

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

ENFORCEMENT NOTICE

TOWN AND COUNTRY PLANNING ACT 1990 **(As amended by the Planning Compensation Act 1991)**

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

1. NOTICE

This notice is issued by the City Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. The City Council considers it expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. THE LAND TO WHICH THE NOTICE RELATES

Land at 38 Commercial Road, Exeter, EX2 4AE being the ground floor area in the north-western area of the building and shown edged red on the attached plan (the “Land”).

3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission:

1. The unauthorised change of use of part of the ground floor area (in the north-western area of the building) of 38 Commercial Road, fronting Commercial Road, from retail Class E Use to use for the parking of vehicles (Sui Generis use).
2. Installation of roller shutter on Commercial Road elevation on north elevation of 38 Commercial Road, Exeter, EX2 4AE.

4. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the above breach of planning control has occurred within the last ten years (for the change of use) and four years (for the physical works/development).

The development relates to a commercial unit located within the Riverside Conservation Area, which forms a part of the historic Exeter Quay area of the city. The development is contrary to Paragraphs 130, 197, 199, 200 and 202 of the National Planning Policy Framework, Objectives 4, 8 and 9 and Policy CP17 of the Exeter Local Development Framework Core Strategy and Saved Policies C1, C2, DG1, KP6 of the Exeter Local Plan First Review 1995-2011 because:-

- i) the loss of a commercial retail unit, and its replacement with an inactive frontage, is detrimental to the overall vitality, vibrancy and attractiveness of The Quay area as an attractive destination for tourism and leisure, which in turn keeps important historic buildings well maintained and in active use;
- ii) by virtue of the position and design, the installed shutters have a detrimental impact on the locally distinctive and historic character and appearance of the surrounding townscape, including the setting of listed buildings and the wider Riverside Conservation Area;

iii) the 'less than substantial harm' to designated heritage assets is not outweighed by the public benefits of the scheme, of which there are none; and

iv) in the absence of a planning application in advance of the development proceeding, the identified harm has not been clearly and convincingly justified.

5. WHAT YOU ARE REQUIRED TO DO

You must:

1. Cease use of the ground floor as vehicular parking; and
2. Remove roller shutter from north elevation fronting Commercial Road.

6. TIME FOR COMPLIANCE

The period for compliance with the steps set out in paragraph 5 is 2 (two) months from the date this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 9th August 2023 unless an appeal is made against it beforehand.

Dated: 28th June 2023



Signed: Assistant Service Lead (DM) City Development (Hayley Stokes)

On behalf of: Exeter City Council

Nominated Officer: Stacey Salter

Telephone Number: 01392 265175

Email Address: Stacey.Salter@exeter.gov.uk

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 7 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 7 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 6 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.

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 enforcement notice you can do it:-

- online at the [Appeals Casework Portal](#); or
- sending us 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 enforcement notice.

Please read the appeal guidance documents at <https://www.gov.uk/appeal-enforcement-notice/how-to-appeal>.

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 enforcement notice.

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

EXPLANATORY NOTE

EXETER CITY COUNCIL has issued an enforcement notice and you are served with a copy of that notice as you have an interest in the Land.

Copies of the notice have also been served on the parties listed below.

YOUR RIGHT OF APPEAL

You can appeal against this enforcement notice. If you want to appeal against this enforcement notice you need to submit a copy of the enforcement notice a copy of your appeal and a plan and other documents in support of your appeal.

You can do this by following the instructions on the enclosed information sheet published by the Planning Inspectorate which gives details of how to make an appeal

You MUST make sure that the Planning Inspectorate receives your appeal before the effective date on the enforcement notice (see paragraph 7).

GROUNDINGS OF APPEAL

Under section 174(2) of the TCPA 1990 you may appeal on one or more of the following grounds that:

- (a) In respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.
- (b) Those matters have not occurred.
- (c) Those matters (if they have occurred) do not constitute a breach of planning control.
- (d) At the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
- (e) Copies of the enforcement notice were not served as required by section 172 of the Town and Country Planning Act 1990.
- (f) The steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by such breach.
- (g) Any period specified in the notice in accordance with section 173(9) of the Town and Country Planning Act 1990 falls short of what should reasonably be allowed.

Not all of these grounds may be relevant to you.

FEES

If you appeal under ground (a) of section 174(2) of the TCPA 1990 this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay the fee of £924.00 which is equivalent of applying for planning permission for the development alleged in the notice. You should pay the fee to Exeter City Council.

STATEMENT TO ACCOMPANY APPEAL

If you decide to appeal, you should state in writing the ground(s) on which you are appealing against the enforcement notice and you should state briefly the facts on which you intend to rely in support of each of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, the enforcement notice will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, are taken within the period specified in paragraph 6 of the notice.

FAILURE TO COMPLY with an enforcement notice which has taken effect can result in prosecution under s179 of the Town and Country Planning Act 1990 and/or remedial action and a claim for the costs of the works by the City Council under s178 of the Town and Country Planning Act 1990.

Service of Notice

Persons served with a copy of this enforcement notice are as follows:

Exeter City Council of Civic Centre, Paris Street, Exeter EX1 1JN
Kennaway Estates Limited (Co. Regn. No.10022745) of The Mill, Kingsteignton Road, Newton Abbot TQ12 2QA
Principality Building Society of Principality House, The Friary, Cardiff CF10 3FA
The Owner/Occupier(s), Retail Unit (facing Commercial Rd), 38 Commercial Road, Exeter EX2 4AE

Ground Floor Retail Unit Fronting Commercial Road, 38 Commercial Road, EX2 4AE

