



# Planning Inspectorate

Department of the Environment

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*JDA*  
~~*JRB*~~  
~~*JRB*~~

**27344**

Wainwright & Stevens  
67 High Street  
HEMEL HEMPSTEAD  
Herts  
HP1 1JP

CHIEF EXECUTIVE OFFICER

Your Reference:  
RJCS/PW/S8497  
Council Reference:

21 NOV 1988  
File Ref. ....  
refer to *CPO 21/11*  
Ref. ....  
Clear .....

PLANNING DEPARTMENT  
DACORUM DISTRICT COUNCIL  
Your Reference:  
0182/88E  
Date: T/APP/C/88/A1910/000001/P6

C.P.O. D.P. D.C. B.C. Admin. File

7 NOV 88

Received 21 NOV 1988

Comments

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9  
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981  
APPEAL BY MR W R KEMPLER  
LAND AND BUILDINGS AT 77 ST JOHN'S ROAD, BOXMOOR, HEMEL HEMPSTEAD

1. I have been appointed by the Secretary of State for the Environment to determine the above-mentioned appeal against an enforcement notice issued by the Dacorum Borough Council concerning the above-mentioned land and buildings. I have considered the written representations made by you and by the council, together with those made by interested persons. I inspected the site on 18 October 1988.

- 2. a. The notice was issued on 18 December 1987.
- b. The breach of planning control alleged in the notice is the change of use of the premises from use for retail sale of goods to a mixed use for the retail sale of goods and use as offices for the operation of a motor cycle and van courier service.
- c. The requirements of the notice are to cease the mixed use for the retail sale of goods and use as offices for the operation of a motor cycle and van courier service.
- d. The period for compliance with the notice is 3 months.
- e. The appeal was made on the grounds set out in Section 88(2)(a) and (f) of the Town and Country Planning Act 1971, as amended.

### The Appeal under Ground (f)

3. I note that H B Milne Limited, the company carrying out the retailing activities, holds the lease on the appeal premises. The courier service in question is operated from the building by a company known as Boxmoor Despatch Services Limited. I note also that the appellant is a director of both companies. Thus, within the terms of Section 87(5) of the 1971 Act, it appears to me that he has an interest in the land and premises in question, and I consider that such interest

has not been prejudiced by the service of the notice. The requirements of the Act have been met and accordingly the appeal under ground (f) fails.

#### The Appeal under Ground (a)

4. From my inspection of the site and surroundings and consideration of all the representations, I am of the opinion that the main issue in this ground of appeal, which is concerned with the planning merits of the case, is the suitability of the site for the development in question, particularly whether the parking facilities are satisfactory.

5. The ground floor of the appeal premises is divided into 2 parts. One section sells hardware and do-it-yourself items; the other is used for the sale of photographic film and the developing and printing of films. The courier service is operated from the basement of the building. Access is by way of a staircase from within the shop. There are 2 rooms; one is the operational centre. It contained, amongst other things, a desk, chairs, telephones and radio equipment, plans and maps, and a photocopying machine. The other room is laid out as a rest room. In it were chairs, a television, tea and coffee-making facilities, filing cabinets, street plans, and a board upon which appeared to be order or despatch sheets.

6. The property itself is on the south side of St John's Road. The property next door, to the east, is in retail use as are Numbers 67 and 49. To the west, at Number 87 is a betting shop. There are 2 shops also on the other side of the road at the junction of Puller Road with St John's Road. Yet despite the presence of these retail outlets residential uses predominate along the road and in the surrounding streets.

7. St John's Road is a busy thoroughfare which provides a west-east link across this part of town. It was evident that this road carries a constant flow of traffic. It was also apparent that parking is at a premium. Parking is restricted along the northern side of the road and the parking spaces along the southern side were well-used with few gaps at the time of my visit. No doubt such spaces are in demand by people visiting the shops, but because many of the houses have little or no off-street parking, space on the road is important to local residents also.

8. I accept that courier services rely a great deal on the use of the telephone and radio to keep in touch with their employees. I acknowledge also that the couriers are away from the premises for a great deal of the time. But there are occasions, in my experience, when they need to call at the base either to collect orders or to rest between collections and deliveries. The layout of the basement indicates that this operation is no different. And with some 15-20 people employed, the numbers at the appeal premises could well be significant at times. This is certainly the case in the morning when you say that drivers collect instructions from the office.

9. The alternative parking area which your client has arranged nearby provides garage parking for one van. At the time of my visit a blue Ford Escort van was inside the garage and a red van with Boxmoor Despatch Services on the side was parked in the garage entrance. Nearby was a motor bicycle in the company's colours. However, these facilities

are far from ideal. Space is limited and appears to be shared, and the access is awkward. As a consequence it is easier for the vehicles to park on St John's Road, causing an increase in the demand for parking in this road. This is undesirable in view of the traffic importance of the road and the demands of local residents living there for parking. The appeal under ground (a) therefore fails.

#### Summary

10. The appeal under grounds (a) and (f) fails. In reaching this decision I have taken into account all other matters raised in the representations, including the fact that yours is a small company which no doubt provides a valuable service to its customers, but none of these matters are sufficient to outweigh the planning considerations I deem to be material.

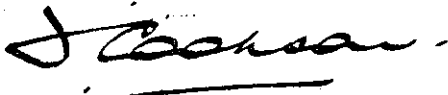
#### FORMAL DECISION

11. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal, uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under Section 88B(3) of the Town and Country Planning Act 1971, as amended.

#### RIGHTS OF APPEAL AGAINST DECISION

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

I am Gentlemen  
Your obedient Servant



T COOKSON DipTP MRTPI  
Inspector

ENC

DEPARTMENT OF THE ENVIRONMENT

Tollgate House Houlton Street BRISTOL BS2 9DJ

182/88E

TOWN AND COUNTRY PLANNING ACT 1971

The enclosed copy of the Inspector's decision letter is for the Council's information.

PLANNING DEPARTMENT DACORUM DISTRICT COUNCIL					
				Ack.	
C.P.O.	D.P.	D.C.	B.C.	Admin.	File
Received			21 NOV 1988		
Comments					

ENC

TCP 212A

Bt1 5605/1/A06006 5m 5/80 TCL

**IMPORTANT:— THIS COMMUNICATION AFFECTS YOUR PROPERTY**

(a)

Dacorum Borough

Council

**TOWN AND COUNTRY PLANNING ACT 1971**  
(as amended)

**Enforcement Notice**

Material Change of Use

(b)

77 St John's Road, Boxmoor

Hemel Hempstead, Herts

**WHEREAS:**

(1) It appears to the<sup>(a)</sup> Dacorum Borough 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 after the end of 1963<sup>(c)</sup>

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 development by the making of the material change in the use of the land 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.<sup>(d)</sup>

**NOTICE IS HEREBY GIVEN** that the Council require that the steps specified in Schedule 3 below be taken [in order to remedy the breach] <sup>(e)</sup>

within [the period of three months [days] [months] from the date on which this notice takes effect] [~~the period specified in respect of each step in that schedule.~~]<sup>(f)</sup>

**THIS NOTICE SHALL TAKE EFFECT**, subject to the provisions of section 88 (10) of the Act, on 29th January 1988.<sup>(g)</sup>

Issued 18th December 1987

Council's address —  
Civic Centre  
Marlowes  
Hemel Hempstead  
Hertfordshire

(Signed) *K. M. Pugh*  
(Designation) *Assistant* Borough Secretary  
(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) Where section 87(4)(e) of the Act applies insert "and within the period of 4 years before the date of issue of this notice."
- (d) See paragraph 29 of DOE Circular 38/81 (Welsh Office Circular 57/81).
- (e) 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.
- (f) 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.
- (g) 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).

SCHEDULE 1

Address or premises to which this notice relates  
(address or description)

77 St John's Road Boxmoor Hemel Hempstead Hertfordshire

shown edged [red] [ ] on the attached plan.<sup>(h)</sup>

SCHEDULE 2

**Alleged breach of planning control**

(description of the material change of use alleged to have been made) (j)

Change of use of the premises from use for retail sale of goods to a mixed use for the retail sale of goods and use as offices for the operation of a Motor Cycle and Van Courier Service.

SCHEDULE 3

**Steps required to be taken.**<sup>(k)</sup>

(i)

Cease the mixed use for the retail sale of goods and use as offices for the operation of a Motor Cycle and Van Courier Service.

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**NOTES TO THE LOCAL PLANNING AUTHORITY**

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

(j) If the new use is a mixed use, include all the uses comprising that mixed use.

(k) 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 (e) and (f) overleaf.

**Other appeals**

3(a) Have you made any other appeals to the Secretary of State involving this or any related land? *(Please indicate by a cross (X) in the appropriate box).*

Yes

No

(b) If 'Yes', please complete the following table.

Type of appeal	Date of appeal	DOE reference No (if known)

**Written representations**

4. Do you agree to have your appeal dealt with on the basis of written statements by the parties and an inspection of the site by an officer of the Department? *(Please indicate by a cross (X) in the appropriate box).*

Yes

No

(Although you may agree to the appeal being dealt with by written representations, the Secretary of State may find it essential to hold a Public Local Inquiry).

**Checking and despatching**

5(a) Before you send this appeal to the Department, please check that you have:—

- (i) completed the whole form, including the statement of facts which is Item 6 on page 3, and
- (ii) enclosed a copy of the enforcement notice.

(b) Now send this appeal to the following address by first class post.

Department of the Environment  
 (PLUP2)  
 PO Box 326  
 Bristol BS99 7XF

**NB This appeal must not be sent to the local Council. The appeal must arrive in the Department not later than the day before the date, stated by the Council, for the enforcement notice to take effect. If the enforcement notice takes effect on a Saturday, Sunday or Monday, the appeal must arrive in the Department not later than the preceding Friday. If the enforcement notice takes effect on a Bank Holiday the appeal must arrive on the last working day before the Holiday.**

**Use of "recorded delivery" by the Post Office: if you wish to have proof that your appeal has been received by the Department, you should send it by Post Office "recorded delivery", for which an extra charge is payable. Most "recorded delivery" postal items require extra time for postal transmission and you should allow for this possibility if you send your appeal by this postal service.**

## Statement of facts

6. Please state here the facts in support of each one of the eight grounds of appeal (a) to (h) you have marked with an "X" in Item 2 on page 1 of this form. For each ground of appeal, please state the facts relevant to that ground.

- (1) With regard to ground a, I consider that planning permission should be granted for the following reasons:-
- (i) The office use is carried on in the basement of 77 St. Johns Road, Boxmoor, Hemel Hempstead, Herts. "the premises"). Only one basement room is used for offices constantly. The other is an ancillary room used occasionally.
  - (ii) Only one person, a Director of Boxmoor Despatch Services, ("the Company") works in that room at any time with occasional assistance from a member of his family.
  - (iii) The total area of the basement rooms is 141 square feet compared with a total net floor space in the building of 1,778 square feet.
  - (iv) The basement rooms are unsuitable for storage and, therefore, for any other use.
  - (v) All the Company's vans are on radio telephone and all the Company's motorcycle riders have "bleepers". The "bleepers" require the riders to contact the Company from the nearest telephone. Drivers only need to return to the premises for instructions during the day if there is no job immediately available for them, which is unusual.
  - (vi) No vans or motorcycles are parked outside or near to the premises overnight and few are parked there during the day. It is not economic for the Company to have more vehicles or motorcycles than it can use.
  - (vii) Drivers collect instructions either by telephone or call at the premises between 8.00 and 9.00 a.m. It has been observed that the parking of vehicles outside the premises during this period prevents commuters using the railway station from taking up space outside the premises thereby ensuring its availability during normal hours of business.
  - (viii) In the five years the business has been operated from the premises, the Company has received only one complaint, which was immediately dealt with to the satisfaction of the person concerned. Drivers and riders are under strict instructions not to cause an obstruction. None of the Company's vehicles have ever been involved in any accidents outside the premises.
  - (ix) The Company now employs 15-20 people at any one time. Of its current workforce eight were unemployed immediately before joining the company - several of them were "long-term" unemployed persons. Five are under the age of twenty.
  - (x) The impact of the office use on the locality is minimal. The benefit to the community is considerable both in terms of the service provided and the employment created. It is submitted that the grant of planning permission would not have any adverse effect on the village of Boxmoor. Some retailers in the village would be adversely affected by its refusal.
- (2) With regard to ground f:-
- (i) The lessee of the premises is HB Milne Limited ("the lessee") which holds them under a Lease "the Lease" made the 10th July 1970 and granted for a term of 21 years from 29th September, 1969.
  - (ii) The lessee is assigning the Lease to the purchaser of the hardware business carried on at the premises. The lessee will continue to operate a retail use on the ground floor of the premises.
  - (iii) The basement is occupied by the Company which carries out the office use complained of.
  - (iv) The Appellant has no personal legal interest in the premises and is not an occupier.
  - (v) Neither of these Companies have been served with the Enforcement Notice.



Annex to Enforcement Notice date: 18th December 1987

This information is given in pursuance of the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1981 and Circular 38/81

The Council, as the local planning authority, consider it expedient to serve this Notice upon you for the following reason(s):-

1. Traffic generated by the use together with the lack of off street parking is prejudicial to highway safety.
2. There is no provision for vehicle parking within the site to meet the standards adopted by the local planning authority.
3. Planning permission for changes of use of existing buildings to offices will normally only be granted where the proposal is located within the commercial area of the town centre, as defined on the proposals map.

## 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 appealing 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 provisions 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 exceeding £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

Town and Country Planning Act 1971 (as amended)

For DOE use only

Date Received 27/1/88

Enforcement notice appeal to the Secretary of State for the Environment

IMPORTANT:- DO NOT DELAY YOUR COMPLETED APPEAL FORM MUST BE RECEIVED IN THE DEPARTMENT BEFORE THE DATE ON WHICH THE COUNCIL HAVE STATED THAT THE ENFORCEMENT NOTICE SHALL TAKE EFFECT. YOU ARE STRONGLY ADVISED TO SEND THE COMPLETED FORM WELL BEFORE THIS DATE.

- before you complete this form, please read the explanatory booklet "Enforcement Notice Appeals - A Guide to Procedure". If you do not have a copy, the Council can provide one.

PLANNING DEPARTMENT
DACORUM DISTRICT COUNCIL
Ref No. APP/C 88/11910/00001
Received 5 FEB 1988
Comments S, HEMEL, HEMPSTEAD, HERTS.

Appellant's details (Please complete in block letters)

1(a) Full name & address. WILLIAM RALPH KEMPLEN c/o 214 COTTERELS, HEMEL, HEMPSTEAD, HERTS.
HP1 1JP
Postcode
(b) Telephone number. Daytime 0442 52578. Reference number.
(c) Name and address of any agent or professional representative to whom letters should be sent. WAINWRIGHT & STEVENS
67 HIGH STREET, HEMEL, HEMPSTEAD, HERTS.
HP1 3AF
Postcode
(d) Telephone number. 0442 64355. Reference number. RJCS/JB/S8497

Appeal and grounds (Please appeal on a separate form for each enforcement notice)

2. I appeal, (as a result of an enforcement notice) under section 88 of the Town & Country Planning Act 1971, (as amended) against the enforcement notice dated 18th December 1987 issued by Decorum Borough Council relating to land at 77, St. Johns Road, Broomer, Hemel Hempstead, Herts. and I attach a copy of the relevant enforcement notice to this form.
Signed: [Signature] Date: 26th January, 1988

I appeal on the ground(s) in section 88(2) of the 1971 Act indicated by a cross (X) in the appropriate box below:-

Ground (a) that planning permission ought to be granted for the development to which the enforcement 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; [X]
Ground (b) that the matters alleged in the enforcement notice do not constitute a breach of planning control; [ ]
Ground (c) that the breach of planning control alleged in the enforcement notice has not taken place; [ ]
Ground (d) in the case of an enforcement notice which, by virtue of section 87(4) of the 1971 Act may be issued only within the period of 4 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; [ ]
Ground (e) in the case of an enforcement notice not falling within ground (d) aside, that the breach of planning control alleged by the notice occurred before the beginning of 1964; [ ]
Ground (f) that copies of the enforcement notice were not served as required by section 87(5) of the 1971 Act; [X]
Ground (g) that the steps required by the enforcement notice to be taken exceed what is necessary to remedy any breach of planning control, or to achieve a purpose specified by the Council under section 87(10) of the 1971 Act; [ ]
Ground (h) that the period specified in the enforcement notice as the period within which any required step is to be taken falls short of what should reasonably be allowed. [ ]

My statement of facts, in support of each of my grounds of appeal, as indicated above, is given overleaf in Item 6. (Failure to provide facts may result in the dismissal of the appeal or the refusal to consider a ground of appeal without supporting facts).

† please note that the only purpose of an appeal on Ground (C) is to maintain that the Council's allegation in the enforcement notice has not occurred, as a matter of fact.

\*delete as appropriate

LOCATION

77 ST. JOHN'S ROAD , HEMEL HEMPSTEAD.  
 APPEAL AGAINST ENFORCEMENT NOTICE



LAND USE OF FRONTAGES IN THE VICINITY OF THE  
APPEAL SITE

- APPEAL SITE
- RESIDENTIAL
- OFFICE BETTING OFFICE
- SHOP

C.G.B. Barnard  
 Chief Planning Officer  
 Dacorum Borough Council  
 Hemel Hempstead

Scale 1:1250  
 Plan no. ....  
 Ref. no. 4/0182/88E









LOCATION

77 ST. JOHN'S ROAD, HEMEL HEMPSTEAD.  
 APPEAL AGAINST ENFORCEMENT NOTICE

4/182/88E



LAND USE OF FRONTAGES IN THE VICINITY OF THE APPEAL SITE

-  RED OUTLINE
-  APPEAL SITE
-  RESIDENTIAL
-  OFFICE
-  BETTING OFFICE
-  SHOP
-  BLUE INFILL
-  MATCHING

C.G.B. Barnard  
 Chief Planning Officer  
 Dacorum Borough Council  
 Hemel Hempstead

Scale 1:1250

Plan no. ....

Ref. no. 4/0182/88E