IMPORTANT:— THIS COMMUNICATION AFFECTS YOUR PROPERTY

(a) North Devon District Council

TOWN AND COUNTRY PLANNING ACT 1971
(as amended)

Enforcement Notice
Operational Development

(b) Oaktree Carp Farm, Bullaford

WHEREAS:

(1) It appears to the(a) North Devon District Council ("the Council"), being the local planning authority for the purposes of section 87 of the Town and Country Planning Act 1971 ("the Act") in this matter, that there has been a breach of planning control within the period of 4 years before the date of issue of this notice on the land or premises ("the land") described in Schedule 1 below.

(2) The breach of planning control which appears to have taken place consists in the carrying out of the building, engineering, mining or other operations described in Schedule 2 below, without the grant of planning permission required for that development.

(3) The Council consider it expedient, having regard to the provisions of the development plan and to all other material considerations, to issue this enforcement notice, in exercise of their powers contained in the said section 87, for the reasons set out in [the annex to] this notice.(c)

NOTICE IS HEREBY GIVEN that the Council require that the steps specified in Schedule 3 below be taken [in order to remedy the breach] [(d)

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within [the period of 6 ~~[days]~~ [months] from the date on which this notice takes effect] [~~the period specified in respect of each step in that Schedule~~](e)

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88(10) of the Act, on 25th February 19 88.(f)

Issued 21 January 1988.

Council's address
Civic Centre,
Barnstaple,
North Devon, EX31 1EA.

(Signed) [redacted]

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

CONTINUED OVERLEAF — P.T.O.

NOTES TO THE LOCAL PLANNING AUTHORITY

(a) Insert the name of the Council issuing the notice.
(b) Insert the address or a description of the land to which the notice relates.
(c) See paragraph 29 of DOE Circular 38/81 (Welsh Office Circular 57/81).
(d) Or, as the case may be, having regard to section 87(7)(a) and (b) of the Act. Where steps are required to be taken for more than one of the purposes provided for in section 87, the purpose for which each step is required should be specified in Schedule 3. Steps may be required as alternatives.
(e) If a single period is to be specified, by which all the required steps must be taken, insert it here. But if a series of steps is required to be taken, with a different compliance period for each step, the appropriate period should be clearly stated against each step (in columns if more suitable) in Schedule 3.
(f) The date selected must be not less than 28 clear days after all the copies of the notice will have been served (see section 87(5) of the Act).

Cat. No. TCP 106 SHAW & SONS LTD., Shaway House, London SE26 5AE. LLY 897

SCHEDULE 1

Land or premises to which this notice relates

(address or description)

Oaktree Carp Farm, Bullaford, East Anstey

shown edged [red] [ ] on the attached plan.(g)

SCHEDULE 2

Alleged breach of planning control

(description of operations carried out on the land) (h)

The excavation of 5 ponds for a fish farm.

SCHEDULE 3

Steps required to be taken(j)

(i) Fill in the 5 ponds and reinstate the land to its former condition, before excavations were commenced.

NOTES TO THE LOCAL PLANNING AUTHORITY

(g) See paragraph 31 of DOE Circular 38/81 (Welsh Office Circular 57/81).

(h) Where the works being enforced against are on only part of the land identified in Schedule 1, their position should be shown on the plan.

(j) Specify the actual steps to be taken with, if appropriate, the compliance period for each step. The requirements should be clear and precise. See also notes (d) and (e) overleaf.

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

Power to issue 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;

(*c*) that the breach of planning control alleged in the notice has not taken place;

(*d*) in the case of a notice which, by virtue of section 87(4) of this Act, may be issued 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;

***NOTE:** The Secretary of State has specified that such a statement must be submitted to him either when the appellant is giving notice of appeal, or within 28 days from the date on which the Secretary of State sends the appellant a notice requiring such a statement to be submitted.

(*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 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 appealling against an enforcement notice; but
(*b*) the appellant does not give information required under paragraph (*b*) of that subsection 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 £2,000 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.

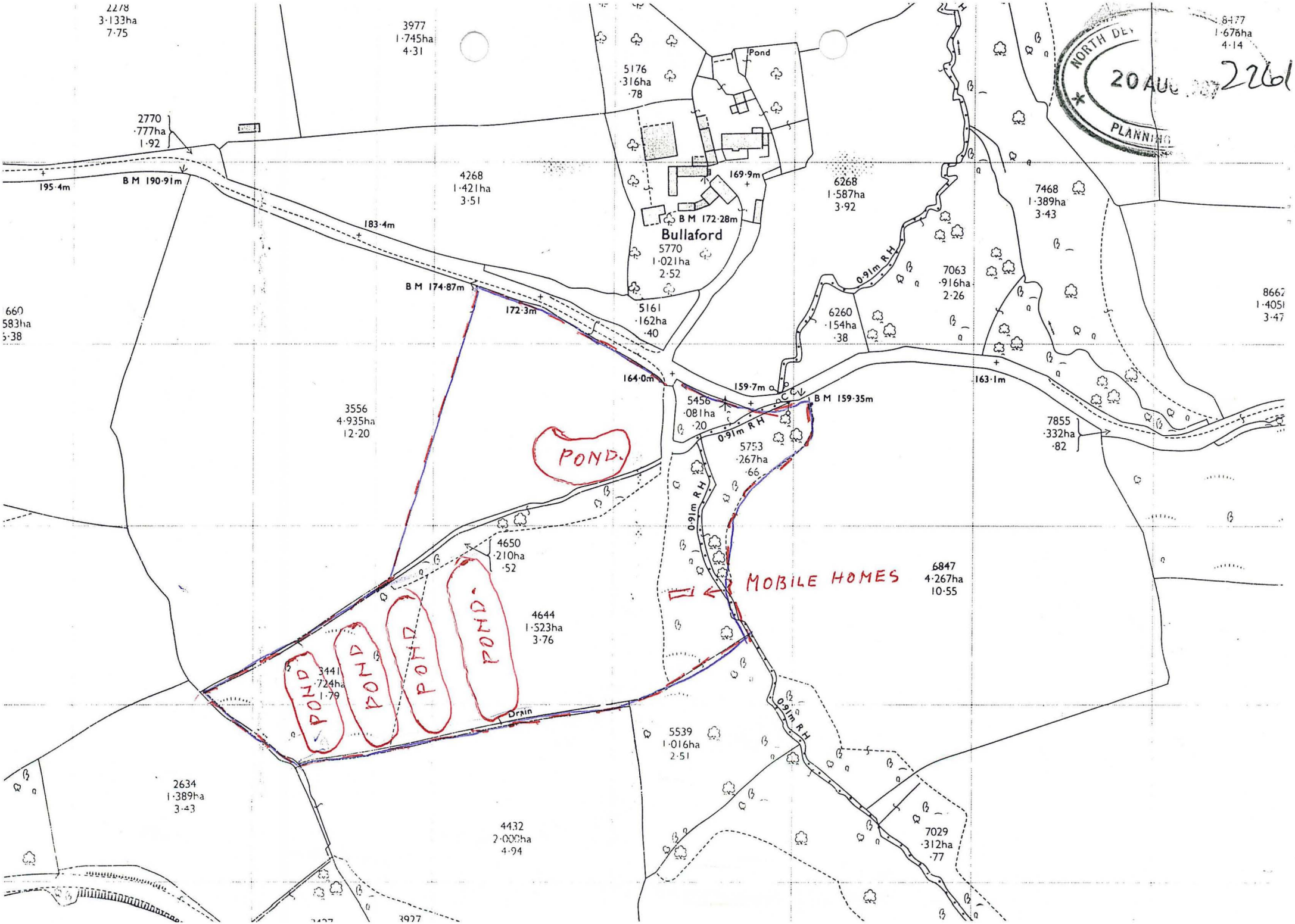
(3) If, after it has been proved that any steps required by the enforcement notice have not been taken within the period allowed for compliance with the notice, the original defendant proves that the failure to take those steps were attributable, in whole or in part, to the default of the subsequent 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 provisons 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 exceeing £2,000, 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 of 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 notice, section 110 which contains supplementary provisions as to appeals to the Secretary of State and section 243 relating to the validity of Enforcement Notices.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NORTH DEVON DISTRICT COUNCIL

Annex to Enforcement Notice dated 21 January 1988.

Oaktree Carp Farm, Bullaford

1. During July 1987 it was brought to the attention of North Devon District Council that various excavation works to form ponds were being carried out at Oaktree Carp Farm, Bullaford. No planning application has been received in respect of the ponds.

2. Had a planning application been received it would have been recommended to Council for refusal on the following grounds:-

   (i) The proposed development is in an area where the authority would only permit development which to their satisfaction is necessary in the interests of agriculture. The Local Planning Authority having consulted the Ministry of Agriculture, Fisheries and Food is not satisfied that the agricultural need claimed for this development is such as to override the planning objection.

   (ii) The proposal constitutes isolated development in the countryside, which, in the absence of any overriding need, is contrary to the Local Planning Authority's recognised Rural Policy of locating development in established centres where community services are available, and would comprise development contrary to Policy SE8 of the Devon County Structure Plan.

   (iii) The proposal would give rise to further development in the countryside divorced from any established centres where community services and facilities are available, contrary to the Local Planning Authority's recognised rural Policy of locating development in established centres where community services are available and would comprise development contrary to Policy SE8 of the Devon County Structure Plan.

   (iv) The increased use of the access onto the public highway, resulting from the proposed development would, by reason of the limited visibility from and of vehicles using the access, be likely to result in additional danger to all users of the road and interference with the free flow of traffic.

   (v) The proposal would set a precedent for development along a road which by virtue of its width and alignment is unsuitable to cater for the additional traffic which would be generated.

3. The excavations remain in the form of 5 large pond shaped holes.

4. For these reasons the Council finds it expedient to issue this Enforcement Notice.

[redacted]

Solicitor