

TOWN AND COUNTRY PLANNING ACT 1971
(as amended)

LISTED BUILDING ENFORCEMENT NOTICE
(unauthorised works)

WHEREAS:

(1) The building situate at and known as^(a) Hammond House, Castle Street, Combe Martin, North Devon, EX34 0HX which is more particularly delineated on the attached plan and thereon coloured RED ("the building") is a listed building as defined in section 54 of the Town and Country Planning Act 1971 ("the Act").

(2) The building is situate within the district of the^(b) North Devon District Council ("the Council"), being the local planning authority for the purposes of Parts IV and V of the Act.

(3) It appears to the Council that the following works, namely^(c) Unauthorised widening of the access to Hammond House, Castle Street, Combe Martin, North Devon.

("the said works") [have been] ~~[are being]~~ carried out to the building and that the said works involve a contravention of section 55(1) of the Act in that the said works are for the ~~[demolition of part of the building]~~ [extension] of a listed building [in a manner affecting its character as a building of special architectural or historic interest^(d)] and the said works are not authorised under Part IV of the Act, no listed building consent having been granted therefor.

(4) The Council consider it expedient, having regard to the effect of the said works on the character of the building as one of special architectural or historic interest, to issue this notice.

NOTICE IS HEREBY GIVEN that, in exercise of their powers under section 96 of the Act, the Council require that the steps specified in the Schedule hereto be taken ~~[to restore the building to its former state]~~ [to alleviate the effect of the said works] within the period of two months from the date on which this notice takes effect.

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 97(9) of the Act, on 29th March 19 90.^(e)

SCHEDULE

(1) The unauthorised widening of the access by the demolition of the stone wall be reinstated to its original condition prior to the unauthorised works.

Issued 1st March 19 90.
Legal Division,
Room 311, Civic Centre,
Barnstaple,
North Devon, EX31 1EX.

(Signed)
(Designation) Solicitor
(The officer appointed for this purpose).

Address to which all communications are to be sent.

SEE OVERLEAF

N.B. Delete any words in square brackets, which do not apply.

- (a) Insert address or description of the building to which the notice relates.
- (b) Insert name of Council issuing the notice.
- (c) Insert description of works.
- (d) Delete in the case of demolition of part or whole of building.
- (e) The date specified must be not less than 28 clear days after all the copies of the notice will have been served (see section 96(3) of the Act).

Appeal against listed building enforcement notice**Section 97.**

(1) A person having an interest in the building to which a listed building 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 on any of the following grounds—

- (a) that the building is not of special architectural or historic interest;
- (b) that the matters alleged to constitute a contravention of section 55 of this Act do not involve such a contravention;
- (c) that the contravention of that section alleged in the notice has not taken place;
- (d) that works to the building were urgently necessary in the interests 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 out to be granted for the works, or that any relevant condition of 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 96(3) of this Act;
- (g) except in relation to such a requirement as is mentioned in section 96(1)(b)(ii) or (iii) of this Act, 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 thereby 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 virtue of section 96(1)(b)(ii) of this Act 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 96(1)(b)(iii) of this Act exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.

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

(3) A person who gives notice under subsection (2) of this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed under subsection (4) of this section, 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 the regulations may prescribe.

(4) 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, may make any such provision in relation to appeals under this section as may be made in relation to appeals under section 88 of this Act by regulations under subsection (5) of that section.

(5) The Secretary of State—

- (a) may dismiss an appeal if the appellant fails to comply with subsection (3) of this section within the time prescribed by regulations under subsection (4); and
- (b) may allow an appeal and quash the listed building enforcement notice if the local planning authority fail to comply with any requirement of regulations under this section corresponding to regulations made by virtue of subsection (5)(b), (c) or (e) of section 88 of this Act within the period prescribed by the regulations.

(6) Subject to subsection (7) of this section, 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.

(7) 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 (5) of this section or to allow an appeal and quash the listed building enforcement notice under paragraph (b) of that subsection.

(8) If—

- (a) a statement under subsection (3) of this section specifies more than one ground on which the appellant is appealing against a listed building enforcement notice; but
 - (b) the appellant does not give information required under paragraph (b) of that subsection in relation to each of the specified grounds within the time prescribed by regulations under subsection (4) 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.

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

(10) Schedule 9 to this Act applies to appeals under this section.

Section 97A

(1) On the determination of an appeal under section 97 of this Act, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the listed building 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 listed building 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 listed building 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.

(4) On the determination of such an appeal the Secretary of State may—

- (a) grant listed building consent for the works to which the listed building enforcement notice relates or for part only of those works;
- (b) discharge any condition or limitation subject to which listed building consent was granted and substitute any other condition, whether more or less onerous;
- (c) if he thinks fit, exercise—
 - (i) his power under section 54 of this Act to amend any list compiled or approved under that section by removing from it the building to which the appeal relates; or
 - (ii) his power under subsection (10) of that section to direct that that subsection shall no longer apply to the building.

(5) Any listed building consent granted by the Secretary of State under subsection (4) of this section shall be treated as granted on an application for the like consent under Part I of Schedule 11 to this Act, and the Secretary of State's decision in relation to the grant shall be final.

Penalties for non-compliance with listed building enforcement notice**Section 98**

(1) Subject to the provisions of this section, where a listed building enforcement notice has been served on the person who, at the time when the notice was served on him, was the owner of the building to which it relates, then, if any steps required by the notice to be taken have not been taken within the period allowed for compliance with the notice, that person shall be guilty of an offence and 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 have been 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 building, 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 building (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 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 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 notice, he shall be guilty of a further offence and be liable—

- (a) on summary conviction to a fine of not more than £200 for each day following his first conviction on which any of the requirements of the notice remain unfulfilled; or
- (b) on conviction on indictment to a fine.

(5) Any reference in this section to the period allowed for compliance with a listed building enforcement notice is a reference to the period specified in the notice as that within which the steps specified in the notice are required thereby to be taken, or such extended period as the local planning authority may allow for taking them.

Execution and cost of works required by listed building enforcement notice**Section 99.**

(1) If, within the period specified in a listed building enforcement notice as that within which the steps specified in the notice are required thereby to be taken, or within such extended period as the local planning authority may allow, any steps required by the notice to be taken have not been taken, the authority may enter 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.

(2) Any expenses incurred by the owner or occupier of a building for the purpose of complying with a listed building enforcement notice and any sums paid by the owner of a building under subsection (1) of this section in respect of expenses incurred by the local planning authority in taking steps required by such a notice to be taken, 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) The provisions of section 91 (3) and (4) of this Act shall apply in relation to a listed building enforcement notice as they apply in relation to an enforcement notice; and any regulations made by virtue of this subsection may provide for the charging on the land on which the building stands of any expenses recoverable by a local planning authority under subsection (1) of this section.

NOTE

Attention is also drawn to Section 243 of the Town and Country Planning Act 1971 which relates, *inter alia*, to the validity of listed building enforcement notices.

NORTH DEVON DISTRICT COUNCIL

ANNEX TO AN ENFORCEMENT NOTICE DATED 1ST MARCH 1990


1. On 15th July 1987 on planning application (reference no. 1972) for alteration (Listed Building) Listed Buildings Consent was registered for Hammonds House, Castle Street, Combe Martin, North Devon.
2. The alterations; the removal of a gate, wall and railings to the Listed Building had commenced before the matter had been placed before the Local Planning Authority, and the Area Planning Officer inspected the property and observed that part of the boundary wall and gate pillar had been demolished.
3. No planning permission or Listed Building consent had been granted for the demolition of the boundary wall.
4. The Director of Planning in a letter dated 28th July 1987 to the owner of Hammond House, Castle Street, Combe Martin, Mr. Peter L. Bailey, requesting a written assurance that the boundary wall would be reinstated. No reply was received to this letter.
5. On 2nd September 1987 consent for the alteration to the Listed Building was granted by the Local Planning Authority. However, the latter authorised the Council's Solicitor to commence enforcement action to secure the reinstatement of the boundary wall.
6. Enforcement action was implemented by the Council's Solicitor but before the Enforcement Notice was served, the owner of Hammond House, Castle Street, Combe Martin, Mr. A. Greener, wrote to the Council's Solicitor, undertaking to rebuild the boundary wall by April 1988.
7. The Area Planning Officer inspected the premises on 8th June 1988 and observed that the boundary wall was reinstated. Accordingly, no further action was implemented.
8. On 31st October 1988 the Directorate of Planning received a complaint from the Devon County Council's Engineer's Planning Division that the access to Hammond House, Castle Street, North Devon, had been widened without the benefit of planning consent. This was confirmed by the Directorate of Planning's Enforcement Officer on 1st November 1988.
9. On 3rd November 1988, the Area Planning Officer met with Mr. Greener who stated that he would submit a planning application to regularise the unauthorised access.
10. On 8th December 1988, planning application, reference no. 7553 and planning application for a Listed Building Consent (reference no. 7554) were registered with the Local Planning Authority.
11. On 24th January 1989 the Local Planning Authority refused both applications and authorised the Council's Solicitor to commence enforcement action to have the unauthorised access reinstated.

12. Mr. Greener appealed against the refusal of his planning applications and the Planning Inspectorate in a letter dated 30th August 1989 dismissed the appeal.
13. Planning Applications submitted by Mr. Greener were refused for the following reasons:
- (a) The proposed development would be likely to result in a material increase in the volume of traffic entering and leaving the Class I County road through an access that does not provide adequate visibility for emerging vehicles with consequent risk of additional danger to all road users and interference with the free flow of traffic.
 - (b) The proposed development does not make adequate provision for the manoeuvring of vehicles within the site and would therefore be likely to result in vehicles reversing onto or manoeuvring on the highway, with consequent risk of additional danger to all users of the road and interference with the free flow of traffic.
 - (c) It is the Devon County Council's policy as set out in Structure Plan Policy TR29 to have regard to the following criteria when determining proposals for development:
 - (i) Access being provided to the appropriate standard having regard to environmental considerations especially in landscape policy areas and in 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.
 - (iii) Adequate off-street parking and servicing provision as appropriate to the type of development proposed.

The proposed development is considered to be contrary to criteria (a) and (b) above in that it does not meet the requirements.

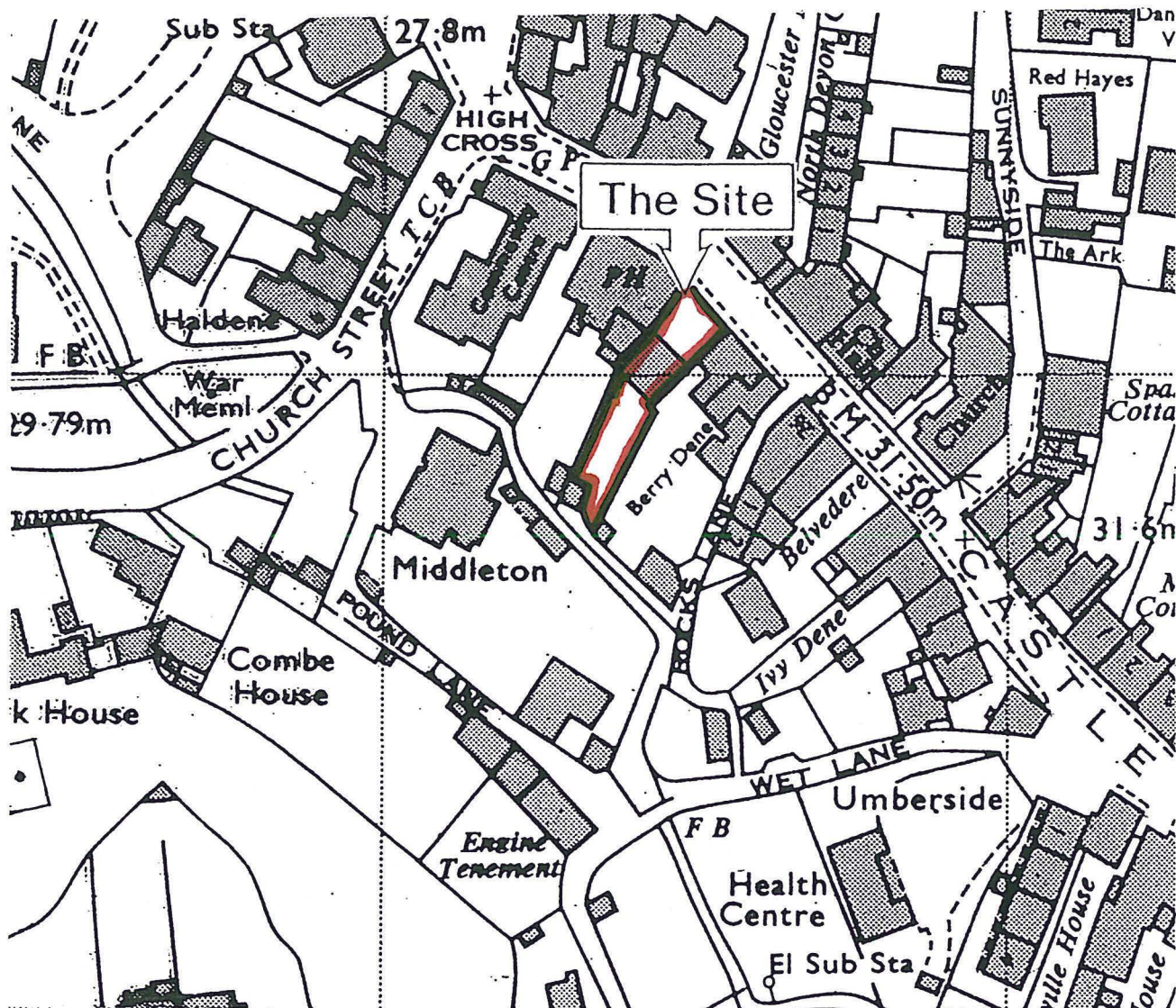
14. For the above mentioned reasons the North Devon District Council consider it expedient to issue this Enforcement Notice.

Dated 1st March 1990

Solicitor 
K

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

ENFORCEMENT NOTICE (PLANNING).



Re-instatements of Gate, Wall, and Railings to Listed Building :-

Hammond House, Castle Street, Combe Martin.

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O.S. Plan No: SS 5846 East.

Drawn: 

Scale: 1:1250.

Date: September 1989