

The Town and Country Planning Act 1971 has now been consolidated within the Town and Country Planning Act 1990 to which reference should now be made and in particular Sections 1, 8, 38 and 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which largely replace those sections listed below.

LISTED BUILDING ENFORCEMENT NOTICE

(unauthorised works)

PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 ("the Act")

WHEREAS:

(1) The building situate at and known as^(a) 2 Prixford Cottages, Marwood, Barnstaple, N. Dev which is more particularly delineated on the attached plan and thereon coloured is a listed building as defined in section 1 of the ¹ "the building") 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 1 of the Act.

(3) It appears to the Council that the following works, namely^(c) removal of a tile canopy to the front of the building and construction of a block built porch to the front of the building

("the said works") [are being] carried out to the building and that the said works involve a contravention of section 38 of the Act in that the said works are for the [alteration] 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 1 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 38 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 39(3) of the Act, on 26 August 1991.^(e)

SCHEDULE

1. Demolish the block built porch to the front of the building.
2. Reinstall the original tile canopy to the front of the building.
3. Clear up any debris resulting from the demolition of the block built porch and reinstatement of the tile canopy.

Issued

26 June 1991.

(Signed)

(Designation) SOLICITOR
Legal Section, (The officer appointed for this purpose).
North Devon District Council,
Civic Centre,

Address to which all communications are to be sent Barnstaple, N. Devon.

SEE OVERLEAF

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—

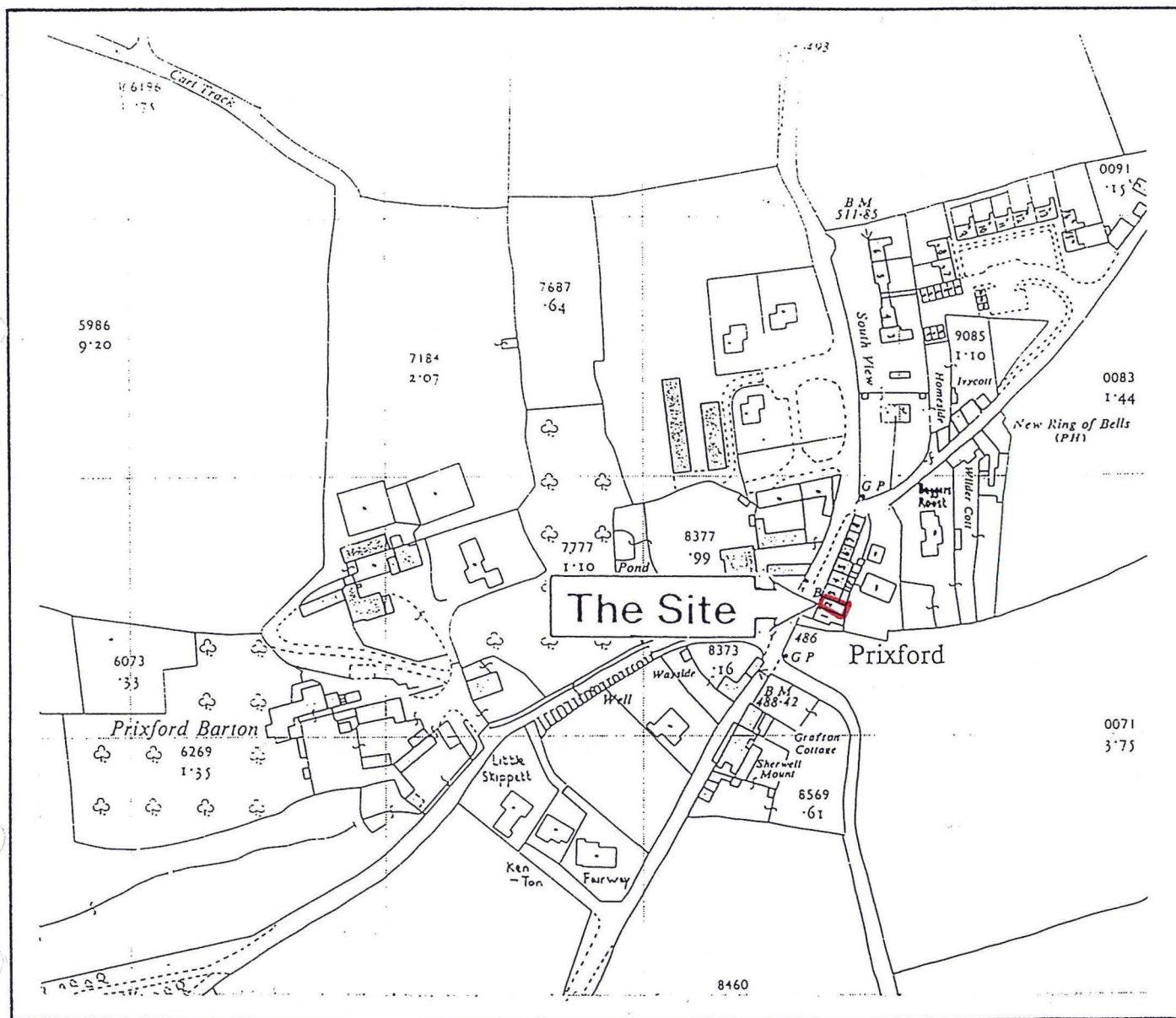
- (a) on summary conviction to a fine of not more than £200 for each day following his first conviction on which any of the requirements of the notice remain unfulfilled; or
- (b) on conviction on indictment to a fine.

(5) Any reference in this section to the period allowed for compliance with a listed building enforcement notice shall be construed as referring to the period specified in the notice as that within which the steps specified in the notice are to be taken.



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

ENFORCEMENT NOTICE (PLANNING).



Unauthorised Porch,

2, Prixford Cottages, Prixford.

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O.S. Plan No: SS. 5436

Drawn: S.M.T.

Scale: 1/2500

Date: November 1990

NORTH DEVON DISTRICT COUNCIL

ANNEXE TO LISTED BUILDING ENFORCEMENT NOTICE

DATED 26th June 1991

1. On the 9th August 1990 the Local Planning Authority's Conservation Officer visited the building and noted that certain works appeared to have taken place, namely the removal of the tile canopy to the front of the building and its replacement by a partially built block built enclosed porch.
2. Correspondence was entered into with Miss J. Harrington and Mr. K. Dwight advising them that there appeared to be an alleged breach of Listed Building control on the building and requesting them to submit a Listed Building Planning Application. On the 29th August 1990 an inspection of the building was undertaken by an Enforcement Officer who confirmed that the porch had not been removed although no further work had been carried out to complete its construction.
3. On 23rd October 1990 Listed Building application no. 12755 in relation to the porch was refused by the Planning (Development Control) Committee and authority was given for the Solicitor to commence enforcement action.
4. An inspection of the building was undertaken by the Enforcement Officer on the 2nd November 1990 who confirmed that the porch had not been removed.
5. For the reasons outlined above the North Devon District Council consider it expedient to issue this Enforcement Notice.

Signed

 SOLICITOR

Dated 26th June 1991

WJ/ANNEX/M7