

413

(a)

NORTH DEVON DISTRICT

Council

**TOWN AND COUNTRY PLANNING ACT 1971**  
**(as amended)**

**Enforcement Notice**  
**Operational Development**

(b).....Land adjoining Kittiwell Lane and New Lane, Knowle, Branton, North Devon

**WHEREAS:**

(1) It appears to the<sup>(a)</sup> North Devon District Council ("the Council"), being the local planning authority for the purposes of section 87 of the Town and Country Planning Act 1971 ("the Act") in this matter, that there has been a breach of planning control within the period of 4 years before the date of issue of this notice on the land or premises ("the land") described in Schedule 1 below.

(2) The breach of planning control which appears to have taken place consists in the carrying out of the building, engineering, mining or other operations described in Schedule 2 below, without the grant of planning permission required for that development.

(3) The Council consider it expedient, having regard to the provisions of the development plan and to all other material considerations, to issue this enforcement notice, in exercise of their powers contained in the said section 87, for the reasons set out in [the annex to] this notice.<sup>(c)</sup>

**NOTICE IS HEREBY GIVEN** that the Council require that the steps specified in Schedule 3 below be taken [in order to remedy the breach] [<sup>(d)</sup>

within [the period of Three [blacked out] months] from the date on which this notice takes effect] [the period specified in respect of each step in that Schedule].<sup>(e)</sup>

**THIS NOTICE SHALL TAKE EFFECT**, subject to the provisions of section 88(10) of the Act, on 28th February 1990.<sup>(f)</sup>

Issued ..... 31st January ..... 1990 .

Council's address

Legal Division,  
Room 311 Civic Centre,  
BARNSTAPLE,  
North Devon EX31 1EA

(Signed) [blacked out]

(Designation) *Solicitor*  
(The officer appointed for this purpose)

**CONTINUED OVERLEAF — P.T.O.**

**NOTES TO THE LOCAL PLANNING AUTHORITY**

- (a) Insert the name of the Council issuing the notice.
- (b) Insert the address or a description of the land to which the notice relates.
- (c) See paragraph 29 of DOE Circular 38/81 (Welsh Office Circular 57/81).
- (d) Or, as the case may be, having regard to section 87(7)(a) and (b) of the Act. Where steps are required to be taken for more than one of the purposes provided for in section 87, the purpose for which each step is required should be specified in Schedule 3. Steps may be required as alternatives.
- (e) If a single period is to be specified, by which all the required steps must be taken, insert it here. But if a series of steps is required to be taken, with a different compliance period for each step, the appropriate period should be clearly stated against each step (in columns if more suitable) in Schedule 3.
- (f) The date selected must be not less than 28 clear days after all the copies of the notice will have been served (see section 87(5) of the Act).

## **SCHEDULE 1**

### **Land or premises to which this notice relates**

*(address or description)*

Land adjoining Kittiwell Lane and New Lane, Knowle, Braunton, North Devon

shown edged [red] [ ] on the attached plan.<sup>(g)</sup>

## **SCHEDULE 2**

### **Alleged breach of planning control**

*(description of operations carried out on the land) (h)*

Unauthorised engineering operations by the excavation of land and formation of a means of access to the adjoining highway at Kittiwell Lane and the unauthorised construction of buildings used for the stabling of horses for purposes incidental thereto

## **SCHEDULE 3**

### **Steps required to be taken<sup>(i)</sup>**

- (i) Cease the engineering operations
- (ii) Cease the construction of buildings
- (iii) Demolish the buildings including the concrete bases and remove from the land
- (iv) Restore the land to its original levels
- (v) Restore the land to its original condition before the unauthorised operations were begun

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#### **NOTES TO THE LOCAL PLANNING AUTHORITY**

(g) See paragraph 31 of DOE Circular 38/81 (Welsh Office Circular 57/81).

(h) Where the works being enforced against are on only part of the land identified in Schedule 1, their position should be shown on the plan.

(j) Specify the actual steps to be taken with, if appropriate, the compliance period for each step. The requirements should be clear and precise. See also notes (d) and (e) overleaf.



## EXTRACTS from the TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

### Power to issue enforcement notice

87.—(1) Where it appears to the local planning authority that there has been a breach of planning control after the end of 1963, then subject to the following provisions of this section, the authority, if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may issue a notice requiring the breach to be remedied and serve copies of the notice in accordance with subsection (5) of this section.

(2) A notice under this section is referred to in this Act as an "enforcement notice".

(3) There is a breach of planning control—

(a) if development has been carried out, whether before or after the commencement of this Act, without the grant of the planning permission required in that behalf in accordance with Part III of the Act of 1962 or Part III of this Act; or

(b) if any conditions or limitations subject to which planning permission was granted have not been complied with.

(4) An enforcement notice which relates to a breach of planning control consisting in—

(a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land; or

(b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land; or

(c) the making without planning permission of a change of use of any building to use as a single dwelling-house; or

(d) the failure to comply with a condition which prohibits or has the effect of preventing a change of use of a building to use as a single dwelling-house.

may be issued only within the period of four years from the date of the breach.

(5) A copy of an enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in the notice as the date on which it is to take effect—

(a) on the owner and on the occupier of the land to which it relates; and

(b) on any other person having an interest in that land, being an interest which in the opinion of the authority is materially affected by the notice.

(6) An enforcement notice shall specify the matters alleged to constitute a breach of planning control.

(7) An enforcement notice shall also specify—

(a) any steps which are required by the authority to be taken in order to remedy the breach;

(b) any such steps as are referred to in subsection (10) of this section and are required by the authority to be taken.

(8) An enforcement notice shall specify the period within which any such step as is mentioned in subsection (7) of this section is to be taken and may specify different periods for the taking of different steps.

(9) In this section "steps to be taken in order to remedy the breach" means (according to the particular circumstances of the breach) steps for the purpose—

(a) of restoring the land to its condition before the development took place; or

(b) of securing compliance with the conditions or limitations subject to which planning permission was granted, including—

(i) the demolition or alteration of any buildings or works;

(ii) the discontinuance of any use of land; and

(iii) the carrying out on land of any building or other operations.

(10) The steps mentioned in subsection (7)(b) of this section are steps for the purpose—

(a) of making the development comply with the terms of any planning permission which has been granted in respect of the land; or

(b) of removing or alleviating any injury to amenity which has been caused by the development.

(11) Where the matters which an enforcement notice alleges to constitute a breach of planning control include development which has involved the making of a deposit of refuse or waste materials on land, the notice may require that the contour of the deposit shall be modified by altering the gradient or gradients of its sides in such manner as may be specified in the notice.

(12) The Secretary of State may by regulations direct—

(a) that enforcement notices shall specify matters additional to those which they are required to specify by this section; and

(b) that every copy of an enforcement notice served under this section shall be accompanied by an explanatory note giving such information as may be specified in the regulations with regard to the right of appeal conferred by section 88 of this Act.

(13) Subject to section 88 of this Act, an enforcement notice shall take effect on a date specified in it.

(14) The local planning authority may withdraw an enforcement notice (without prejudice to their power to issue another) at any time before it takes effect.

(15) If they do so, they shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.

(16) Where—

(a) an enforcement notice has been issued in respect of development consisting of the erection of a building or the carrying out of works without the grant of planning permission; and

(b) the notice has required the taking of steps for a purpose mentioned in subsection (10)(b) of this section; and

(c) the steps have been taken,

for the purposes of this Act planning permission for the retention of the building or works as they are as a result of compliance with the notice shall be deemed to have been granted on an application for such permission made to the local planning authority.

### Appeal against enforcement notice

88.—(1) A person having an interest in the land to which an enforcement notice relates may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought 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) that the breach of planning control alleged in the notice has not taken place;

(d) in the case of a notice which, by virtue of section 87(4) of this Act, may be issued within the period of four years from the date of the breach of planning control to which the notice relates, that that period had elapsed at the date when the notice was issued;

(e) in the case of a notice not falling within paragraph (d) of this subsection, that the breach of planning control alleged by the notice occurred before the beginning of 1964;

(f) that copies of the enforcement notice were not served as required by section 87(5) of this Act;

(g) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or to achieve a purpose specified in section 87(10) of this Act;

(h) that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed.

(3) An appeal under this section shall be made by notice in writing to the Secretary of State.

(4) A person who gives notice under subsection (3) of this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed by regulations under subsection (5) of this section\*, a statement in writing—

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

(b) giving such further information as the regulations may prescribe.

(5) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under this section, and in particular, but without prejudice to the generality of this subsection—

\* (a) may prescribe the time within which an appellant is to submit a statement under subsection (4) of this section and the matters on which information is to be given in such a statement;

**\*NOTE:** The Secretary of State has specified that such a statement must be submitted to him either when the appellant is giving notice of appeal, or within 28 days from the date on which the Secretary of State sends the appellant a notice requiring



- (b) may require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
  - (c) may specify the matters to be included in such a statement;
  - (d) may require the authority or the appellant to give such notice of appeal under this section as may be prescribed, being notice which in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated;
  - (e) may require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.
- (6) The Secretary of State—
- (a) may dismiss an appeal if the appellant fails to comply with subsection (4) of this section within the time prescribed by regulations under subsection (5); and
  - (b) may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph (b), (c) or (e) of subsection (5) of this section within the period prescribed by the regulations.
- (7) Subject to subsection (8) below, 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.
- (8) The Secretary of State shall not be required to afford such an opportunity if he proposes to dismiss an appeal under paragraph (a) of subsection (6) of this section or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection.
- (9) If—
- (a) a statement under subsection (4) of this section specifies more than one ground on which the appellant is appealing against an enforcement notice; but
  - (b) the appellant does not give information required under paragraph (b) of that subsection to each of the specified grounds within the time prescribed by regulations under subsection (5) of this section,
- the Secretary of State may determine the appeal without considering any of the specified grounds as to which the appellant has failed to give such information within that time.
- (10) 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.
- (11) Schedule 9 to this Act applies to appeals under this section, including appeals under this section as applied by regulations under any other provision of this Act.

**88A.**—(1) On the determination of an appeal under section 88 of this Act, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice or for varying its terms.

(2) On such an appeal the Secretary of State may correct any informality, defect or error in the enforcement notice, or give directions for varying its terms, if he is satisfied that the correction or variation can be made without injustice to the appellant or to the local planning authority.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the enforcement 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.

**88B.**—(1) On the determination of an appeal under section 88 of this Act, the Secretary of State may—

- (a) grant planning permission for the development to which the enforcement notice relates or for part of that development or for the development of part of the land to which the enforcement notice relates;
- (b) discharge any condition or limitation subject to which planning permission was granted;
- (c) 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 of it and to any planning permission relating to it.

(2) In considering whether to grant planning permission under subsection (1) of this section, 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.

(3) Where an appeal against an enforcement notice is brought under section 88 of this Act, 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 (1) of this section—

- (a) any planning permission granted under that subsection shall be treated as granted on that 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, 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.

(4) On an appeal under section 88 of this Act against an enforcement notice relating to anything done in contravention of a condition to which section 71 of this Act applies, the Secretary of State shall not be required to entertain the appeal in so far as the appellant claims that planning permission free from that condition ought to be granted.

#### **Penalties for non-compliance with enforcement notice**

**89.**—(1) Subject to the provisions of this section, where a copy of an enforcement notice has been served on the person who, at the time when the copy was served on him, was the owner of the land to which the notice 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 £2,000 or on conviction on indictment to a fine.

(2) If a person against whom proceedings are brought under subsection (1) of this section 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 were 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—

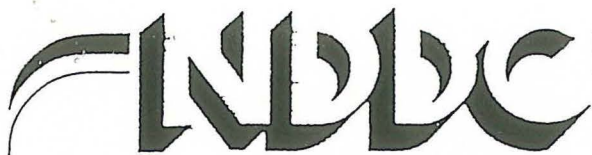
- (a) on summary conviction to a fine not exceeding £100 for each day following his first conviction on which any of the requirements of the enforcement notice (other than the discontinuance of the use of land) remain unfulfilled; or
- (b) on conviction on indictment to a fine.

(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 £2,000, 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 £100 for each day on which the use is so continued, or on conviction on indictment to a fine.

(6) Any reference to 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 of such extended period as the local planning authority may allow for compliance with the notice.

**Note.**—Attention is also directed to section 91 relating to the execution and costs of works required by enforcement notice, section 110 which contains supplementary provisions as to appeals to the Secretary of State and section 243 relating to the validity of Enforcement Notices.

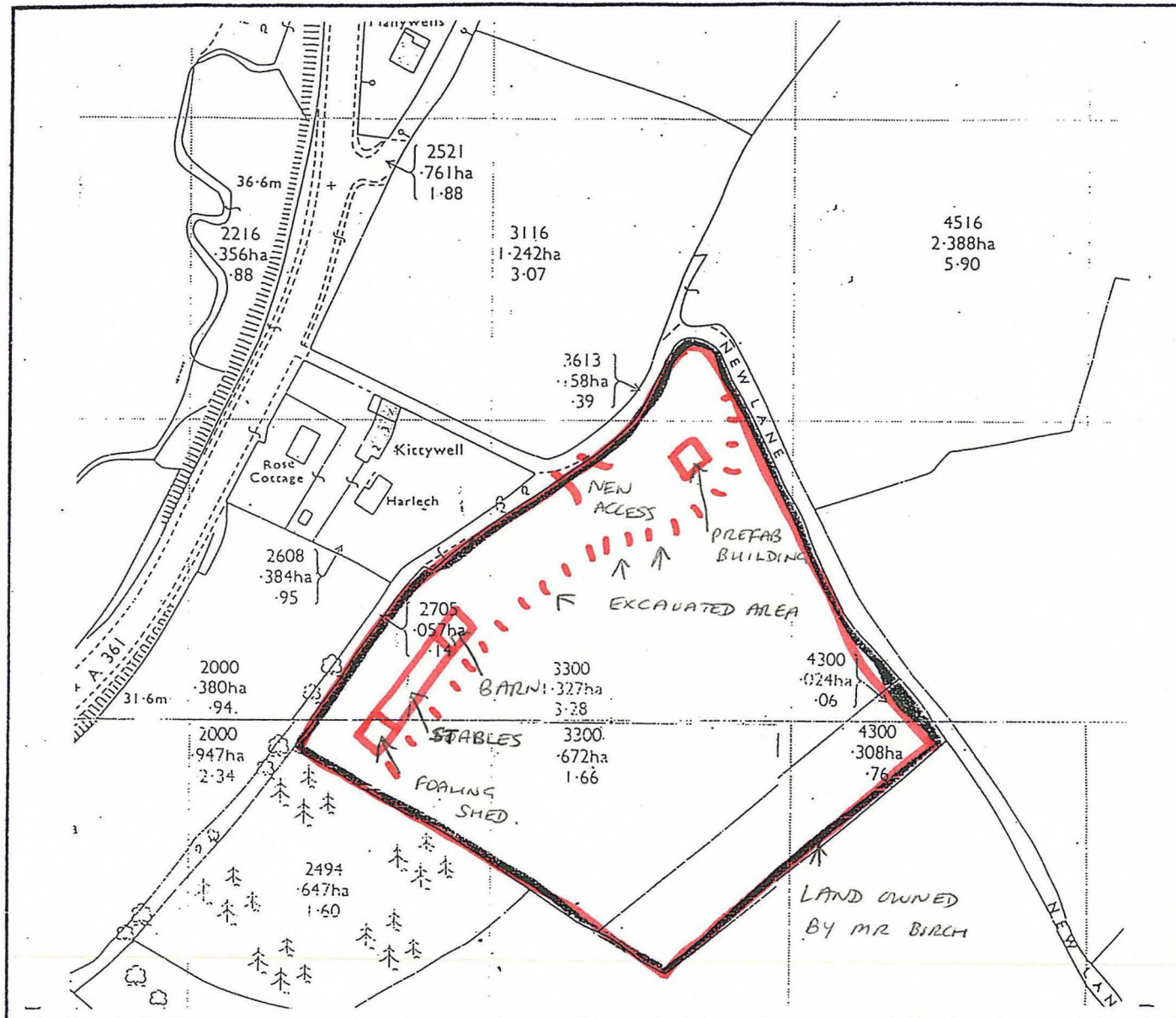




North Devon District Council  
Civic Centre, Barnstaple, Devon EX31 1EA

J. H. Martin Dip.T.P. M.R.T.P.I., Director of Planning.

## ENFORCEMENT NOTICE (PLANNING).



**Unauthorised Development of STABLES.**

Land adjoining :-

**Kittiwell Lane & New Lane, Knowle.**

O.S. Field numbers 3300 & 4300

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O.S. Plan No: SS.4937 & 4938

Drawn: A.T.

Scale: reduced from 1/2500

Date: January 1990



## NORTH DEVON DISTRICT COUNCIL

### ANNEX TO AN ENFORCEMENT NOTICE DATED 31ST JANUARY 1990

1. A complaint was received by the Directorate of Planning on 3rd May 1989 that excavation works were being carried out at a site adjoining Kittiwell Lane and New Lane, Knowle, Braunton, North Devon.
2. On 6th June 1989 the Directorate of Planning's Enforcement Office, Mr Kenneth Spencer, visited and inspected the site adjoining Kittiwell Lane and New Lane, Knowle, Braunton, North Devon ('the site') OS3300 and 4300. He observed that a new access had been made from Kittiwell Lane to a site which had been excavated out of the hillside.
3. After an investigation of the Department of Planning's records it was discovered that the land was owned by Mr Joseph Birch of 2 Stepstone Lane, Knowle, Braunton, North Devon. The land did not have planning permission for the creation of the new access and the engineering operations.
4. After a number of attempts to contact Mr Birch, Mr Spencer on 21st June 1989 spoke with Miss Kathleen Lee (Mr Birch's fiancée) at 2 Stepstone Lane, Knowle, Braunton, North Devon. She stated that there was no intention to carry out further development in the near future, but later they may erect cattle sheds or horse stables.
5. After a further complaint was received on 25th July 1989 Mr Spencer again visited and inspected the site. He observed that further excavations had taken place and that a wooden structure 25m x 3.5m x 3.5m had been partially erected.
6. On 1st August 1989 the Director of Planning sent a letter to Mr Joseph Birch at 2 Stepstone Lane, Knowle, Braunton, North Devon. It was pointed out to Mr Birch the need for planning permission and he was invited to apply for permission. The relevant planning application forms were enclosed with this letter.
7. On 5th September 1989 the Director of Planning sent a second letter to Mr Birch. Mr Birch was informed that the Director of Planning would be recommending enforcement action for the unauthorised excavations and development of the land adjacent to Kittiwell Lane. As a result of this letter Mr Birch telephoned the Directorate of Planning on 6th September 1989 stating that he had not received any previous correspondence from the Planning Department.
8. On 16th October 1989 Mr Birch had a meeting with the Area Planning Officer whereupon he confirmed that he would submit a planning application.
9. On 24th October 1989 Miss Kathleen Lee sent a letter to the Director of Planning confirming that Mr Birch would be submitting a planning application to regularise the matter.
10. Further complaints were received by the Directorate of Planning on 20th November 1989. On 2nd January 1990 Mr Spencer visited and inspected the site. Mr Spencer observed that the partially erected wooden structure seen on 28th July 1989 had now been completed and was used for the stabling of horses. He also observed that a temporary sectional structure had been built for the storage of straw and feed and that each of the buildings were having concrete bases laid inside them. He noted that a large framework and a smaller wooden framework has been erected.



Miss Kathleen Lee advised Mr Spencer that it was intended that the larger wooden framework would provide framework for the construction of a barn and the smaller one for the construction of a foaling stable. Mr Spencer advised Miss Kathleen Lee that as no planning application had been forthcoming a report would be submitted to the Planning (Policy) Committee on 16th January 1990 recommending enforcement action.

11. On 4th January 1990 the Director of Planning sent a letter to Mr Joseph Birch at 2 Stepstone Lane, Knowle, Braunton, North Devon. He was informed that the Director of Planning would be submitting a report to the Planning (Policy) Committee on 16th January 1990 recommending enforcement action because no planning application has been received by the Planning Department.
12. On 8th January 1990 the Directorate of Planning received a further complaint that excavation works were continuing on the site.
13. On 11th January 1990 the Director of Planning sent a letter to Mr Joseph Birch at 2 Stepstone Lane, Knowle, Braunton, North Devon. He was informed to stop work immediately on the site until the matter was resolved by the Planning (Policy) Committee on 16th January 1990.
14. The Planning (Policy) Committee of 16th January 1990 authorised the Council's Solicitor to take enforcement action to remove all buildings, hardstandings and engineering operations and to restore the site to its previous agricultural use but that should be deferred until the planning application was considered by the Local Planning Authority.
15. On 22nd January 1990 further complaints were received by the Director of Planning that work was continuing on the site. Mr Spencer visited and inspected the site and confirmed this to be the case with works advanced on the foaling shed.
16. A planning application, reference No. 11399 made by Mr Birch was received by the Local Planning Authority on 16th January 1990.
17. The Planning (Development Control) Committee on 23rd January 1990 resolved that enforcement action be taken immediately and that a Stop Notice be served on Mr Birch, the owner of the site, given that he was continuing to develop the unauthorised stables.
18. The planning application submitted has not yet been considered by the Local Planning Authority but when the planning application is considered it will be recommended for refusal for the following reasons :
  - (a) In the opinion of the Local Planning Authority the proposed stables by reason of their prominent raised location and size are visually intrusive and detrimental to the character and appearance of the area.
  - (b) In the opinion of the Local Planning Authority the stables by reason of their close proximity to the residential properties in Kittiwell Lane will comprise development prejudicial to the amenities enjoyed by the occupier of these developments.
19. The proposal will also be recommended for refusal by the Local Highway Authority for the following reasons :
  - (a) The proposal is contrary to Plan Policy SE8 of the Devon County Structure Plan since the road providing access to the site is not of a

condition, or maintained to a standard necessary to accommodate the Volume and type of traffic likely to be generated by the proposed development.

(b) The inadequate width of the access lane onto the A361 and its layout is likely to cause congestion with consequent risk of additional danger to all users of the road and interference with the free flow of traffic.

(c) The road giving access to the site is, by reason of its inadequate width, vertical alignment, horizontal alignment, gradient and condition, unsuitable to accommodate the increase in traffic likely to be generated.

(d) The proposed access is contrary to Plan Policy TR29 of the Devon County Structure Plan because it does not accord with the following criteria :

(i) access being provided to the appropriate standard, having regard to environmental considerations, especially in Landscape Policy Areas and Conservation Areas and only where it does not detract from or conflict with the function of the route;

(ii) consideration of the effects of the development on the highway network as regards traffic and road safety.

20. For the above mentioned reasons, outlined above, the North Devon District Council consider it expedient to issue this Enforcement Notice.

DATED 31st January 1990

K. B. MORGAN  
Solicitor

ANN/BIRCH