

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

DACORUM

THE DISTRICT COUNCIL OF
 IN THE COUNTY OF HERTFORD

R. W. Stokley, Esq.,
 Appleby,
 Wharf Lane,
 To Dudswell,
 BERKHAMSTED,
 Herts.

Use of land at rear of "Appleby", Wharf Lane,

Dudswell, Berkhamsted, for the storage and

xx maintenance of agricultural implements.

at

Brief
 description
 and location
 of proposed
 development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time
 being in force thereunder, the Council hereby refuse the development proposed by you in your application dated
 18th March, 1980,
 25th March, 1980,
 and received with sufficient particulars on
 and shown on the plan(s) accompanying such
 application..

The reasons for the Council's decision to refuse permission for the development are:—

The site is within an area without notation on the approved County
 Development Plan and in an area referred to in the approved County
 Structure Plan (1979), wherein permission will only be given for the
 construction of new buildings, (or the change of use or extension of
 existing buildings), for agricultural purposes, small scale facilities
 for participatory sport and recreation, or other uses appropriate to a
 rural area. The proposed development is unacceptable in the terms of
 this policy.

8th

May,

80.

Dated day of 19

Signed.....
 Director of Technical Services.

Designation

NOTE

- (1) If the applicant wishes to have an explanation of the reasons for this decision it will be given on request and a meeting arranged if necessary.
- (2) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with section 36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Secretary of State for the Environment, Whitehall, London, S.W.1.) The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
- (3) If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council in which the land is situated, a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
- (4) In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act 1971.

(a) **DACORUM DISTRICT COUNCIL**

TOWN AND COUNTRY PLANNING ACT 1971.

Enforcement Notice

***(Change of use without permission)**

To: (b) Roger Stokley
of "Appleby", Wharf Lane,
Dudswell, Berkhamsted, Herts.

1. WHEREAS:

(i) You are the [owner [and] [occupier] of] ~~a person having an interest in~~ the land situate at ~~and known as~~ (c) Jenny's Lane off Dudswell Lane Berkhamsted Hertfordshire

which is more particularly delineated on the attached plan and thereon ~~coloured~~ edged in red (hereinafter called "the said land").

(ii) The (a) Dacorum District Council (hereinafter called "the Council") are the Local Planning Authority (*inter alia*) for the purposes of the provisions of section 87 of the Town and Country Planning Act 1971 (hereinafter called "the Act of 1971").

(iii) It appears to the Council that after the 31st day of December 1963 there has been a breach of planning control in that the said land has been developed by the making of a material change in the use [thereof] ~~for the buildings situate thereon~~ to a use for the purpose of the storage and repair of agricultural implements and machinery motor vehicles and plant

without the grant of permission required in that behalf under Part III of the Town and Country Planning Act 1962 or Part III of the Act of 1971.

(iv) The Council consider it expedient having regard to the provisions of the development plan and to all other material considerations to serve this notice.

[CONTINUED OVERLEAF]

(a) Insert the name of the council serving the notice.

(b) Insert the name of the person, company or other body on whom the notice is being served. In the case of a company, service should be on the company, not on individual directors or officers, but in the case of an incorporated company or body service may be made by delivering or addressing the notice to the clerk or secretary. In the case of a partnership, service should be on each of the partners by name, but a notice may be served on a partner or a person having the control or management of the partnership business. (Section 233 of the Local Government Act 1972.) Service on (i) an occupier or (ii) a person having any interest in the land whose name cannot be ascertained after reasonable inquiry can be made in the manner provided by sub-section (2) of section 283 of the Town and Country Planning Act 1971. There is also provision in sub-section (3) of that section for service of notices in respect of occupied land.

(c) Insert a full description of the land to which the notice relates, sufficient to enable its location and extent to be readily understood. Where there is a postal address for the land, this should be included. The land should also be shown on a plan attached to the notice, where possible. In drafting an enforcement notice regard should be had to *the whole of the planning unit* in respect of which it is alleged there has been a breach of planning control, not merely to that part of the land which is directly affected by the activities, or failure, constituting the alleged breach.

YOUR ATTENTION IS DIRECTED TO THE ATTACHED NOTES WHICH EXPLAIN YOUR RIGHT OF APPEAL AGAINST THIS NOTICE. YOU SHOULD READ THEM CAREFULLY.

2. NOW THEREFORE TAKE NOTICE that in exercise of the powers contained in the said section 87 of the Act of 1971 the Council HEREBY REQUIRE YOU within the period of six calendar months beginning with the date on which this notice takes effect to discontinue the use [of the said land] [~~of the buildings situated on the said land~~] for the purpose of the storage and repair of agricultural implements and machinery motor vehicles and plant

~~and to restore the said land [and the buildings situated thereon] to [its] [their] condition before the said development took place~~

3. THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88(3) of the Town and Country Planning Act 1971, at ~~the end of the period of _____ days beginning with~~ ^(d) on 27th May, 19 80.

DATED this 22nd day of April, 19 80.

Kath Hunt

Signed.....
(e)

District Secretary

(The officer appointed for this purpose)

Civic Centre, Marlowes,
Hemel Hempstead, Herts.

Address to which all communications should be sent.)

(d) The period specified must be such that not less than 28 clear days elapse between the date of the service of the notice and the effective date (a longer period may be specified). Where several persons are served, ensure that the effective date is not less than 28 clear days after the *latest* date of service. (The period of 28 clear days cannot begin to run until the day following the day when service of the notice on all those persons entitled to be served has been completed.)

(e) Insert title of proper officer.

NOTES FOR PERSONS SERVED WITH AN ENFORCEMENT NOTICE

(These notes do not form any part of the enforcement notice)

PENALTIES FOR NON-COMPLIANCE

1. You have been served with an enforcement notice which will come into effect at the expiry of the period stated in paragraph 3 of the notice. You then have the further period set out in paragraph 2 of the notice in which to comply with the requirements set out. If you fail to comply within that time you will be liable to prosecution and, on conviction, to a fine. The continuing contravention after conviction can lead to a further fine for each day the offence continues.

RIGHT OF APPEAL

2. You have a right of appeal against the notice to [the Secretary of State for the Environment] [~~the Secretary of State for Wales~~]. If you do appeal, the notice will not come into effect until the appeal is finally determined. In considering whether to exercise this right, you are invited to consider the reasons given in the Council's letter why this notice has been served.

WHEN TO APPEAL

3. An appeal *must* be made within the period at the end of which the notice is stated to take effect. This is the period set out in paragraph 3 of the notice. *The Secretary of State has no power to extend this period nor to accept an appeal made out of time.*

HOW TO APPEAL

4. There are no special forms on which to make an appeal, but it should be made in writing and addressed to [the Secretary of State, Department of the Environment, Tollgate House, Houlton Street, Bristol] [~~the Secretary of State, Welsh Office, Summit House, Windsor Place, Cardiff CF1 3BX~~] and the envelope marked "Enforcement Appeal". You should state (a) the grounds on which the appeal is made, and (b) the facts on which those grounds are based. (It will help the Secretary of State in dealing with the preliminary stages of the appeal (see paragraph 7 below) if you enclose a copy of the enforcement notice or, failing that, state the name of the Council serving the notice, and the address of the property or location of the land enforced against. If you have also made, or are making, an appeal against a refusal of planning permission in respect of the same land, you should mention this as well.)

GROUND ON WHICH AN APPEAL CAN BE MADE

5. An appeal can be made on one or more of the grounds set out in Section 88(1) of the Town and Country Planning Act 1971—reproduced with other relevant sections of the Act below/overleaf. In general,

grounds (c) and (d) are mutually exclusive. Ground (c) can be pleaded only where the enforcement notice alleges one of the following types of breach:—

- a. the carrying out of building or other operations without planning permission; or
- b. failure to comply with a condition requiring the carrying out of building or other operations; or
- c. change of use of any building to use as a single dwellinghouse without planning permission.

STATING THE FACTS

6. The statement of facts in support of the appeal must be more than just a reiteration of the grounds set out in section 88(1) of the Act and must at least give the basic facts on which you rely in pleading those grounds. For example, where ground (c) or (d) is pleaded, you should give, as far as you are able, the actual date when the building or other operations took place, when the use commenced, or when the failure to comply with the condition occurred, as the case may be.

SUBSEQUENT ACTION

7. The Secretary of State will acknowledge receipt of your appeal and contact the Council who served the notice. Unless the Secretary of State considers that an inquiry is essential, an opportunity will be given to both you, as appellant, and the Council to say whether you wish to appear before an Inspector at a local inquiry or are prepared to have the matter dealt with by way of written statements. This latter procedure may be more suitable where there is no dispute as to the facts of the case.

8. Certain classes of enforcement appeals are transferred to Inspectors for determination. These classes are defined in the Town and Country Planning (Determination of appeals by appointed persons) (Prescribed Classes) Regulations 1972 (S.I. 1972 No. 1652) as amended by the Town and Country Planning (Determination of appeals by appointed persons) (Prescribed Classes) (Amendment) Regulations 1977 (S.I. 1977 No. 477). The decision whether an appeal is transferred is based solely on the breach of planning control alleged in the enforcement notice and having regard to the defined classes.

PROFESSIONAL ADVICE

9. If the issues are simple, you may decide to deal with the appeal yourself or with the help of someone not professionally qualified. Where legal or other complex issues are likely to be involved, it may be better to seek professional advice at an early date. Whoever the spokesman is, all representations will be carefully considered. If there is an inquiry, the Inspector will ensure that everybody gets a fair hearing whether professionally represented or not.

NOTE

These notes are supplied for guidance only. Although they seek to draw your attention to the more important provisions of the legislation concerning enforcement of planning control, they do not purport to be a complete statement of the law. Further reference should be made to the Town and Country Planning Act, 1971 and associated Orders or Regulations.

EXTRACTS from the TOWN AND COUNTRY PLANNING ACT 1971

Power to serve 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 any directions given by the Secretary of State and 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 serve a notice under this section (in this Act referred to as an "enforcement notice") requiring the breach to be remedied.

(2) There is a breach of planning control if development has been carried out, whether before or after the commencement of this Act, without the grant of planning permission required in that behalf in accordance with Part III of the Act of 1962 or Part III of this Act, or if any conditions or limitations subject to which planning permission was granted have not been complied with.

(3) Where an enforcement notice 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,

it may be served only within the period of four years from the date of the breach.

(4) An enforcement notice shall be served on the owner and on the occupier of the land to which it relates and 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.

(5) Where planning permission has effect subject to a condition to which section 82 of this Act applies, and by reason of anything done in a particular part of a building that condition is contravened, any enforcement notice relating to the contravention shall be taken to be served on the owner and on the occupier of the land to which it relates if it is served on the owner and on the occupier of that part of the building, whether it is also served on any other person or not.

(6) An enforcement notice shall specify—

- (a) the matters alleged to constitute a breach of planning control;
- (b) the steps required by the authority to be taken in order to remedy the breach, that is to say steps for the purpose of restoring the land to its condition before the development took place or (according to the particular circumstances of the breach) of securing compliance with the conditions or limitations subject to which planning permission was granted; and
- (c) the period for compliance with the notice, that is to say the period (beginning with the date when the notice takes effect) within which those steps are required to be taken.

(7) The steps which may be required by an enforcement notice to be taken include the demolition or alteration of any buildings or works, the discontinuance of any use of land, or the carrying out on land of any building or other operations.

(8) Subject to section 88 of this Act, an enforcement notice shall take effect at the end of such period, not being less than twenty-eight days after the service of the notice, as may be specified in the notice.

(9) The local planning authority may withdraw an enforcement notice (without prejudice to their power to serve another) at any time before it takes effect; and, if they do so, they shall forthwith give notice of the withdrawal to every person who was served with the notice.

Appeal against enforcement notice

88.—(1) A person on whom an enforcement notice is served, or any other person having an interest in the land may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal to the Secretary of State against the notice 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) in the case of a notice which, by virtue of section 87 (3) of this Act, may be served only within the period of four years from the date of the breach of planning control to which the notice relates, that that period has elapsed at the date of service;
- (d) in the case of a notice not falling within paragraph (c) of this subsection, that the breach of planning control alleged by the notice occurred before the beginning of 1964;
- (e) that the enforcement notice was not served as required by section 87 (4) of this Act;
- (f) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control;
- (g) that the specified period for compliance with the notice falls short of what should reasonably be allowed.

(2) An appeal under this section shall be made by notice in writing to the Secretary of State, which shall indicate the grounds of the appeal and state the facts on which it is based; and on any such appeal 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.

(3) 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.

(4) On an appeal under this section—

- (a) the Secretary of State may correct any informality, defect or error in the enforcement notice if he is satisfied that the informality, defect or error is not material;
- (b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 87 (4) of this Act to be served with the 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.

(5) On the determination of an appeal under this section, the Secretary of State shall give directions for giving effect to his determination, including, where appropriate, directions for quashing the enforcement notice or for varying the terms of the notice in favour of the appellant; and the Secretary of State may—

- (a) grant planning permission for the development to which the enforcement notice relates or, as the case may be, discharge any condition or limitation subject to which planning permission for that development was granted;
- (b) 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 thereof and to any planning permission relating to the land.

(6) In considering whether to grant planning permission under subsection (5) 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.

(7) Where an appeal against an enforcement notice is brought under this section, 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 (5) of this section, the following provisions shall have effect—

- (a) any planning permission granted thereunder shall be treated as granted on the said 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.

(8) On an appeal under this section against an enforcement notice relating to anything done in contravention of a condition to which section 71 or 82 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.

(9) 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.

Penalties for non-compliance with enforcement notice

89.—(1) Subject to the provisions of this section, where an enforcement notice has been served on the person who, at the time when the notice was served on him, was the owner of the land to which it 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 £400 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 £50 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 £400 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 £50 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 or 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 cost 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.