IMPORTANT: - THIS COMMUNICATION AFFECTS YOUR PROPERTY

NORTH DEVON DISTRICT COUNCIL

Council

(a)

TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

Enforcement Notice

Material Change of Use

(b) Land at Nutcombe Farm, Nut	combe Hill, Combe Martin, North Devon.
WHEREAS:	
being the local planning authority for	evon District Council Council ("the Council"), the purposes of section 87 of the Town and Country natter, that there has been a breach of planning control
on the land or premises ("the land") desc	cribed in Schedule 1 below.
out of development by the making of t	which appears to have taken place consists in the carrying the material change in the use of the land described in lanning permission required for that development.
plan and to all other material considerati	ent, having regard to the provisions of the development ons, to issue this enforcement notice, in exercise of their or the reasons set out in [the annex to] this notice. (d)
NOTICE IS HEREBY GIVEN that the below be taken [in order to remedy the br	e Council require that the steps specified in Schedule 3 reach] [(e)
within [the period of one day takes effect] [কাল period specified in সভঃসূহ	x{denys}*{months} from the date on which this notice
THIS NOTICE SHALL TAKE EFFECT on 18th December	I , subject to the provisions of section 88 (10) of the Act, 19 89 .(g)
Issued 16th November 19	9 89 .
Council's address —	(Signed).
Civic Centre,	
Barnstaple,	(Designation) Solicitor
North Devon.	(The officer appointed for this purpose)
CONTINUED OVERLEAF — P.T.O	•
NOTES TO TH	IE LOCAL PLANNING AUTHORITY
 (d) See paragraph 29 of DOE Circular 38/81 (Welsh Of (e) Or, as the case may be, having regard to section 87 one of the purposes provided for in section 87, th Steps may be required as alternatives. (f) If a single period is to be specified, by which all the 	d within the period of 4 years before the date of issue of this notice."
	ys 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 at Nutcombe Farm, Nutcome Hill, Combe Martin, North Devon.

shown edged [red] [

] on the attached plan. (h)

SCHEDULE 2

Alleged breach of planning control

(description of the material change of use alleged to have been made) (j)

Change of use from field used for agriculture to use for motor cycle scrambling.

SCHEDULE 3

Steps required to be taken.(k)

(i)

Cease to use the field for motor cycle scrambling.

NOTES TO THE LOCAL PLANNING AUTHORITY

⁽h) See paragraph 31 of DOE Circular 38/81 (Welsh Office Circular 57/81).
(j) If the new use is a mixed use, include all the uses comprising that mixed use.
(k) Specify the actual steps to be taken with, if appropriate, the compliance period for each step. The requirements should be clear

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

(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.
 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

(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;

a condition of initiation anleged 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;

(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
- (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 appealling 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 28 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 provisons 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 £200 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 £200 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

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

ANNEX TO AN ENFORCEMENT NOTICE DATED 16TH NOVEMBER 1989

- A number of complaints were received by the Director of Planning of the North Devon District Council from neighbouring residents that the land at Nutcombe Farm, Nutcombe Hill, Combe Martin, North Devon was being used for motor cycle scrambling.
- The Director of Planning's Enforcement Officer, Mr. Victor George Christian visited and inspected the land at Nutcombe Farm, Nutcombe Hill, Combe Martin, North Devon on Tuesday, 23rd May 1989. Mr. Christian spoke with the owner, Mr. Frederick William Willis and explained the purpose of his visit and inspection. Mr. Christian observed the following:
 - (a) Mr. Willis had made a new access from his land onto the A399 road.
 - (b) Mr. Willis was using machinary to lay a track along the top of his fields at Nutcombe Farm, Nutcombe Hill, Combe Martin, North Devon. Mr. Willis stated to Mr. Christian that his son and friends were using his land for motor cycle scrambling and that he was not laying a scrambling track on his land.
- 3. In a letter dated 7th June 1989 the Assistant Director of Planning,
 Mr. Malcolm Easton advised Mr. F.W. Willis the use of the land at
 Nutcombe Farm, Nutcombe Hill, Combe Martin for the purposes of motor
 cycle scrambling was a material change of use for which planning
 permission was required. Mr. Willis was advised that he should either:
 - (a) Cease the use of the land for the purpose of motor cycle scrambling and close the unauthorised access, or
 - (b) Submit a planning application to regularise the matter and
 - (c) That if he took no action the matter would be referred to the Planning Committee to consider the appropriateness of the enforcement action.
- 4. On 17th June 1989 at a meeting in the Civic Centre, Barnstaple, North Devon, Mr. Easton again advised Mr. Willis that planning permission would be required for use of the land for motor cycle scrambling.
- 5. Mr. Willis' planning application, reference number 9849 was received by the Planning Department on 13th July 1989.
- 6. At the meeting of the Planning Committee on 13th July 1989 the Committee recommended:
 - (a) That the Director of Planning write to the owner of the land at Nutcombe Farm, Nutcombe Hill, Combe Martin requesting that the unauthorised use for the motor cycle scrambling be ceased until after the determination of the planning application.
 - (b) That the planning application be brought forward to the next Planning (Development Control) Committee meeting as a matter of urgency.
 - (c) That the Director of Planning be authorised to issue a Stop Notice for the unauthorised use of the land from motor cycle scrambling if it was determined necessary. The recommendation was confirmed at the meeting of the Full Council on Wednesday, 26th July 1989.

- 7. Mr. Easton wrote to Mr. Willis on 17th July 1989 informing the latter of the Planning Committee's recommendation and requesting Mr. Willis to confirm in writing that the use of the land for motor cycle scrambling would cease until the planning application was determined.
- 8. The Planning (Development Control) Committee at its meeting held on 12th September 1989 resolved to refuse Mr. Willis' planning application to use Nutcombe Farm, Nutcombe Hill, Combe Martin for motor cycle scrambling. The reasons for refusal are as follows:
 - (a) The site is within an area of outstanding natural beauty and the proposed development would be detrimental to the appearance of the area by reason of its intrusion into the landscape and would compromise development contrary to Policies CO7 and CO9 of the Devon County Structure Plan.
 - (b) The site is within a protected area as defined by the Coastal Preservation Policy in the adopted County Structure Plan. Within this area only essential development will be permitted and in the opinion of the Local Planning Authority the development now proposed is not essential and would be at variance with the provisions of Policy CO1O of the Devon County Structure Plan.
 - (c) In the opinion of the Local Planning Authority the proposal would be to the detriment of the amenities enjoyed by residents in the vicinity by virtue of the noise associated with such a use.
 - (d) The proposed development would be likely to result in a material increase in the volume of traffic entering and leaving the Class I 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.
 - (e) The proposed development would be likely to result in a material increase in the volume of traffic turning right into a site at a point where inadequate forward visibility from and of such vehicles is available and where the carriageway is of inadequate width with consequent risk of additional danger to all users of the road and interference with the free flow of traffic.
 - (f) The proposal would set a precedent for development along a road which by reason of its function in the highway network and physical characteristics is unsuitable to accommodate the increase in residential traffic likely to be generated.
 - (g) It is the Devon County Policy as set out in Structure Plans Policy TR29 to have regard to the following criteria when determining proposals for development:
 - (A) Access being provided to the appropriate standard having regard to environmental health 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.
 - (B) Consideration of the affects of the development on a highway network as regards traffic and road safety.

- (C) Adequate provision be made for access by pedestrians and to public transport.
- (D) Adequate off—street parking for service and provision as appropriate to the type of development proposed.

The proposed development is considered to be contrary to curtail (A), (B), (C) and (D) above in that it does not meet the requirements.

- (h) Inadequate information has been submitted to satisfy the Local Planning Authority. The proposal is acceptable in terms of access, visibility splays, off-street parking, on-site turning facilities, its effect on local traffic conditions and public safety.
- 9. The Director of Planning received further complaints from neighbouring residents in October and November 1989 that Mr. Frederick William Willis was again using his land at Nutcombe Farm, Nutcombe Hill, Combe Martin for motor cycle scrambling. At 1.30 p.m. on Sunday, 12th November 1989, Mr. Easton received a telephone call from Mr. Christian that he had received a complaint that Mr. Willis was letting the land at Nutcombe Farm, Nutcombe Hill, Combe Martin to be used for motor cycle scrambling. Mr. Easton visited and inspected the site at 3.15 p.m. the same day and confirmed the complaint.
- 10. For the above mentioned reasons the North Devon District Council consider it expedient to issue this Enforcement Notice.

Signed .

k.B. Morgan, Solicitor

Dated

16th November 1989

JCC/MSWILLIS



