

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**LISTED BUILDING ENFORCEMENT NOTICE**

**PLANNING (LISTED BUILDING AND CONSERVATION AREAS) ACT 1990  
ENFORCEMENT NOTICE - UNAUTHORISED WORK TO A GRADE II LISTED BUILDING**

1. **SOUTH LAKELAND DISTRICT COUNCIL** ("the Council") is the Local Planning Authority for the purpose of Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Act") for the area containing the building described below.

The building is included within a list of buildings of special architectural or historic interest approved and compiled by the Secretary of State under the provisions of section 1 of the Act.

2. **THE BUILDING TO WHICH THE NOTICE RELATES:**

Betfred, 11/11a Market Street, Ulverston, Cumbria, LA12 7AY hereafter referred to as ("the Building") as shown edged red for identification purposes only on **plan No. 1** attached to this Notice.

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

It appears to the Council Local Planning Authority that the following works ("the Works") have been executed to the Building in contravention of section 9 (1) of the Act:-

- I. Six timber double sliding sash windows removed and insertion of modern timber top hung with double glazed units, to the front first and second floors.

4. **REASONS FOR ISSUING THIS NOTICE:**

The replacement windows are modern top hung opening single pane casement windows with thicker frames and no vertical glazing bars. They bare very little resemblance to the original timber windows. The glazing is modern with a flat light appearance and not characteristic of the period materials.

The building in question is a very dominant facade on Market Street in the heart of the Conservation area. The building is listed and the removed sash windows are mentioned on the listing (being 2 over 2 sashes) these were original to the building and with the original glass made a very positive contribution to the Conservation area.

The NPPF at section 13, para 132, Conserving and enhancing the Historic environment: stresses the need for careful consideration when dealing with an application for works to a listed building. Local Authorities should recognise that heritage assets are an irreplaceable and limited resource and conserve them in a manner appropriate to their significance. Extensive works resulting in substantial harm to heritage assets of the highest significance, namely grade 11 listed buildings, should be entirely exceptional.

In this instance the works were not brought to the Local Planning Authorities attention, and the opportunity to assess the impact or weigh the balance between the significance of the heritage asset against more desirable works, was lost.

The alterations have resulted in a harmful impact upon the character and appearance of the grade II listed building and its setting within the conservation area, by reason of the design and appearance of the replacement windows. The alterations do not deliver any significant public benefits. A retrospective application was made to retain the new windows and refused. The unauthorised development is contrary to policy CS8.6 of the South Lakeland Core Strategy, saved policies C15 and C16 of the South Lakeland Local Plan and Paragraphs 132- 134 of the NPPF

**5. WHAT YOU ARE REQUIRED TO DO:**

The Council requires the specified steps to the parts of the Building listed below to be taken to alleviate the effect of the works which were carried out without Listed Building Consent.

1. Remove the 6 unauthorised top hung opening single pane casement windows from the front of building first and second floors .
2. To the front of the building, insert 6 new timber Sash box frames with cords and weights and reuse the salvaged sliding sashes with original glass, to the first and second floor.

Time for compliance with requirement (1) and (2) is 3 months from the date this Notice takes effect.

**6. WHEN THIS NOTICE TAKES EFFECT:**

This Notice takes effect on 8<sup>th</sup> October 2017 unless an appeal is made against it beforehand.

Dated 4<sup>th</sup> September 2017

Signed  .....

Anthea Lowe

Solicitor to the Council

On behalf of:-

South Lakeland District Council of South Lakeland House  
Lowther Street  
KENDAL  
Cumbria LA9 4UQ



## **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 Secretary of State Planning Inspectorate before the date specified in paragraph 6 of the Notice.

You must submit to the Secretary of State either when giving notice of appeal or within 14 days of the Secretary of State giving notice so requiring a written statement specifying the grounds on which you are appealing against the enforcement notice and stating briefly the facts on which you are proposing to rely in support of each of those grounds.

### **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, and 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 Council.

## **RELEVANT STATUTORY PROVISIONS RELATING TO A LISTED BUILDING ENFORCEMENT NOTICE**

### **PLEASE READ THESE NOTES CAREFULLY**

#### **PLANNING (LISTED BUILDING AND CONSERVATION AREAS) ACT 1990**

##### **CHAPTER IV ENFORCEMENT**

**38** Power to issue listed building enforcement notice.

**(1)** Where it appears to the local planning authority—

**(a)** That any works have been or are being executed to a listed building in their area; and

**(b)** That the works are such as to involve a contravention of section 9(1) or (2), they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice under this section (in this Act referred to as a "listed building enforcement notice").

**(2)** A listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken.

**(a)** For restoring the building to its former state; or

**(b)** if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent; or

**(c)** For bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.

**(3) A listed building enforcement notice—**

**(a)** Shall specify the date on which it is to take effect and, subject to sections 39(3) and 65(3A), shall take effect on that date, and

**(b)** Shall specify the period within which any steps are required to be taken and may specify different periods for different steps, and, where different periods apply to different steps, references in this Part to the period for compliance with a listed building enforcement notice, in relation to any step, are to the period within which the step is required to be taken.

**(4)** A copy of a listed building 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 it as the date on which it is to take effect.

**(a)** on the owner and on the occupier of the building to which it relates; and

**(b)** on any other person having an interest in that building which in the opinion of the authority is materially affected by the notice.

**(5) The local planning authority may—**

**(a)** withdraw a listed building enforcement notice (without prejudice to their power to issue another); or

**(b)** waive or relax any requirement of such a notice and, in particular, may extend the period specified in accordance with section 38(3), and the powers conferred by this subsection may be exercised whether or not the notice has taken effect.

**(6)** The local planning authority shall, immediately after exercising the powers conferred by subsection (5), give notice of the exercise to every person who has been served with a copy of the listed building enforcement notice or would, if the notice were re-issued, be served with a copy of it.

**(7)** Where a listed building enforcement notice imposes any such requirement as is mentioned in subsection (2)(b), listed building consent shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice.

**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 either—

(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.

(3) Where such an appeal is brought the listed building enforcement notice shall 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 license; 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.

**(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 mis-description 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 the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) 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 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.

#### **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—

(a) on summary conviction, to a fine not exceeding £20,000; and

(b) 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.

#### 44 Effect of listed building consent on listed building enforcement notice.

(1) If, after the issue of a listed building enforcement notice, consent is granted under section 8(3)—

(a) For the retention of any work to which the notice relates; or

(b) Permitting the retention of works without compliance with some condition subject to which a previous listed building consent was granted, the notice shall cease to have effect in so far as it requires steps to be taken involving the works not being retained or, as the case may be, for complying with that condition.

(2) The fact that such a notice has wholly or partly ceased to have effect under subsection (1) shall not affect the liability of any person for an offence in respect of a previous failure to comply with that notice.

#### 44 Injunctions.

(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended contravention of section 9(1) or (2) to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.

(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the contravention.

(3) Rules of court may, in particular, provide for such an injunction to be issued against a person whose identity is unknown.

(4) The references in subsection (1) to a local planning authority include, as respects England, the Commission.



(5) In this section “the court” means the High Court or the county court.

## **88 Rights of entry.**

(1) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of surveying any building on it or any other land in connection with a proposal to include the building in, or exclude it from, a list compiled or approved under section 1.

(2) Any person duly authorised in writing by the Secretary of State, a local planning authority or, where the authorisation relates to a building situated in Greater London, the Commission may at any reasonable time enter any land for any of the following purposes—

(a) Surveying it or any other land in connection with any proposal by the authority or the Secretary of State to make, issue or serve any order or notice under any of the provisions of sections 1 to 26, 38, 40, 46, 54, 55, 60, 68, 75 or 76 or under any order or regulations made under any of them, or any notice under section 48;

(b) Ascertaining whether any such order or notice has been complied with in relation to the land or any other land;

(c) Ascertaining whether an offence has been, or is being, committed with respect to any building on the land or any other land, under section 9, 11 or 43;

(d) Ascertaining whether any building on the land or any other land is being maintained in a proper state of repair.

(3) Any person duly authorised in writing by the Secretary of State, a local authority or, where the authorisation relates to a building situated in Greater London, the Commission may at any reasonable time enter any land for any of the following purposes—

(a) Ascertaining whether an offence has been or is being committed under section 59 in relation to the land or any other land;

(b) Ascertaining whether any of the functions conferred by section 54 should or may be exercised in connection with the land or any other land; or

(c) Exercising any of those functions in connection with the land or any other land.

(4) Any person who is an officer of the Valuation Office or is duly authorised in writing by a local planning authority may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation payable by the authority under section 28 or 29 in respect of any land.

(5) Any person who is an officer of the Valuation Office or is duly authorised in writing by a local authority having power to acquire land under sections 47 to 52 may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that land or any other land or in connection with any claim for compensation in respect of any such acquisition.

(6) Subject to section 88B(8), any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil



