

370

(a)

NORTH DEVON DISTRICT COUNCIL

**TOWN AND COUNTRY PLANNING ACT 1971.**

**Enforcement Notice**

**(Breach of Condition of specific planning permission relating to a change of use)**

To: (b)..... Mr A and Mrs Paula Green.....

of..... 106 East Street, South Molton, North Devon.....

**1. WHEREAS:**

(i) You are the [owner [and] [occupier] of] [REDACTED] the land situate at and known as <sup>(c)</sup> 106 East Street, South Molton, N Devon

which is more particularly delineated on the attached plan and thereon coloured (hereinafter called "the said land").

(ii) The <sup>(a)</sup> North Devon District Council (hereinafter called "the Council") are the Local Planning Authority (*inter alia*) for the purposes of the provisions of section 87 of the Town and Country Planning Act 1971 as amended by the Local Government and Planning (Amendment) Act 1981 (hereinafter called "the Act of 1971").

(iii) On the Second day of November 1988, the North Devon District Council as [REDACTED] Local Planning Authority upon an application in that behalf made under Part III of the Town and Country Planning Act, [REDACTED] [1971] granted permission for [the following development of the said land namely the making of a material change in the use thereof to a use for the purpose of <sup>(d)</sup> the alterations to the ground floor windows only ] [the continuance of the use of the said land for the purpose of <sup>(d)</sup> Shop ].

(iv) The hereinbefore recited permission was granted subject (*inter alia*) to the condition that <sup>(e)</sup> any proposed fascia panel or projecting blinds shall be the subject of a separate application to be considered on their own merits

(hereinafter called "the said condition").

(v) It appears to the Council that after the 31st day of December 1963 within four years prior to the issue of this notice there has been a breach of planning control in that [the said development has been carried out but] the said condition has not been complied with in the following respect[s] namely:—

the erection of a projecting blind on the shop front of 106 East Street South Molton, North Devon

(vi) The Council consider it expedient having regard to the provisions of the development plan and to all other material considerations to issue this notice.

(a) Insert the name of the council issuing the notice.

(b) Insert the name of the person, company or other body on whom the copy of the notice is being served. In the case of a company, service should be on the company, not on individual directors or officers, but in the case of an incorporated company or body service may be made by delivering or addressing the notice to the clerk or secretary. In the case of a partnership, service should be on each of the partners by name, but a notice may be served on a partner or a person having the control or management of the partnership business. (Section 233 of the Local Government Act 1972.) Service on (i) an occupier or (ii) a person having any interest in the land whose name cannot be ascertained after reasonable inquiry can be made in the manner provided by sub-section (2) of section 283 of the Town and Country Planning Act 1971. There is also provision in sub-section (3) of that section for service of notices in respect of occupied land.

(c) Insert a full description of the land to which the notice relates, sufficient to enable its location and extent to be readily understood. Where there is a postal address for the land, this should be included. The land should also be shown on a plan attached to the notice, where possible. In drafting an enforcement notice regard should be had to the whole of the planning unit in respect of which it is alleged there has been a breach of planning control, not merely to that part of the land which is directly affected by the activities, or failure, constituting the alleged breach.

(d) Insert a description of the development for which permission was granted, using the words of the grant of permission.

(e) Set out (in full) only the condition or conditions which it is alleged have not been complied with.

YOUR ATTENTION IS DIRECTED TO THE ATTACHED NOTES WHICH EXPLAIN YOUR RIGHT OF APPEAL AGAINST THE NOTICE. YOU SHOULD READ THEM CAREFULLY.



2. **NOW THEREFORE TAKE NOTICE** that in exercise of the powers contained in the said section 87 of the Act of 1971 the Council **HEREBY REQUIRE YOU** within the period of **Four weeks** beginning with the date on which this notice takes effect to take the following steps to comply with the said condition:—(f)

Remove the projecting blind from the shop front at 106 East Street,  
South Molton, North Devon

3. **THIS NOTICE SHALL TAKE EFFECT**, subject to the provisions of section 88(10) of the Act of 1971, on 29th January 1990 . (g)

**DATED** this 20th day of December 19 89 .

Signed.....  
(h)

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

(Address to which all communications should be sent.)

(f) Specify the actual steps required to be taken. The requirements should be clear and such general expressions as "restore the land to its condition before the development took place" should be avoided if possible.

(g) A copy of an enforcement notice must be served not later than 28 days after the date of its issue and not later than 28 days before the date on which it is to take effect. Where several persons are served with copies, ensure that the effective date is not less than 28 days after the latest date of service. (The period of 28 days cannot begin to run until the day following the day when service on all those persons entitled to be served has been completed.)

(h) Insert title of proper officer.

#### **NOTES FOR PERSONS SERVED WITH A COPY OF AN ENFORCEMENT NOTICE**

(These notes do not form any part of the enforcement notice)

##### **PENALTIES FOR NON-COMPLIANCE**

1. You have been served with a copy of an enforcement notice which will come into effect on the date stated in paragraph 3 of the notice. You then have the period set out in paragraph 2 of the notice in which to comply with the requirements set out. If you fail to comply within that time you will be liable to prosecution and, on conviction, to a fine. The continuing contravention after conviction can lead to a further fine for each day the offence continues.

##### **RIGHT OF APPEAL**

2. You have a right of appeal against the notice to [the Secretary of State for the Environment] [the Secretary of State for Wales]. If you do appeal, the notice will not come into effect until the appeal is finally determined. In considering whether to exercise this right, you are invited to consider the reasons given in the Council's letter why this notice has been served.

##### **WHEN TO APPEAL**

3. An appeal *must* be made *before* the date specified in the notice as the date on which it is to take effect, i.e. the date set out in paragraph 3 of the notice. *The Secretary of State has no power to extend this period not to accept an appeal made out of time.*

##### **HOW TO APPEAL**

4. The Council will have sent you a special form on which to appeal if you decide to do so, and also a spare copy of the enforcement notice. In many cases a fee will also be payable — this is not a charge for the appeal as such, but for the deemed application for planning permission that goes with every appeal. The Council will tell you if a fee is payable and how much it will be. You should complete the form in full and send it with the copy of the enforcement notice and the appropriate fee to [the Secretary of State, Department of the Environment, Cashiers, Albion Court, 197 Marlowes, Hemel Hempstead, Herts HP1 1BN (or, if no fee is payable, to the Secretary of State, Department of the Environment (PLUP 2), Tollgate House, Houlton Street, Bristol, Avon BS2 9DJ)] [the Secretary of State, Welsh Office, Cathays Park, Cardiff CF1 3NQ] and the envelope marked "Enforcement Appeal". If by any chance you do not receive a copy of the appeal form you should write saying you wish to appeal and giving as many details as possible to the Secretary of State [at the address at Tollgate House, Bristol, given above] [at the above address].

##### **GROUND ON WHICH AN APPEAL CAN BE MADE**

5. An appeal can be made on one or more of the grounds set out in Section 88(2) of the Town and Country Planning Act 1971, as amended by the Act of 1981 — reproduced with other relevant sections of the Act below/overleaf. In general, grounds (d) and (e) are mutually exclusive. Ground (d) can be pleaded only where the enforcement notice alleges one of the following types of breach:—

- a. the carrying out of building or other operations without planning permission; or
- b. failure to comply with a condition requiring the carrying out of building or other operations;



- c. change of use of any building to use as a single dwellinghouse without planning permission.
- d. failure to comply with a condition which prohibits or effectively prevents change of use of any building to use as a single dwelling house.

## STATING THE FACTS

6. The statement of facts in support of the appeal must be more than just a reiteration of the grounds set out in section 88(2) of the Act and must at least give the basic facts on which you rely in pleading those grounds. For example, where ground (d) or (e) is pleaded, you should give, as far as you are able, the actual date when the building or other operations took place, when the use commenced, or when the failure to comply with the condition occurred, as the case may be.

## SUBSEQUENT ACTION

7. The Secretary of State will acknowledge receipt of your appeal and contact the Council who served the notice. Unless the Secretary of State considers that an inquiry is essential, an opportunity will be given to both you, as appellant, and the Council to say whether you wish to appear before an Inspector at a local inquiry or are prepared to have the matter dealt with by way of written statements. This latter procedure may be more suitable where there is no dispute as to the facts of the case. All enforcement appeals are now transferred by the Secretary of State to Inspectors for determination. In a limited range of circumstances an appeal may subsequently be recovered for determination by the Secretary of State. If this is done you will be informed by letter, giving the reasons for recovery.

## PROFESSIONAL ADVICE

8. If the issues are simple, you may decide to deal with the appeal yourself or with the help of someone not professionally qualified. Where legal or other complex issues are likely to be involved, it may be better to seek professional advice at an early date. Whoever the spokesman is, all representations will be carefully considered. If there is an inquiry, the Inspector will ensure that everybody gets a fair hearing whether professionally represented or not.

## NOTE

These notes are supplied for guidance only. Although they seek to draw your attention to the more important provisions of the legislation concerning enforcement of planning control, they do not purport to be a complete statement of the law. Further reference should be made to the Town and Country Planning Act, 1971 the amendments made by the Local Government, Planning and Land Act 1980 and the Local Government and Planning (Amendment) Act 1981, and associated Orders or Regulations.

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

### Power to serve 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;



- (d) in the case of a notice which, by virtue of section 87(4) of this Act, may be issued only 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 an 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 in relation 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 £1,000 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 £1,000, 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 or 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 notices, section 110 which contains supplementary provisions as to appeals to the Secretary of State and section 243 relating to the validity of Enforcement Notices.

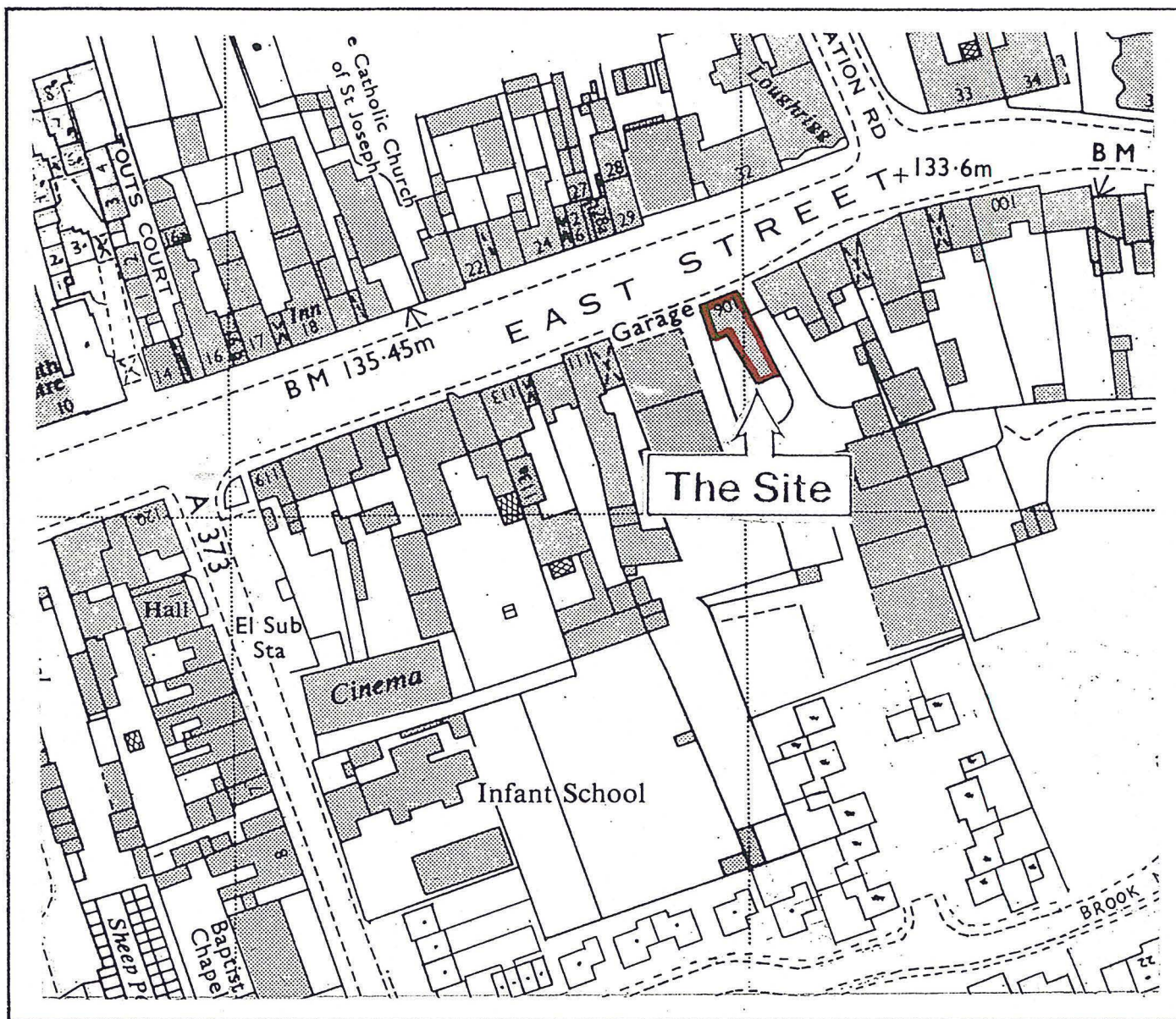




North Devon District Council  
Civic Centre, Barnstaple, Devon EX31 1EA

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

## ENFORCEMENT NOTICE (PLANNING).



Unauthorised Projecting Blind :-

**106 South Street, South Molton.**

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O.S. Plan No: SS 7125 East.

Drawn: *PM*

Scale: 1:1250.

Date: August 1989.




NORTH DEVON DISTRICT COUNCIL

ANNEX TO ENFORCEMENT NOTICE DATED 20TH DECEMBER 1989

1. The Directorate of Planning received a complaint that the owners, Mr and Mrs A Green of 106 East Street, South Molton, North Devon has failed to comply with Condition 4 of planning permission Reference 6149/88 granted on 2nd November 1988 by erecting a projecting blind without submitting a separate planning application.. Condition 4 provided that any proposed fascia panel or projecting blinds shall be the subject of separate applications to be considered on their merits.
2. The Directorate of Planning's Enforcement Officer, Mr Victor George Christian visited and inspected the property on 10th March 1989 and observed that the owners of 106 East Street, South Molton, North Devon had erected a projecting blind on their property with the words 'Paula Green' inscribed on it.
3. The Director of Planning, in a letter dated 20th March 1989 informed the owners of 106 East Street, South Molton, North Devon that the projecting blind to the front of the property was unauthorised and was not part of the approved planning application Reference 6149/88. The owners were advised to submit a separate planning application to regularise the matter but that should they submit such an planning application it would not receive the support of the Local Planning Department.
4. The Director of Planning in a letter dated 31st May 1989 informed the owners of 106 East Street, South Molton, North Devon that because they had not submitted a separate planning application to regularise the matter he had no alternative but to recommend to the Planning (Development Control) Committee on 14th November 1989 to authorise the Council's Solicitors to take enforcement action.
5. The Planning (Development Control) Committee of 14th November 1989 authorised the Council's Solicitors to take enforcement action.
6. The owners of 106 East Street, South Molton, North Devon submitted a separate planning application Reference 10643/89 on 27th September 1989 for the proposed exterior window blind. This planning application was refused planning permission on 14th November 1989 for the following reasons :
  - (a) The proposed alterations to this building of architectural and historical interest which makes a significant contribution to the character and appearance of the designated South Molton Conservation Area would be poorly related to the existing building as an architectural unit.
  - (b) The site is within an area designated as a Conservation Area and the proposal would conflict with the Local Planning Authority's intention to protect and enhance the appearance and character of such areas.
7. For the above mentioned reasons the North Devon District Council consider it expedient to issue this enforcement notice.

Dated 20/12/89

Signed.   
K B MORGAN, Solicitor

Ann/Green