for compliance therewith or such extended period as the local planning authority may allow for compliance with the notice.

SECTION 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 the expenses reasonably incurred by them in doing so.

(2) Any expenses incurred by the owner or occupier of any land for the purpose of complying with an enforcement notice, or any sums paid by the owner of any land in respect of any breach of planning control (as defined in Section 82(2) of this Act), and any sums paid by the owner of any land in respect of this section in respect of expenses incurred by the local planning authority in taking steps required by such a notice, to be taken or incurred or paid for the use and at the request of the person by whom the breach of planning control was committed.

(3) Regulations made under this Act may provide that, in relation to any steps required to be taken by an enforcement notice, the enactments specified in subsection (4) of this section, shall apply, subject to such adaptations and modifications as may be made, including, in the case of the enactment specified in paragraph (b) of that subsection, adaptations and modifications affording to the owner of land to which an enforcement notice relates the right, as against all other persons interested in the land, to the requirements of the enforcement notice.

(4) The said enactments are the following provisions of the Public Health Act, 1936, that is to say—

- section two hundred and seventy-six (which empowers local authorities to sell materials removed in executing works subject to accounting for the proceeds of sale);
- section two hundred and eighty-nine (which confers power to require the occupier of any premises to permit entry by the owner of the premises);
- section two hundred and ninety-two (which confers power on local authorities to include a sum in respect of expenses in their expenses in executing works); and
- section two hundred and ninety-four (which limits the liability of persons holding premises as agents or trustees for expenses recoverable under that Act).

(5) Any regulations made in accordance with subsection (2) of this section may provide for the charging on the land of a sum payable by a local authority under subsection (1) of this section.

SECTION 92

(1) If, after the service of an enforcement notice, planning permission is granted for the retention on land of buildings or works, the continuance of a use of land, to which the enforcement notice relates, the enforcement notice shall cease to have effect in so far as it relates to the demolition or alteration of those buildings or works, or the discontinuance of that use, as the case may be.

(2) If the planning permission granted as mentioned in subsection (1) of this section is granted so as to permit the retention of buildings or works, or the continuance of a use of land, without complying with some condition subject to which a previous planning permission for the enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.

(3) The preceding provisions of this section shall be without prejudice to the liability of any person for an offence in relation to the enforcement notice before the relevant provisions of the enforcement notice ceased to have effect.

SECTION 93

(1) Compliance with an enforcement notice, whether in respect of—

- the demolition or alteration of any buildings or works, or
- the discontinuance of any use of land,

or in respect of any other requirements contained in the enforcement notice, shall not discharge the enforcement notice.

(2) Without prejudice to subsection (1) of this section, any provision of an enforcement notice requiring a use of land to be discontinued, or a building or works to be demolished or altered, shall, to the extent that it is in contravention of Part III of this Act, be of no effect; and the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be a breach of the enforcement notice.

(3) Without prejudice to subsection (1) of this section, if any development is carried out on land by way of reinstating buildings or works which have been demolished or altered in compliance with an enforcement notice, the notice shall, notwithstanding that it was for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works as demolished or altered; and if the buildings or works are reinstated or restored as it applied in relation to the buildings or works before they were demolished or altered, the provisions of section 91(1) and (2) of this Act, shall apply accordingly.

(4) Where, at any time after an enforcement notice takes effect:—

- any development is carried out on land by way of reinstating or restoring buildings or works which have been demolished or altered in compliance with the notice, and
- the local planning authority propose, under section 91(1) of this Act, to take any steps required by the enforcement notice for the demolition or alteration of the buildings or works in consequence of the reinstatement or restoration,

the local planning authority shall, not less than twenty-eight days before taking any such steps, serve on the owner and on the person who is then the occupier of the land a notice of their intention to do so.

(5) A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating buildings or works which have been demolished or altered in compliance with an enforcement notice shall be liable on summary conviction to a fine not exceeding £400; and no person shall be liable under any of the provisions of this Act for failure to take any steps required to be taken by an enforcement notice by way of demolition or alteration of buildings or works, or the discontinuance of a use of land, if he has taken such steps as are required by the enforcement notice.

SECTION 110

(2) Where under this Part of this Act any person has appealed to the Secretary of State or (in accordance with section 111) to the magistrates' court against a notice, neither that person nor any other shall be entitled, in any other proceedings instituted after the appeal, to claim that the notice was not duly served on the person who appealed.

SECTION 111

Where by virtue of any of the preceding provisions of this Part of this Act any expenses are recoverable by a local planning authority, those expenses shall be recoverable as a simple contract debt in any court of competent jurisdiction.

N.B.—The Secretary of State has no power to extend the period within which an appeal may be made under Section 88.