

Contents

IMPORTANT-THISCOMMUNICATIONAFFECTSYOURPROPERTY	2
1. INTRODUCTION	2
2. BREACH OF LISTED BUILDING CONTROL	2
3. REASONS FOR ISSUING THE NOTICE	2
4. STEPS REQUIRED TO BE TAKEN.....	3
5. TIME FOR COMPLIANCE	3
6. WHEN THIS NOTICE TAKES EFFECT.....	3
ANNEX.....	4
APPEAL INFORMATION SHEET	5
THIS IS IMPORTANT	5
Enforcement Notice Plan for 3 Fore Street. Topsham ref ENF/21/00078	11

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

LISTED BUILDING ENFORCEMENT NOTICE

PLANNING (LISTED BUILDING AND CONSERVATION) AREAS ACT 1990 (as amended)

ISSUED BY: Exeter City Council (the “City Council”)

TO: The Owner/Occupier, 3 Fore Street, Topsham, Exeter EX3 0HF
Sammi Chakmakchi, No 3 Gin Bar Limited (Co. Regn. No. 13194856) of The Barbican Centre, Lustleigh Close, Marsh Barton Trading Estate, Exeter EX2 8PW
Howlett Property Limited (Co. Regn. No. 12432335) of 48 Wrefords Close, Exeter EX4 5AY
Barton Clark Properties Limited (Co. Regn. No.05269589) of 4-6 Barnfield Crescent, Exeter EX1 1RF and of 20 Streatham Drive, Exeter EX4 4PD and of 9 Plover Close, Topsham, Exeter EX3 0FJ

1. INTRODUCTION

The City Council is the local planning authority for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“**the Act**”) in relation to the following building: 3 Fore Street, Topsham, Exeter EX3 0HF (“**the Building**”).

The Building is included within a list of buildings of special architectural or historic interest compiled or approved under Section 1 of the Act.

2. BREACH OF LISTED BUILDING CONTROL

It appears to the City Council that the works specified below have been or are being executed to the Building and are such as to constitute a contravention of Section 9(1) of the Act:

Construction of:

1. a single-storey ground floor extension on the rear (north-east) elevation; and
2. covered canopy on rear elevation.

3. REASONS FOR ISSUING THE NOTICE

The City Council considers it expedient to issue this notice having regard to the effect of the said works on the character of the Building as one of special architectural or historic interest.

In particular the development is contrary to Chapter 12 and 16 of the National Planning Policy Framework, Objectives 8 and 9 of the Exeter Local Development Framework Core Strategy and Saved Policies C2 and DG1 of the Exeter Local Plan First Review 1995-2011 because:-

- i. by virtue of the poor quality design and use of non-traditional materials (including modern faux tiles, plastic roofing and guttering), it is considered that the unauthorised extension and canopy structure has a detrimental impact on the designated heritage asset - namely the character and appearance of 3 Fore Street Topsham; and
- ii. the identified harm to the designated historic asset would not be outweighed by the public benefits of the scheme.

4. STEPS REQUIRED TO BE TAKEN

The City Council requires the steps specified below to be taken for the purposes of: restoring the building to its former state by:

1. Demolishing i) the rear ground floor extension and ii) canopy structure on rear elevation.
2. Removing all materials formerly comprising the i) extension and ii) canopy structure and responsibly dispose of them.
3. Make good the original rear elevation and side boundary wall with materials to match the existing.

5. TIME FOR COMPLIANCE

The period for compliance with the steps set out in paragraph 4 is **6 (six) months** from the date this notice takes effect.

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 8 March 2023 unless an appeal is made against it beforehand.

Dated: 25th January 2023

Roger Clotworthy

Signed: _____ Roger Clotworthy

On behalf of: Exeter City Council, Civic Centre, Paris Street, Exeter EX1 1JN

Nominated Officer: Stacey Salter

Telephone Number: 01392 265175

ANNEX

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Planning Inspectorate acting on behalf of the Secretary of State before the date specified in paragraph 6 of the notice.

The enclosed information sheet published by the Planning Inspectorate gives details of how to make an appeal

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 6 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in paragraph 5 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the City Council.

EXISTING CRIMINAL LIABILITY

Section 9 of the Act creates immediate criminal liability if a person executes or causes to be executed any works for the demolition of a listed building, or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised. This criminal liability is independent of enforcement action commenced by an enforcement notice. You may, therefore, be liable to prosecution under Section 9 of the Act.

APPEAL INFORMATION SHEET

Customer Support Team
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Direct Line: 0303 444 5000

Email: enquiries@planninginspectorate.gov.uk

THIS IS IMPORTANT

If you want to appeal against this listed building enforcement notice you can do it:-
online at the [Appeals Casework Portal \(https://acp.planninginspectorate.gov.uk\)](https://acp.planninginspectorate.gov.uk) or
sending us listed building enforcement appeal forms, which can be obtained by
contacting us on the details above.

You MUST make sure that we RECEIVE your appeal BEFORE the effective date on the listed building enforcement notice.

Please read the appeal guidance documents at
<https://www.gov.uk/government/publications/listed-building-enforcement-notice-appeals-how-to-complete-your-appeal-form>

In exceptional circumstances you may give written notice of appeal by letter or email. You should include the name and contact details of the appellant(s) and either attach a copy of the Enforcement notice that you wish to appeal or state the following:
the name of the local planning authority;
the site address; and
the effective date of the listed building enforcement notice.

We MUST receive this BEFORE the effective date on the listed building enforcement notice. This should immediately be followed by your completed appeal forms.

EXTRACTS FROM THE PLANNING (LISTED BUILDING AND CONSDRVATION AREAS) ACT 1990 (as amended)

39 Appeal against listed building enforcement notice

(1) A person having an interest in the building to which a listed building enforcement notice relates or a relevant occupier may 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 9(1) or (2) have not occurred;
- (c) that those matters (if they occurred) do not constitute such a contravention];
- (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 ought 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 38(4);
- (g) except in relation to such a requirement as is mentioned in section 38(2)(b) or (c), that 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 by the notice 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 38(2)(b) 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 38(2)(c) 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 . . .—

- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the listed building enforcement notice as the date on which it is to take effect; or
- (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date; or
- (c) by sending such notice to him using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to him before that date].]

- (3) Where such an appeal is brought the listed building enforcement notice shall [subject to any order under section 65(3A)] be of no effect pending the final determination or the withdrawal of the appeal.
- (4) A person who gives notice of appeal under this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed, 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 may be prescribed.
- (5) If, where more than one ground is specified in the statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.
- (6) Where any person has appealed to the Secretary of State under this section against a notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.
- (7) In this section “relevant occupier” means a person who—
- (a) on the date on which the listed building enforcement notice is issued occupies the building to which the notice relates by virtue of a licence . . . ; and
 - (b) continues so to occupy the building when the appeal is brought.

40 Appeals: supplementary provisions

- (1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 39, and in particular, but without prejudice to the generality of this subsection may—
- (a) 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;
 - (b) specify the matters to be included in such a statement;
 - (c) require the authority or the appellant to give such notice of such an appeal 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 building in question is situated;
 - (d) 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.
- (2) Subject to section 41(4), the Secretary of State shall, if either the appellant or the local planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

[(2A) Subsection (2) does not apply to an appeal against a listed building enforcement notice issued by a local planning authority in England.]

[(2B) Subsection (2) does not apply to an appeal against a listed building enforcement notice issued by a local planning authority in Wales.]

(3) Schedule 3 applies to appeals under section 39.

41 Determination of appeals under s 39

[(1) On an appeal under section 39 the Secretary of State may—

(a) correct any defect, error or misdescription in the listed building enforcement notice; or

(b) vary the terms of the listed building enforcement notice,

if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.

(2) Where the Secretary of State determines to allow the appeal, he may quash the notice.

(2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.]

(3) The Secretary of State—

(a) may dismiss such an appeal if the appellant fails to comply with section 39(4) within the prescribed time; and

(b) may allow such an appeal and quash the listed building enforcement notice if the local planning authority fail to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 40(1)(a), (b) or (d).

(4) If [section 40(2) would otherwise apply and] the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) [of this section] or to allow an appeal and quash the listed building enforcement notice under paragraph (b) of that subsection he need not comply with section 40(2).

(5) Where it would otherwise be a ground for determining 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.

(6) On the determination of 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 his power under section 1 to amend any list compiled or approved under that section by removing from it the building to which the appeal relates.

(7) Any listed building consent granted by the Secretary of State under subsection (6) shall be treated as granted on an application for the same consent under section 10 and the Secretary of State's decision in relation to the grant shall be final.

[(8) Subsection (5) of [section 250](#) of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings [in England] before the Secretary of State on an appeal under section 39 as if those proceedings were an inquiry held by the Secretary of State under section 250.]

42 Execution of works required by listed building enforcement notice

(1) If any of the steps specified in the listed building enforcement notice have not been taken within the [period for compliance with the notice], the authority may—

- (a) enter the land and take those steps, and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

(2) Where a listed building enforcement notice has been served in respect of a building—

- (a) any expenses incurred by the owner or occupier of the building for the purpose of complying with it, and
- (b) any sums paid by the owner of the building under subsection (1) in respect of expenses incurred by the local planning authority in taking steps required by it,

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) Regulations under this Act may provide that all or any of the following sections of the [Public Health Act 1936](#), namely—

- (a) section 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);
- (b) section 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises);
- (c) section 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act),

shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a listed building enforcement notice.

(4) Regulations under subsection (3) applying all or any of section 289 of that Act may include adaptations and modifications for the purpose of giving the owner of land to which such a notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice.

(5) Regulations under subsection (3) may also provide for the charging on the land on which the building stands of any expenses recoverable by a local planning authority under subsection (1).

[(6) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

(7) . . .

[43 Offence where listed building enforcement notice not complied with]

[(1) Where, at any time after the end of the period for compliance with the notice, any step required by a listed building enforcement notice to be taken has not been taken, the person who is then owner of the land is in breach of the notice.

(2) If at any time the owner of the land is in breach of a listed building enforcement notice he shall be guilty of an offence.

(3) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.

(4) In proceedings against any person for an offence under this section, it shall be a defence for him to show—

(a) that he did everything he could be expected to do to secure that all the steps required by the notice were taken; or

(b) that he was not served with a copy of the listed building enforcement notice and was not aware of its existence.

(5) A person guilty of an offence under this section shall be liable [on summary conviction, or on conviction on indictment, to a fine].

(6) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.]

