

**IMPORTANT:— THIS COMMUNICATION AFFECTS YOUR PROPERTY**

5 OCT 1988

(b)

NORTH DEVON DISTRICT

Council

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

**Enforcement Notice<sup>(a)</sup>**

**Breach of Planning Condition to which the 4 Year Rule applies**  
(Operational Development or Preventing Change of Use to Single Dwellinghouse)

5147

1303

(c) BERKELEY HOTEL, WILDER ROAD, ILFRACOMBE

**WHEREAS:**

(1) It appears to the<sup>(b)</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 failure to comply with the following condition<sup>(§)</sup> subject to which planning permission was granted on 28th July 1987 for<sup>(d)</sup> proposed change of use of hotel ballroom to public dance hall and bar

[that] [~~these~~] conditions<sup>(§)</sup> appearing not to have been complied with in the respect<sup>(s)</sup> set out in Schedule 2 below:

(e) 6. The use of the Dance Floor shall not commence until such time as a 7 feet high wall has been constructed to the satisfaction of the Local Planning Authority along the boundary with Northfield Terrace, in accordance with drawings which shall have been submitted to and agreed in writing by the Local Planning Authority.

(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>(f)</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>(g)</sup>

within [the period of 3 [days] [months] from the date on which this notice takes effect] [~~the period specified in respect of each step in that Schedule~~].<sup>(h)</sup>

**THIS NOTICE SHALL TAKE EFFECT**, subject to the provisions of section 88(10) of the Act, on 31 October 1988.<sup>(i)</sup>

Issued 30 September 1988

Council's address

Civic Centre,  
BARNSTAPLE.  
EX31 1EA

(Signed) [Redacted Signature]

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

**CONTINUED OVERLEAF — P.T.O.**

**NOTES TO THE LOCAL PLANNING AUTHORITY**

- (a) This notice is appropriate for breach of a planning condition relating to the carrying out of operations or preventing a change of use of a building to a single dwellinghouse.  
(b) Insert the name of the Council issuing the notice.  
(c) Insert the address or a description of the land to which the notice relates.  
(d) Insert a description of the development for which planning permission was granted, using the words of the grant of permission.  
(e) Set out (in full) only the condition(s) which it is alleged has/have not been complied with.  
(f) See paragraph 29 of DOE Circular 38/81 (Welsh Office Circular 57/81).  
(g) 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.  
(h) 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.  
(i) The date selected must be not less than 28 days after all the copies of the notice have been served (see section 87(5) of the Act).

## SCHEDULE 1

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

*(address or description)*

BERKELEY HOTEL, WILDER ROAD, ILFRACOMBE

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

## SCHEDULE 2

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

Failure to comply with the condition(s) recited overleaf in that<sup>(l)</sup>

Although the design and plans for a block work wall have been submitted to and agreed by the Local Planning Authority the use of the Dance floor has commenced before the construction of the wall has started. The wall is not yet begun.

## SCHEDULE 3

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

(i)

Construct the wall in accordance with the scheme submitted to and agreed by the Local Planning Authority.

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

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

(l) State how it is alleged the condition(s) has/have been breached.

(m) 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 (g) and (h) above.

## 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—

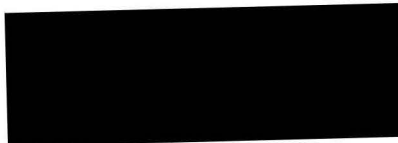
- \* (a) may prescribe the time within which an appellant is to submit a statement under subsection (4) of this section and the matters on which information is to be given in such a statement;

**\*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 such a statement to be submitted.

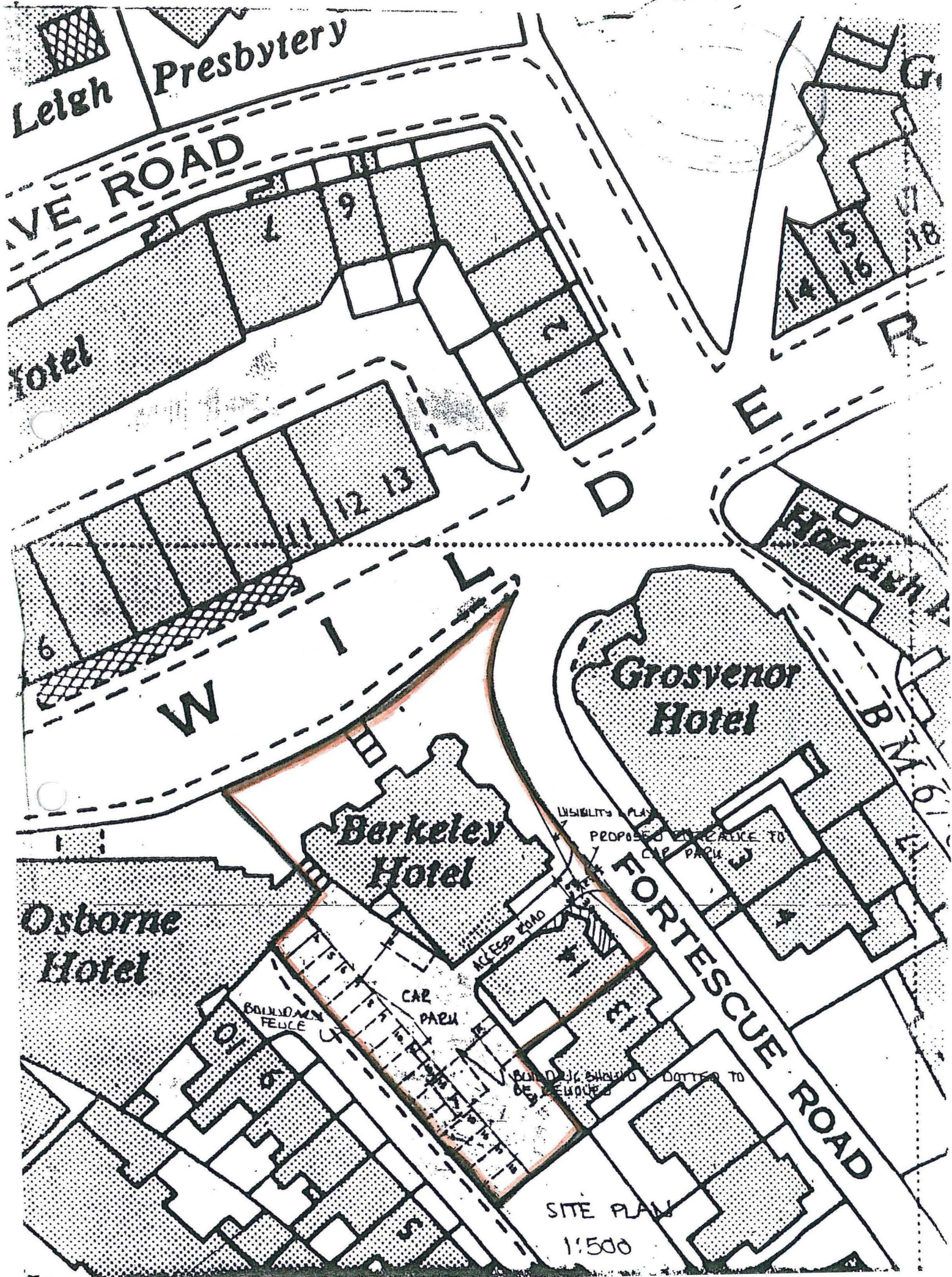
NORTH DEVON DISTRICT COUNCIL

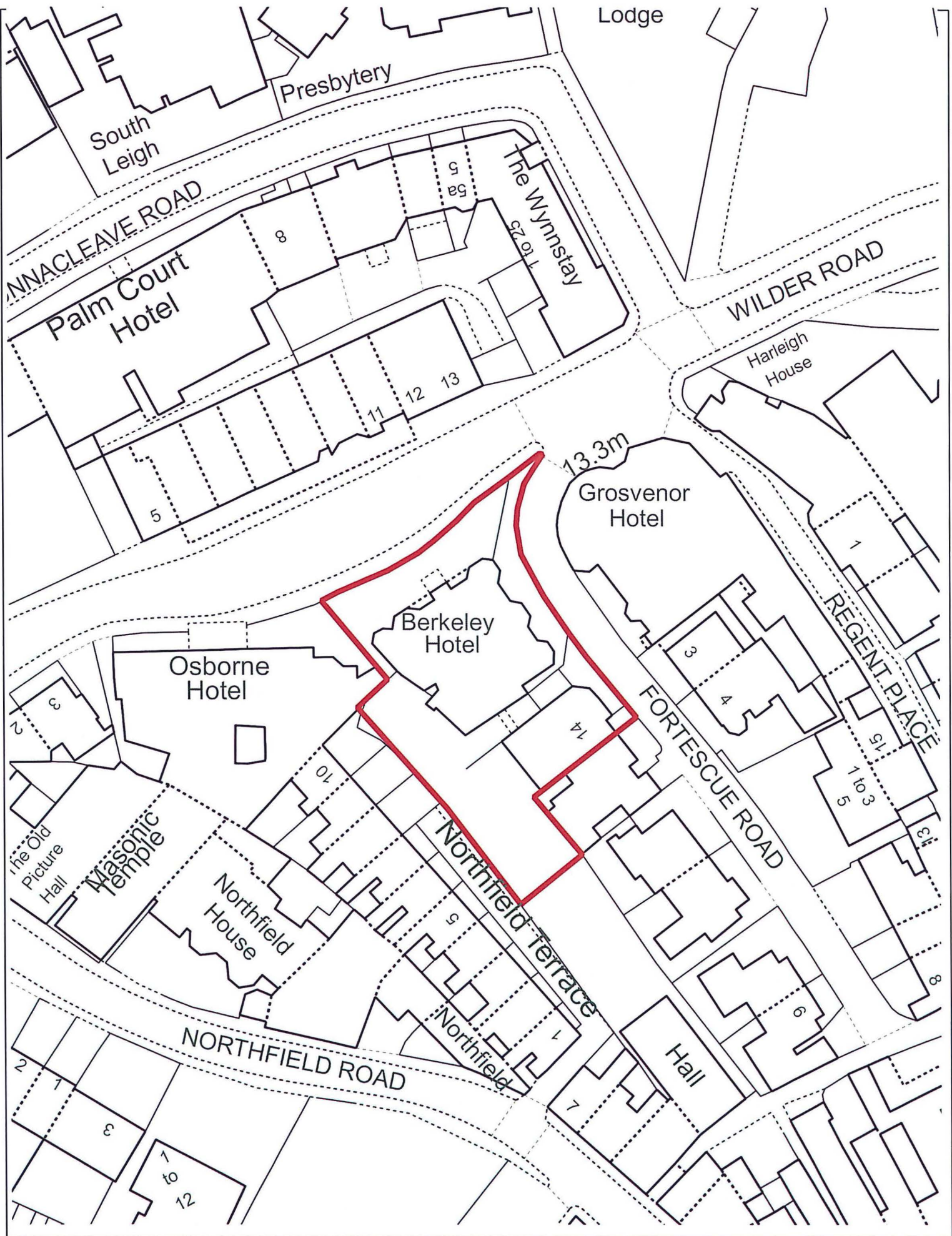
ANNEX TO ENFORCEMENT NOTICE DATED THE 30th DAY OF SEPTEMBER 1988

1. On the 28th July 1987 the Planning Committee of the North Devon District Council decided to give permission for the proposed Change of Use of a hotel ballroom to a public dance hall and bar at the Berkeley Hotel, Wilder Road, Ilfracombe.
2. One of the conditions specified in the Planning Permission was that "the use of the dance floor shall not commence until such time as the seven foot high wall has been constructed to the satisfaction of the Local Planning Authority along the boundary with Northfield Terrace in accordance with drawings which shall have been submitted to and agreed in writing by the Local Planning Authority". The reason given for the imposition of that condition was "to ensure that the car park is both attractively laid out and adequately screened and to ensure orderly development of the site".
3. In July 1988 application number 5559 was registered with the Council for a variation of the above condition from wall to boundary fence.
4. The application was refused for the following reasons:-
  - (a) In the opinion of the Local Planning Authority the proposed fence would detract from the visual and residential amenities of neighbouring properties.
  - (b) In the opinion of the Local Planning Authority the proposed fence would not satisfy the reason for requiring a block wall, which has previously been stated as "to ensure that the car park is both attractively laid out and adequately screened and to ensure orderly development of the site".
5. The use of the dance floor has commenced although the wall has still not been constructed.
6. For the reasons given above it is considered expedient to issue this Enforcement Notice.



5 559





Lynton House, Commercial Road,  
Barnstaple, EX31 1EA

**Enforcement Notice 0836**  
**Berkeley Hotel, Wilder Road, Ilfracombe, EX34 9AQ**

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