

ENFORCEMENT REGISTER INFORMATION SHEET

E/ 341

APPEAL yes no

Plan's Ref N/85/0424

ADDRESS

34 HOLLOWAY
MARMESBURG.

BREACH of CONTROL

THE UNAUTHORISED OF A
PEDESTRIAN ACCESS TO
THE CLASS II PUBLIC
HIGHWAY B4040.

Issuing Authority N.W.D.C.

Date Issued 7.1.85

STOP NOTICES

Date Served
Requiring

Date(s) served

8.1.85.

Takes effect 11.2.85

Compliance by 11.5.85

Dates Extended by
Secretary of State

341

Date withdrawn

REQUIREMENTS of ENFORCEMENT

(i) To secure a reduction in the width of the access to a width not exceeding one metre.

(ii) To secure the erection of a local natural stone wall of rubble construction to a height of not less than 1.8 metres above the adjoining highway carriageway level along the whole of that part of the boundary of the property adjacent to the B.4040 now forming part of the unauthorised access save for the aforesaid pedestrian opening not exceeding one metre in width.

EXTENT TO WHICH NOTICE COMPLIED WITH (dates)

Appeal Allowed 13/8/85

1944

1945

K. SUTTON

IMPORTANT -

THIS COMMUNICATION AFFECTS YOUR PROPERTY

District Secretary's Department
D. F. Lewis
Solicitor to the Council



North Wiltshire District Council

Monkton Park,
Chippenham,
Wiltshire, SN15 1ER.
Tel. Chippenham (0249) 654188.
Ext. 132

Our ref **E** 341 Enquiries to Mr. McDonald

Dear Sir/Madam,

7th January, 1985

NORTH WILTSHIRE DISTRICT COUNCIL TOWN AND COUNTRY PLANNING ACT 1971 (as amended) ENFORCEMENT NOTICE

34 HOLLOWAY, MALMESBURY.

The Council have issued an Enforcement Notice relating to the above land and I now serve on you a copy of that Notice, in view of your interest in the land.

Unless an appeal is made to the Secretary of State, as described below, the Notice will take effect on the date shown in the box below and you must then ensure that the required steps for which you may be held responsible are taken within the period or periods specified in the Notice.

If you wish to appeal against the Notice, you should first read carefully the enclosed booklet entitled "Enforcement Notice Appeals - A Guide to Procedure". Then, you or your agent should complete the enclosed appeal form and send it, together with the extra copy of the Enforcement Notice enclosed herewith and the fee specified in the box below, to the address on the appeal form. Your appeal must be received by the Department of the Environment BEFORE the Notice takes effect.

There is a requirement on the Council to specify the reasons why the local planning authority consider it expedient to issue the Notice and these reasons are set out in the ANNEX overleaf.

Yours faithfully,

Solicitor

DATE ON WHICH NOTICE TAKES EFFECT and BEFORE WHICH ANY APPEAL MUST BE RECEIVED -	11th February, 1985
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FEE WHICH MUST ACCOMPANY APPEAL -	£24
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To: W.R. Davies,
34 Holloway,
Malmesbury,
Wiltshire.

ANNEX - (This does not form part of the Enforcement Notice)

REASONS FOR ISSUE :-

The works and alterations effected are severely detrimental to the special visual amenities of this area of the historic town of Malmesbury.

NORTH WILTSHIRE DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1971 (as amended)
ENFORCEMENT NOTICE

34 HOLLOWAY, MALMESBURY

WHEREAS :


- (1) It appears to the North Wiltshire 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 four 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.

NOTICE IS HEREBY GIVEN that the Council require that the steps specified in Schedule 3 below be taken in order to alleviate injury to amenity which has been caused by the said development within the period of THREE MONTHS from the date on which this Notice takes effect.

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of Section 88(10) of the Act, on 11th February, 1985

ISSUED 7th January, 1985

Signed



Monkton Park,
Chippenham, SN15 1ER

/ SCHEDULE 1

(over)

SCHEDULE 1 - Land or premises to which this Notice relates

House and garden premises known as 34 Holloway, Malmesbury Wilts shown stippled on the attached plan.

SCHEDULE 2 - Alleged breach of planning control

The enlargement of a pedestrian access to the Class II public highway B4040.

SCHEDULE 3 - Steps required to be taken

- (i) To secure a reduction in the width of the access to a width not exceeding one metre.
- ~~—(ii)—~~ To secure the erection of a local natural stone wall of rubble construction to a height of not less than 1.8 metres above the adjoining highway carriageway level along the whole of that part of the boundary of the property adjacent to the B.4040 now forming part of the unauthorised access save for the aforesaid pedestrian opening not exceeding one metre in width.

E 341

Cricket Ground

NORTH WILTSHIRE DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

ENFORCEMENT NOTICE

MALMESBURY C P

No 6 WARD

**the land
referred to:**

St Mary & St Aldhelm's
Abbey Church (C of E)
Remains of
Abbey
(Benedictine)

Abber House

The Rectory

The Vicarage

St Joseph's R C
Primary Sch

Tower House

St Aldhelm's
R C Church

Pentecostal Church

Scale 1:2500

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ST 187000

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Roundmead 936

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Department of the Environment and
Department of Transport

Common Services

Room 1408

Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct line 0272-218 938

Switchboard 0272-218811

GTN 2074

Council ref: N/85/0424/ENF E341 MCD/A



Mr W R Davies
Hillside
34 Holloway
MALMESBURY
Wilts
SN16 9BA

 PLANNING DEPARTMENT NO 16 AUG 1985	PLACED TO	DATE RECEIVED

Your reference

Our reference

T/APP/J3910/C/85/615/P6

Date

13 AUG 85

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
LAND AND BUILDINGS AT 34 HOLLOWAY, MALMESBURY

1. As you know I have been appointed by the Secretary of State for the Environment to determine your appeal. Your appeal is against an enforcement notice issued by the North Wiltshire District Council concerning the above land and buildings. I held an inquiry into the appeal on Tuesday 2 July 1985.

2. a. The date of the notice is 7 January 1985.

b. The breach of the planning control alleged in the notice is the enlargement of a pedestrian access to the Class II public highway B4040, on land at 34 Holloway, Malmesbury, shown stippled on the plan attached to the notice, without the grant of planning permission required in that behalf.

c. The requirements of the notice are:

i. To secure a reduction in the width of the access to a width not exceeding 1 m.

ii. To secure the erection of a local natural stone wall of rubble construction to a height of not less than 1.8 m above the adjoining highway carriageway level along the whole of that part of the boundary of the property adjacent to the B4040 now forming part of the unauthorised access save for the aforesaid pedestrian opening not exceeding 1 m in width.

d. The period of compliance with the notice is 3 months.

e. The appeal was made on grounds 88(2)(a), (b), (c) and (g).

3. The evidence was not taken on oath.

4. The appeal site fronts the north side of the Class II highway, B4040, known at this point as Holloway and forming one of the main approach roads to the centre of Malmesbury. The site contains your detached house, "Hillside", which is constructed of stone and abuts the rear plot boundary so that there is only a garden to the front and east side of the property, with an enclosed yard on the west side. The house is elevated several feet above road level and has no vehicular access whilst

sole pedestrian access is to the front garden via a flight of steps rising out of a recessed forecourt of somewhat irregular shape and abutting the edge of the carriageway. The inner walls of the forecourt are faced with a mixture of natural stone and concrete blocks. At the western end of the recess is a single gatepost on which is hung a metal wicket gate. At the eastern end is the broken end of a high natural stone wall which flanks the north side of Holloway. The recess has an overall width of some 5.66 m at the widest and a depth varying from 1.6 m at the western end to 3.5 m at the opposite end. The floor of the recess is covered with broken paving. From the vicinity of the site, Holloway falls quite steeply in a north-easterly direction down to a bridge over the River Avon. It has the appearance of being in a cutting with natural stone walls flanking it on the south side, as well as the north, with one of the remaining East Gate towers standing on the south side of the road, further to the east of the site. There is no footpath on the north side of the road such that a pedestrian emerging from the appeal site steps directly onto the carriageway.

THE APPEAL ON GROUNDS (b) AND (c)

5. You explained to me that in December 1982 the front boundary wall of the property was removed together with the steps behind in order to install a new main water supply. The section of wall removed was not part of the retaining wall being approximately 9 ins thick and capped with bricks, the whole being in a poor state of repair; it was your intention to use the opportunity of installing the water main to improve pedestrian visibility. Both the police and the county highways authority were consulted in addition to the water authority. A fuller account of the background to the matter was contained in the decision letter dated 15 November 1983 (Document 3), at paragraphs 8, 9, 10 and 11, which related to an earlier appeal. You considered this to be a fair representation of your case with the single exception that a digger was employed only because the police were insistent on the minimum disruption of the highway and allowed the work to be carried out without the use of traffic lights only if completed in 2 hours.

6. The work as intended, although it improved visibility, did not materially change the access, as entry to the garden above would have been in the same position. Even with the collapse of the retaining wall the entry point to the garden remained substantially the same. Thus entry and exit at road level had improved visibility and safety whilst entry and exit at garden level remained as before. One of the suggestions made by you to the council was the reinstatement of the inner wall along the dotted line marked "dwarf wall" on Plan B. Had this been acceptable, you considered that no breach of planning control would have occurred as removal of the small length of wall and the steps behind could not have been said to be engineering works.

7. In answer to my question you acknowledged that despite the foregoing reasoning, the works as existing at the site did constitute a breach of planning control.

8. The council pointed out that your earlier appeal on ground (b) had failed because the Inspector had concluded that the works constituted development for which planning permission was required. The council maintained that there had been no change in circumstances to warrant a different decision.

9. So far as the appeal on ground (c) was concerned the council explained that the earlier notice had been quashed because the allegations, relating to the formation of a vehicular access, had been found to be incorrect and the notice was not considered to be capable of correction by the Inspector. They maintained that the present notice, by referring to the enlargement of a pedestrian access, was now correct and was an accurate interpretation of your own statements at the previous inquiry.

10. Concerning the appeal on ground (c), I am satisfied that the works which have been carried out amount to an enlargement of an existing pedestrian access and you have not sought to dispute this. Therefore the allegation in the notice is in my view an accurate description of the work which has taken place and the appeal on this ground fails.

11. As for ground (b), I see no reason to dissent from the conclusions of the Inspector on the occasion of your earlier appeal. I consider that as a matter of fact and degree, these works were sufficiently extensive as to constitute operational development in terms of Section 22 of the Act. Since the development involves the alteration of an access to a classified highway I am also satisfied that it does not fall within the criteria for permitted development contained in Class II of the General Development Order. This operational development therefore required planning permission and as no such permission was given the appeal on ground (b) must also fail.

THE APPEAL ON GROUND (a)

12. From my inspection of the site and its surroundings and from the representations made, I consider that the main issue to be decided is whether or not the development is seriously harmful to the character of this part of Malmesbury.

13. I note that whilst much of the historic core of the town has been designated a conservation area and has been given the further description of "outstanding" by this Department, the site lies some 150 ft outside the boundary of the area. Policy C2 of the formally adopted Malmesbury Local Plan states: "the character of Malmesbury and its environs will be maintained by seeking to secure a high standard of design (particularly within the Conservation Area) for development proposals related to the form and setting of each settlement."

14. I also understand that in their concern to ensure that the town retains its unique architectural and historic character, the council instructed consultants to prepare a conservation study which was published in April 1980 (Document 7). Holloway was one of the areas studied and particular reference was made to the appeal site. It was suggested that the area would be enhanced by the "maintenance of wall, removal of timber lintel and making good with natural stone." The sense of enclosure was particularly referred to in reference to the ancient remains of the Eastgate.

15. The council told me that at the time you purchased the property in 1982 there was a vertical stone retaining wall along the frontage of the site varying in height above the carriageway from perhaps 5 ft to 6 ft at the western end up to 8 ft at the other. Towards the west end of the wall there was a gap with a grill gate affording pedestrian access to a recess some 6 ft deep and 5 ft wide from which steps rose eastwards, parallel to the road, to give access to the front garden.

16. In their view the terraced cottages on the southern side of Holloway and the brick retaining walls of the area achieved a strong sense of enclosure, particularly appropriate to an entrance to such a unique, historic town as Malmesbury. The cottages, the remains of the Eastgate and parts of the town walls lying to the east of the site a little down the hill, were listed for their architectural and historic interest.

17. The council contended that they had not been inflexible in their approach, nor had enforcement action been taken lightly. During the period between the previous appeal and the issue of this notice, they had suggested a revised scheme to you

which they found acceptable (Plan E). You were not prepared to accept this scheme and the matter was reported to the Planning Committee (Document 8). The council remained firmly of the opinion that the development was seriously detrimental to the special visual amenities of this part of the historic town of Malmesbury. They maintained that the town was a special case deserving of serious detailed consideration and calling for a strict application of development controls.

18. It seems to me that there was generally no dispute between the parties that Malmesbury, particularly in the region of Holloway, has special qualities deserving of extra care in the control of development and this is a point of view with which I concur. You also agreed with the council, and it was evident at my inspection, that the site, in its present condition, is unsightly and that additional work is required in the form of attention to stone facings and paved areas to remedy this situation.

19. The main point at issue was whether or not the creation of this relatively large opening in the wall flanking the north side of Holloway was so harmful to the appearance of the surrounding area as to be unacceptable. The council's primary concern was that the continuity of this wall had been broken, thereby detracting from the sense of enclosure and what they described as the "tunnel effect" which it provides.

20. In my opinion the council have over-stressed the importance of the enlargement of this pedestrian access and its impact on the area. As you pointed out, and illustrated by means of photographs, when viewed from the east and west, looking respectively up and down the hill, the recessed area does not register significantly. It is only when looking directly into the site that the gap in the wall is particularly noticeable. Despite this, however, I do not agree with the council that it so detracts from the street scene as to be unacceptable. This is mainly because the entrance to No 34 is almost at the western extremity of the stone walling; beyond this point it continues in less pleasing brickwork where it forms the retaining wall to the site frontage of a large and unattractive warehouse.

21. On a more practical point, I understand your desire to improve safety for pedestrians leaving the site by providing a more open frontage to increase visibility before stepping onto the carriageway. The need for people to be able to stand clear of the highway was appreciated by the highway authority's witness at the previous inquiry, who also pointed to the desirability of providing room to open car doors when passengers are alighting from cars. You also mentioned the benefits, conferred by a wider access, of being able to carry large objects such as furniture in and out of the property with least difficulty. This is a very valid point in my opinion, in circumstances such as these where this pedestrian entrance is the sole means of access to your house. In my view the questions of safety and these practical considerations outweigh any marginal disadvantages which the development brings in aesthetic terms.

22. On balance therefore I conclude that planning permission should be granted. However, parts of the walls lining the recess are of inappropriate concrete blockwork and the floor of the recess is presently surfaced with loose paving and rubble. To improve the appearance of the work, I share the council's view that the walls and paving should be finished in natural stone to match existing materials. For your part you said that it was your intention to make such improvements. It was also agreed and appears to me to be desirable from the point of view of pedestrian safety, that the paved area be raised by 4½ ins above carriageway level to prevent cars mounting the kerb. I therefore intend to attach conditions to this effect.

23. I have taken account of the alternative scheme put forward by the council as shown on Plan E and your suggested scheme shown on Plan B. These were presented to

me for consideration as options in the event of my not allowing the appeal on ground (a). However, whilst both have their merits neither scheme is in my view a compelling justification for withholding planning permission on the deemed application.

24. Furthermore, I have had regard to the advice referred to by the council, as set out in Circulars 23/77 and 22/80 and Development Control Policy Notes 5 and 7. However, none of this advice leads me to conclude that I should alter my opinion that there are no sound and clear-cut reasons why planning permission should not be granted in this case.

25. As your appeal succeeds on ground (a), the appeal on ground (g) does not fall to be considered.

26. I have taken account of all the other matters raised including the policies contained in the North East Wiltshire Structure Plan referred to by the council. These matters are, however, insufficient to outweigh the considerations which have led to my decision.

FORMAL DECISION

27. For the above reasons, and in exercise of the powers transferred to me, I hereby allow your appeal, direct that the notice be quashed and grant planning permission for the development referred to therein on the application deemed to have been made therefor under Section 88B(3) of the Act subject to the following conditions:

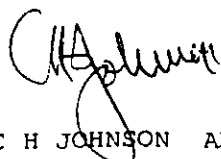
1. Within 4 months of the date of this letter, all walls constructed pursuant to the enlargement of the pedestrian access shall be faced with natural stone to match the existing adjoining wall to the east in colour, texture, courses and jointing.
2. Within 4 months of the date of this letter the base of the pedestrian access, as enlarged, shall be surfaced with natural stone paving and shall be raised a minimum of 4½ ins above the level of the adjoining carriageway.

28. This decision does not convey any approval or consent required under any enactment, byelaw, order or regulations other than Section 23 of the Town and Country Planning Act 1971.

RIGHT OF APPEAL AGAINST DECISION

29. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Sir
Your obedient Servant



C H JOHNSON ARICS
Inspector

ENC

APPEARANCES

FOR THE APPELLANT

Mr W R Davies

- For himself.

FOR THE PLANNING AUTHORITY

Mr J F McDonald

- Principal Administrative
Officer, North Wiltshire
District Council.

He called:

Mr R B Williams DipTP MRTPL
MIAS MBIM

- Principal Planning Officer,
North Wiltshire District
Council.

DOCUMENTS

- Document 1 - List of persons present at the inquiry.
- Document 2 - Council's letter notifying local residents of the inquiry and list of persons notified.
- Document 3 - Department of the Environment letter dated 15 November 1983 Ref T/APP/5408/C/83/852/P2.
- Document 4 - Wiltshire County Council: Statement of Highway Evidence 5 October 1983.
- Document 5 - Correspondence between the appellant and the Council - August 1984.
- Document 6 - Letters of support from interested persons, presented to the inquiry in October 1983.
- Document 7 - Extract from a study undertaken by consultants for the Council.
- Document 8 - Planning Committee report, September 1984.

PLANS

- Plan A - Plan of the appeal site and surroundings - put in by the appellant.
- Plan B - Suggested scheme of improvements of the access - put in by the appellant.
- Plan C - Plan of the access as existing - put in by the appellant.
- Plan D - Extract of a plan showing the conservation area boundary and listed buildings in the vicinity of the appeal site.
- Plan E - Suggested scheme of improvements to the access - put in by the Council.

PHOTOGRAPHS

- Photos 1 - Views of the appeal site from the east and west - put in by the appellant.

R. BROWN

IMPORTANT -

THIS COMMUNICATION AFFECTS YOUR PROPERTY

District Secretary's Department
D. F. Lewis
Solicitor to the Council



L 341

**North Wiltshire
District Council**

Monkton Park,
Chippenham,
Wiltshire, SN15 1ER.
Tel. Chippenham (0249) 654188.
Ext. 132

Our ref

E

341

Enquiries to Mr. McDonald

Dear Sir/Madam,

7th January, 1985

NORTH WILTSHIRE DISTRICT COUNCIL TOWN AND COUNTRY PLANNING ACT 1971 (as amended) ENFORCEMENT NOTICE

34 HOLLOWAY, MALMESBURY.

The Council have issued an Enforcement Notice relating to the above land and I now serve on you a copy of that Notice, in view of your interest in the land.

Unless an appeal is made to the Secretary of State, as described below, the Notice will take effect on the date shown in the box below and you must then ensure that the required steps for which you may be held responsible are taken within the period or periods specified in the Notice.

If you wish to appeal against the Notice, you should first read carefully the enclosed booklet entitled "Enforcement Notice Appeals - A Guide to Procedure". Then, you or your agent should complete the enclosed appeal form and send it, together with the extra copy of the Enforcement Notice enclosed herewith and the fee specified in the box below, to the address on the appeal form. Your appeal must be received by the Department of the Environment BEFORE the Notice takes effect.

There is a requirement on the Council to specify the reasons why the local planning authority consider it expedient to issue the Notice and these reasons are set out in the ANNEX overleaf.

Yours faithfully,

D. F. Lewis

Solicitor

DATE ON WHICH NOTICE TAKES EFFECT and BEFORE WHICH ANY APPEAL MUST BE RECEIVED -	11th February, 1985
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FEE WHICH MUST ACCOMPANY APPEAL -	£24
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To: W.R. Davies,
34 Holloway,
Malmesbury,
Wiltshire.

ANNEX - (This does not form part of the Enforcement Notice)

REASONS FOR ISSUE :-

The works and alterations effected are severely detrimental to the special visual amenities of this area of the historic town of Malmesbury.

NORTH WILTSHIRE DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1971 (as amended)
ENFORCEMENT NOTICE

34 HOLLOWAY, MALMESBURY

WHEREAS :

- (1) It appears to the North Wiltshire 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 four 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.

NOTICE IS HEREBY GIVEN that the Council require that the steps specified in Schedule 3 below be taken in order to alleviate injury to amenity which has been caused by the said development within the period of THREE MONTHS from the date on which this Notice takes effect.

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of Section 88(10) of the Act, on 11th February, 1985

ISSUED 7th January, 1985

Signed



Monkton Park,
Chippenham, SN15 1ER

/ SCHEDULE 1

(over)

SCHEDULE 1 - Land or premises to which this Notice relates

House and garden premises known as 34 Holloway, Malmesbury Wilts shown stippled on the attached plan.

SCHEDULE 2 - Alleged breach of planning control

The enlargement of a pedestrian access to the Class II. public highway B4040.

SCHEDULE 3 - Steps required to be taken

- (i) To secure a reduction in the width of the access to a width not exceeding one metre.
- (ii) To secure the erection of a local natural stone wall of rubble construction to a height of not less than 1.8 metres above the adjoining highway carriageway level along the whole of that part of the boundary of the property adjacent to the B.4040 now forming part of the unauthorised access save for the aforesaid pedestrian opening not exceeding one metre in width.

E-341

Cricket Ground

NORTH WILTSHIRE DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

ENFORCEMENT NOTICE

MALMESBURY C P

No 6 WARD

the land
referred to:

Abbey House

The Retreat

The Vicarage

Depot

St Joseph's R C
Primary Sch

Tower House
86.6m
Surgery

St Aldhelm's
R C Church

Pentecostal
Church

Scale 1:2500

5518
882ha
2.18

5225
465ha
1.15

5929
223ha
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6421
210ha
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6915
364ha
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ENFORCEMENT REGISTER INFORMATION SHEET

E/ 341		
APPEAL	yes	no
Plan's Ref	183	0697

ADDRESS

34 HOLLOWAY,
MALMESBURY

BREACH of CONTROL

Issuing Authority

Date Issued 21.1.83

STOP NOTICES

Date Served

Requiring

Date(s) served

21.1.83

Takes effect 21.3.83

Compliance by 21.4.83

Dates Extended by
Secretary of State

Date withdrawn

Steps required to be taken

REQUIRE

- (i) To secure a reduction in the width of the access to a width not exceeding 1 metre within one month from the date on which this notice takes effect.
- (ii) To secure the erection of a local natural stone wall of rubble construction to a height of not less than 1.8 metres above the adjoining highway carriageway level along the whole of that part of the boundary of the property adjacent to the B.4040 now forming part of the unauthorised vehicular access save for the aforesaid pedestrian opening not exceeding one metre in width.

EXTENT to WHICH NOTICE COMPLIED WITH (dates)

Appeal allowed = Notice Dismissed

Alleged breach of planning control

The enlargement of a pedestrian access to form a means of vehicle access on to the Class II public highway known as the B.4040.

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

NORTH WILTSHIRE DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

ENFORCEMENT NOTICE

34 Holloway, Malmesbury, Wiltshire

WHEREAS:

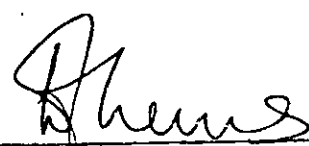
- (1) It appears to the North Wiltshire District Council ("the Council") being the local planning authority for the purposes of Section 87 of the Town and Country Planning Act 1971 ("the Act") in this matter, that there has been a breach of planning control within the period of 4 years before the day of issue of this notice on the land or premises (hereinafter referred to as "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.

NOTICE IS HEREBY GIVEN that the Council require that the steps specified in Schedule 3 below be taken in order to remedy the breach within the period of one month from the date on which this notice takes effect.

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88(10) of the Act, on 21st March, 1983.

Issued 21st January, 1983.

Signed


Solicitor to the Council

North Wiltshire District Council,
Monkton Park,
Chippenham,
Wiltshire.

Schedule 1

Land or premises to which this notice relates

The land situate at and known as 34 Holloway Malmesbury in the County of Wiltshire which is more particularly delineated on the attached plan and thereon edged red.

Schedule 2

Alleged breach of planning control

The enlargement of a pedestrian access to form a means of vehicular access on to the Class II. public highway known as the B.4040.

Schedule 3

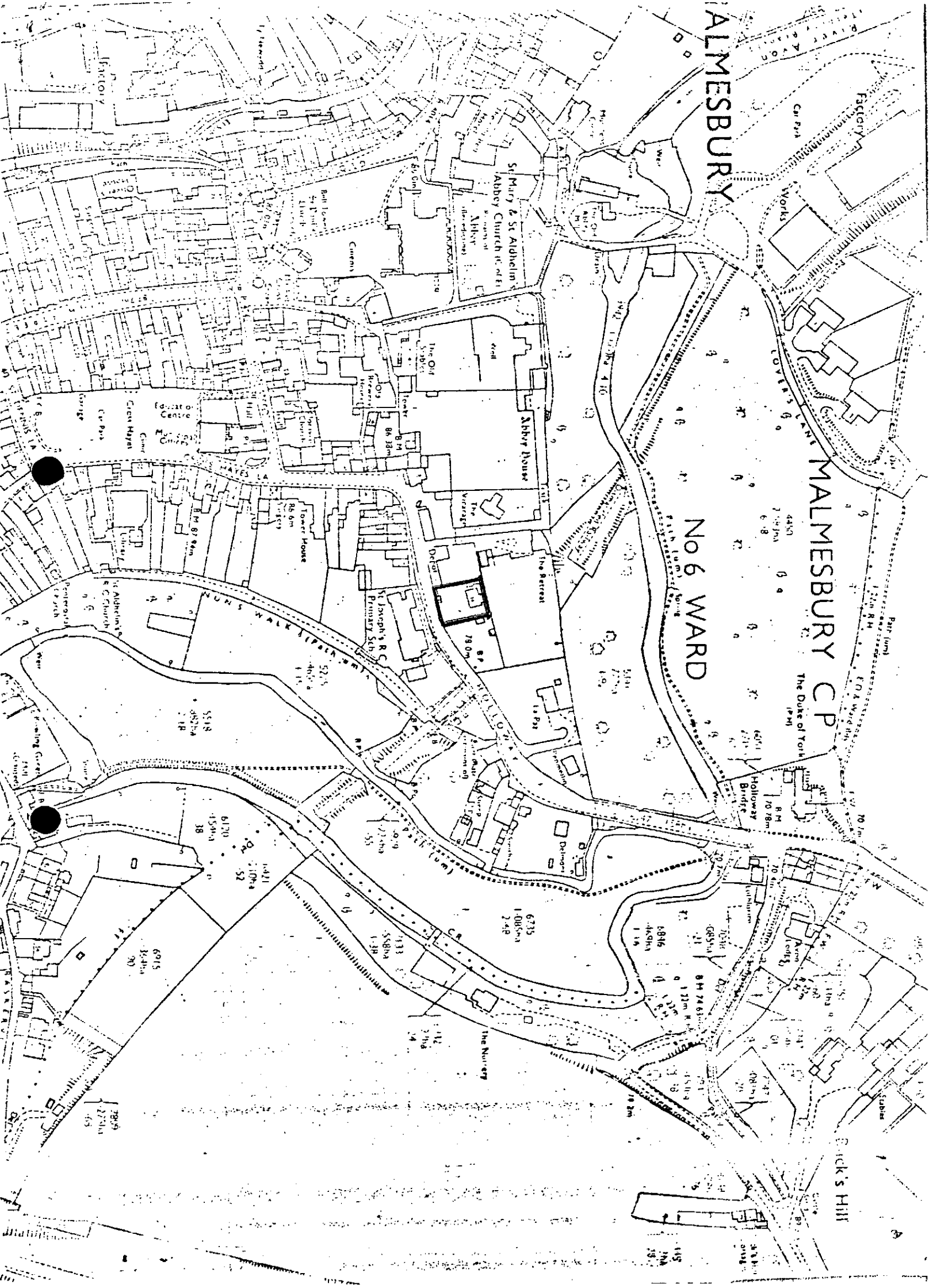
Steps required to be taken

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ALMESBURY

MALMESBURY CP

No 6 WARD

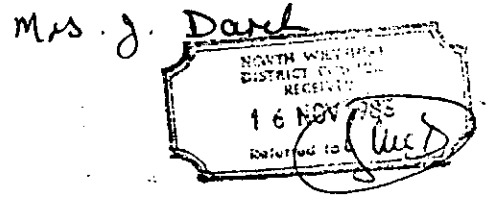


THE ANNEX

(NOTE: This does not form part of the Enforcement Notice)

STATEMENT OF REASONS

1. The excavation works and alterations to the access at Holloway are detrimental to the special visual amenities of this area of the historic town of Malmesbury.
2. A vehicular access at this point would result in vehicles entering and leaving the B.4040 at a point where there is no footway verge, the gradient is steep and where adjoining high walls severely restrict visibility to such an extent that a vehicle leaving the access would be likely to cause danger to vehicles on the Class II road descending the incline from the west.



**Department of the Environment and
Department of Transport**

Common Services

Room 141 Tollgate House Houlton Street Bristol BS2 9 DJ

Telex 449321

Direct line 0272-218914

Switchboard 0272-218811

E 341

Council Reference: AD/DA/537

W R Davies Esq
34 Holloway
MALMESBURY
Wiltshire
SN16 9BA

Your reference

Our reference

T/APP/5408/C/83/852/PE2

Date

15 NOV 1983

N/83/0697/INF

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
LAND AT 34 HOLLOWAY, MALMESBURY

1. I have been appointed by the Secretary of State for the Environment to determine your appeal against an enforcement notice issued by the North Wiltshire District Council concerning the above land. I held an inquiry into the appeal on 11 October 1983.

2. The date of the notice is 21 January 1983. The breach of the planning control it alleged is the carrying out of building operations on the land without the grant of planning permission, namely the enlargement of a pedestrian access to form a means of vehicular access on to the Class II public highway, B4040. The requirements are: (i) to secure a reduction in the width of the access to a width not exceeding 1 m; and (ii) to secure the erection of a local natural stone wall of rubble construction to a height of not less than 1.8 m above the adjoining highway carriageway level along the whole of that part of the boundary of the property adjacent to the B4040 now forming part of the unauthorised vehicular access save for the aforesaid pedestrian opening not exceeding 1 m in width, both within a period of one month.

3. The appeal against the notice was made on grounds 88(2)(b), (c) and (g). The evidence was not taken on oath.

4. With regard to the appeal on ground 88(2)(b) and (c), the relevant facts were not generally in dispute, apart from your intentions when carrying out the works which led to the issue of the notice.

5. The site fronts a Class II highway, B4040, one of the main approach roads to the centre of Malmesbury. That road winds westwards up from the river fairly steeply: from a point near the bottom where remains of the ancient Eastgate still stand up to and including the site's frontage it is generally flanked on either side by high stone retaining walls, those on the southern side opposite the site being apparently of ancient construction and up to 15 ft or so high with those on the northern side, although of similar appearance, being probably of more recent date following the widening of this highway. The site lies about 150 ft outside the boundaries of a designated Conservation Area defined as "outstanding" which embraces most of the town centre.

6. The house at the site is set well back behind a front garden, the level of which is some 6 to 8 ft above the level of the highway at its front. At the time you purchased the property in September or October 1982 there was a vertical stone retaining wall along the frontage of the site varying in height above the highway from perhaps 5 to 6 ft at the western end and up to 8 ft at the other, capped with brickwork. Towards the west end of the wall there was a gap with grill gate affording pedestrian access to a recess some 6 ft deep and 5 ft wide from which steps rose eastwards parallel to the road to give access to the front garden.

7. In December 1982 the front retaining wall to the east of the pedestrian gate was breached and soil behind excavated in order to repair the mains water supply to the property which ran under that wall to a stop cock on the highway. Those works eventually led to the creation of a gap in the retaining wall some 19 ft in overall width, the excavation of the earth behind that gap immediately east of the original recess to a depth some 13 ft over a width of 14 ft down to the approximate level of the highway throughout, the erection of concrete block retaining walls some 5 to 6 ft high round the sides of the new recess, and the provision of new pedestrian access steps leading up from the rear of that recess to the garden above. The floor of the whole recess was then surfaced with flat stonework with a dwarf retaining wall at the front some 6 ins high at the eastern and 15 ins at the western ends, set back from the carriageway of Holloway behind a narrow verge no more than 2½ ft wide.

8. Giving evidence you stressed that the works carried out at the site had never been intended to form a vehicular access, as alleged in the notice. On purchasing the property, which had been empty for about 2 years, there had been several essential repairs required including rewiring, replumbing and overhaul of the roof. All but the plumbing had been completed by mid October. On moving in, it had been discovered that the mains water supply pipe leading from the road was leaking, and a surveyor's report had warned that the steps leading down to the pedestrian access were loose and dangerous, being merely bricks set in mud. The front area of the site had been damp and slippery.

9. In order to repair the water mains and improve the pedestrian access, particularly as the existing gateway had opened directly on to the carriageway of Holloway affording bad visibility in either direction, it had been decided to remove the outer retaining wall between the gate and the water main, extend the existing recess with 6 ft depth over that width, and construct new steps from it leading rearwards at the eastern end over the path of the new water mains. As the use of a digger was required for that work, the Police and County Highway Engineer had been consulted, and advice given that the work should be carried out on a Sunday to avoid cost of traffic lights. As Christmas was approaching and frost had started, work was started on a Sunday in mid December. The removal of the front wall and soil had caused the inner wall of the steps also to collapse. As the Police insisted on the prompt removal of the resulting debris from the road, all the earth which had fallen from the east as well as the rear sides of the excavated area was hurriedly removed, and the present concrete block retaining walls erected to avoid further land slip. This situation had been reported to the council, who had immediately accused you of forming a vehicular access. In spite of requests for an on-site inspection of the resultant works, the council had refused unless formal proposal plans were submitted. Those preliminary exchanges had been interrupted on 21 January 1983 by the issue of the enforcement notice.

10. The floor of the resulting recess had been raised to its present height above the highway to overcome the damp nature of that area. The widened gap in the front wall provided much improved visibility for pedestrian access. The size of the recess was too small to accommodate a car, which could not in any case be driven over the dwarf frontage wall, and the floor of the recess was not firm enough to support a vehicle.

11. If the inner wall had not collapsed, the resulting recess would not have been more than 6 ft deep at the most. From the beginning the council had misled themselves and others into the unjustifiable assumption that the formation of a vehicular access had been intended. The letters from 2 local residents, Mr Rayner and the Rev Barton, confirmed that evidence.
12. The works which had been carried out gave a better pedestrian access and let more light reach the house. You submitted that they appeared to amount to Permitted Development under the terms of Class II.1 of Schedule 1 to the Town and Country Planning General Development Orders 1977 to 1981. It had never occurred to you that planning permission would be required for these works.
13. The fact that a digger and lorry had been used to excavate and remove the earth had been a necessity to meet the Police requirements to clear the road speedily. The problems caused by the water main had come at the busy time of renovating the house, preparing for Christmas, and moving in. The council had given you no time or help in sorting out the matter, and had failed to substantiate the allegations made in the notice.
14. Although admitting that in due course you had hopes of being able to construct a vehicular access to the site, that had nothing to do with the works carried out. By the courtesy of friends you had facilities for parking your car nearby.
15. For the council it was argued that, although the operation concerned in this appeal might appear to be a small matter, the site lay close to the Conservation Area, and the stone walls which flanked Holloway were of particular interest and significance to the character of that part of the town.
16. The works had involved the use of a digger and lorries, which had indicated that substantial works had been premeditated. The resulting recess which had been formed indicated a possible intention to eventually extend it into a vehicular access, the temptation to do so being caused by the widening of the gap in the original front wall from some 3 ft to about 19 ft.
17. The council maintained that throughout the period mid December to mid January you had been made well aware of the council's concern over the works being carried out, had been invited to submit an application of the proposed alterations, and had failed to produce any good reason for carrying them out. It was not customary for a site inspection to be made until definite proposals had been put forward.
18. The operations carried out at the site had constituted "development" under the provisions of Section 22 of the 1971 Act. Section 290 of this Act defined "engineering operation" as including both the "formation" and the "laying out" of means of access to a highway, and defined "means of access" as including those for foot passengers as well as for vehicles. The formation or laying out of a means of access need not be confined to an entirely new access, but could include major alterations to an existing one to form a new one.
19. The works carried out to the site had therefore amounted to the formation or laying out of a means of access. Such development could not qualify as permitted development under Class II.1 of the General Development Orders, having in any case been a major rather than a minor operation: it clearly could not qualify under Class I of those Orders.
20. From those representations, and from my inspection of the site and its surroundings, I am of the opinion that the operation carried out immediately prior to the issue of the notice was on such a scale as to constitute development under Section 22 of the 1971 Act. I accept that the final extent of those operations

resulted from the need to repair the water mains and from an unexpected land slip, but you admitted that they also originated in part from a need to improve the then existing means of pedestrian access to the site.

21. I fully understand the pressures you were under at the time with regard to the repair of the water mains, and so place no significance on the fact that no prior application for planning permission was made. Nevertheless, I consider that a substantial part of those operations were caused by major alterations to the means of pedestrian access, a development that does not come within the criteria for permitted development contained in Class II.1 of the General Development Orders under the total of Sundry Minor Operations. Those operations therefore constituted development requiring planning permission, which had not been given.

22. There was obviously serious misunderstanding by the council of the events which led up to this development, but at the same time an understandable fear that the works being carried out might be a prelude to the formation of a vehicular access. I am, however, satisfied that such was not your intention, that the resulting recess is not large enough to accommodate a vehicle, and that the allegation made in the notice is not correct.

23. I have considered whether the notice is capable of correction so as to allege the formation of a pedestrian rather than a vehicular access, as suggested by the council. It appears to me, however, that all through this enforcement action the council's actions have been concentrated on a vehicular access, without giving any serious consideration to the possibility that only a pedestrian access was involved. In that way you have been misled, so that in the event the ramifications of that possibility were not fully aired at the inquiry, and you were not in a position to fully pursue that aspect.

24. I therefore conclude that the notice is not capable of correction, so that the appeal on ground 88(2)(c) succeeds and the notice will be quashed.

25. Neither the appeal on grounds 88(2)(b) and (g) nor the application deemed to have been made under Section 88B(3) of the 1981 Act fall to be considered. It seems to me that the outcome of the appeal will afford an opportunity for misunderstandings to be removed and further discussions to take place as to the final outcome of this matter, should it be so desired.

26. I have taken into account all the other matters raised at the inquiry, but they do not to my mind outweigh the considerations which have led me to this conclusion.

FORMAL DECISION

27. For the above reasons, and in exercise of the powers transferred to me, I hereby allow this appeal and direct that the notice be quashed.

28. This letter is issued as the determination of the appeal which is before me. The particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Sir
Your obedient Servant



CAPTAIN P J WYATT CBE DSC MRIN
Inspector

341

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

NORTH WILTSHIRE DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

ENFORCEMENT NOTICE

34 Holloway, Malmesbury, Wiltshire

WHEREAS:


- (1) It appears to the North Wiltshire 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 day of issue of this notice on the land or premises (hereinafter referred to as "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.

NOTICE IS HEREBY GIVEN that the Council require that the steps specified in Schedule 3 below be taken in order to remedy the breach within the period of one month from the date on which this notice takes effect.

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88(10) of the Act, on 21st March, 1983.

Issued 21st January, 1983.

Signed


Solicitor to the Council

North Wiltshire District Council,
Monkton Park,
Chippenham,
Wiltshire.

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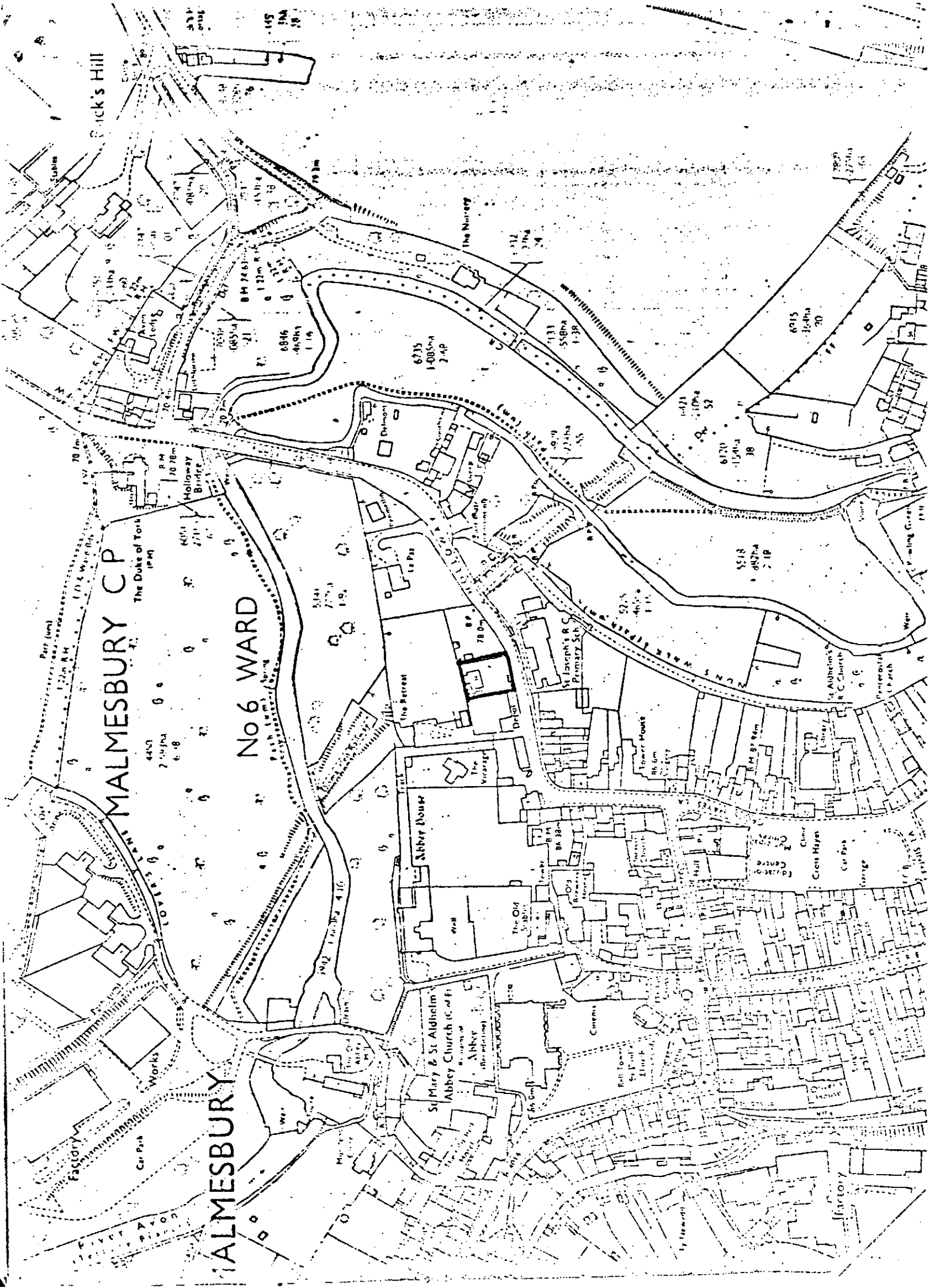
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MALMESBURY CP

NO 6 WARD

The Duke of York
(P.M.)

Back's Bill