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CHIEF EXECUTIVE OFFICER

6 FEB 1989

File No.

Refer to

clp 8/2

(1) Lance Kent & Co
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34 Alexandra Road
HEMEL HEMPSTEAD
Herts
HP2 5BS

(2) Mr D R Stanley

Contract Planning Department 1/AHS/Foy
26 Glebe Close Dacorum Borough Council

HEMEL HEMPSTEAD

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HP3 3PA

Your reference:

1/AHS/Foy

Council reference:

Ack 4/0640/88E & 4/1840/87

Our reference:

T/APP/C/88/A1910/2/P6 &

T/APP/A1910/A/88/097825/P6

Received

- 8 FEB 1989

Date:

Comments

- 6 FEB 89

Gentlemen and Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTIONS 88 AND 36 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEALS BY MRS M A FOY
LAND AND BUILDINGS AT ADJACENT TO PEARTREE COTTAGE, WILSTONE, TRING, HERTFORDSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine the above appeals against an enforcement notice issued by the Dacorum Borough Council and against a refusal of outline planning permission by that Council concerning the above land and buildings. I held an inquiry into the appeals on 10 and 11 January 1989.

2. a. The date of the notice is 11 February 1988.

b. The breach of planning control alleged in the notice is the making of a material change of use from agricultural land to use for storage of caravans and other vehicles which are being or have been used for human habitation.

c. The requirements of the notice are:

1. Cease the use of land for storage of caravans and other vehicles which are being or have been used for human habitation.

2. Remove all caravans and other vehicles which are being or have been used for human habitation from the land.

d. The period for compliance with the notice is two months.

e. The appeal was made on the grounds set out in section 88(2)(a), (b), (c), (e), and (h) of the 1971 Act as amended, but at the inquiry grounds (b) and (h) were withdrawn.

3. The development for which outline planning permission was refused is the erection of a detached chalet bungalow.

4. The evidence relating to the appeal under s88 of the 1971 Act was taken on oath.

*Lehman
20/4/89 - no
caravans on
land.*

THE APPEALS SITES AND SURROUNDINGS

5. The appeals sites lie in open countryside, within the Chilterns Area of Outstanding Natural Beauty, about 400m south of Wilstone, and close to Wilstone Reservoir. From the public footpath along the top of the reservoir embankment, there are panoramic views over the flat, open land to the north-east, including the appeals sites.

6. The s36 appeal site is a "U"-shaped area of land surrounding Peartree Cottage, and having 2 road frontages to Lower Icknield Way, the B489, in the middle of an "S" bend. The suggested site access is opposite the junction of the road from Wilstone with Lower Icknield Way. The site is generally flat and uncultivated. At the time of my inspection, a motor coach, adapted for human habitation and in residential use, was stationed partly on the appeal site and partly on the rear yard of Peartree Cottage. Peartree Cottage is unoccupied and derelict.

7. The plan attached to the enforcement notice defines the s88 appeal site as 2 separate parcels of land. Neither parcel of land is cultivated. The public footpath leads from Lower Icknield Way to the foot of the reservoir embankment, where it joins the public footpath descending from the top of the reservoir embankment. The western parcel of land ("the western land") includes the s36 appeal site. The other parcel of land, OS field No 6952 ("the field"), is mostly laid to pasture. In the field stand 2 dilapidated caravans.

8. One caravan (caravan A) stands near the southwestern side of the field. Inside the caravan are a large area with a television, easy chairs, heaters and general domestic bits and pieces, including a portable gas hob, and 2 sleeping compartments containing beds, one of which is made up for use.

9. The other caravan (caravan B) is brightly painted, and stands next to a half-demolished shed near the northeastern boundary of the field. Caravan B contains tables and chairs; a bed with toy soldiers on it, a mattress and wardrobe, a small compartment containing a chemical toilet, and a kitchenette with sink and cooker, kettle and tea bags.

UNDISPUTED FACTS

10. At the turn of the century, several cottages, including Peartree Cottage stood on or near the appeals sites. The public footpath which now separates the western land and the field was known at that time as Wells Lane. By the time of the survey for the 1924 Ordnance Survey map, only Peartree Cottage remained standing.

11. In 1966, Mr Poulton, the then owner of Peartree Cottage and both appeals sites, applied unsuccessfully for planning permission for the siting of one caravan on the western land. At the same time, he also applied unsuccessfully for planning permission to use the western land as a car breaker's yard. In 1968, an enforcement notice was served requiring the cessation of the use of the western land for car breaking and repair.

12. In February 1976, planning permission was refused for the continued use of part of the field for the stationing of a caravan. In August 1976 an enforcement notice was served requiring the cessation of the use of part of the field for the stationing of 2 caravans used for residential occupation. The appeals against the refusal of permission and against the enforcement notice were dismissed.

13. At the time of service of the 1976 enforcement notice, that part of the field which was affected by the notice was fenced off from the remainder. On the remainder of the field stood a third caravan, in the approximate position now occupied by caravan A.

14. The appellant's personal knowledge of the appeals sites dates back to 1976, when she and her husband moved to Tring. In 1984, the appellant's husband bought the appeals sites from Mr Poulton. Since then, he and his family have used caravan A for residential purposes for short periods at holidays and weekends. In 1986, the appellant bought the appeals sites from her husband. In November 1986, caravan B was brought to the field. The appellant's husband uses caravan B for war games, which is his hobby.

15. From time to time, other residential caravans have been stationed on the appeals sites, but neither caravan A nor caravan B stand on that part of the field which was the subject of the 1976 enforcement notice.

16. The Countryside Commission has proposed that the area to the north of Tring, which includes the appeals sites, be deleted from the designated Chilterns Area of Outstanding Natural Beauty. The Secretary of State has yet to determine the proposal.

17. Lower Icknield Way is heavily trafficked. At the junction of the road from Wilstone, visibility is below the standard which would now be required for the construction of a new junction onto Lower Icknield Way. Visibility at the proposed site access is substandard.

THE S36 APPEAL

18. From my inspection and all the matters raised at the inquiry, I consider the main issues to be the effects of the proposed chalet bungalow on the rural character of the area, on the character and appearance of this part of the Chilterns Area of Outstanding Natural Beauty, and on highway safety.

19. Building in the open countryside, away from existing settlements has long been strictly controlled. New houses will not normally be permitted unless there is a special need in the particular case. This applies equally to areas where, as here, there are already a few scattered buildings.

20. Policy 2 of the adopted Dacorum District Plan states that in the rural areas beyond the Green Belt, planning permission will not be granted, except in very special circumstances, for development unless certain criteria apply. It was not suggested that the proposed bungalow came within any of these criteria.

21. Policy 24 of the District Plan requires the council to have particular regard for the protection of important views and skylines when considering proposals for buildings and other development. Because the site is clearly seen from the public footpaths in the locality, and from the surrounding road network, any built development on the appeal site would be readily visible. Despite being neglected and untidy, the appeal site nevertheless makes a contribution to the generally open rural scene. I consider that the proposed development would intrude into this open view, undesirably consolidating the existing sporadic development on adjacent land, and detracting from the rural character and appearance of the locality.

22. Turning to the second issue, the removal of land in the vicinity of the appeal site from the Chilterns Area of Outstanding Natural Beauty, is by no means certain. In the meantime, I must give due weight to the policies for the protection of that area. Policy 2 of the Structure Plan Review provides that the preservation of the beauty of the area will be the prime consideration, that the area will not be regarded as one of availability from the point of view of development, and that development will be subordinated to the basic theme of the Area of Outstanding Natural Beauty. This policy is supported by policy 23 of the District Plan, which expresses a concern to preserve the natural beauty of the landscape, to encourage agriculture and to conserve wildlife. I consider that these policies add further weight to the already strong planning objections to this development outlined in the previous paragraph.

23. In relation to the third issue, the suggested shared access with Peartree Cottage was only one possibility: the appellant owned the adjoining land, thus enabling the suggested access to be improved or an alternative access to be created on the adjoining land. As Planning Policy Guidance Note 13 advises, whatever the type of access, good visibility is essential. I have, therefore, considered the various points of access to the appeal site using land within the appellant's control. At my site inspection, the appropriate measurements were taken. While the Highway Authority agrees that visibility at the suggested accesses could be improved, each of the suggested accesses, even after improvement, would still be seriously substandard.

24. At present, the use of the access to Peartree Cottage is minimal, as the cottage is derelict and unoccupied. Consequently, in terms of traffic generation, the effect of sharing that access with the proposed bungalow would be tantamount to the formation of a new access onto Lower Icknield Way. In view of its location in the middle of an "S" bend opposite an existing unsatisfactory road junction, and the fact that the access would not be to the required standard, I consider that the proposed access would undesirably exacerbate an existing unsatisfactory situation. Bearing in mind also that adequate visibility could not be achieved on land in Mrs Foy's control in respect of the other suggested accesses, these other accesses would be equally unacceptable.

25. I have taken into account all other matters raised at the inquiry, including the former community nearby, which I understand is now beneath the reservoir, and the long-disappeared cottages which stood on or near the appeal site at the turn of the century. However, in my judgement, these matters are outweighed by my conclusions that the proposed development would cause demonstrable harm to interests of acknowledged importance.

THE APPEAL ON GROUND (e)

26. There was no suggestion that the appeal on ground (e) extends to the western land. In view of the existence of the 1976 enforcement notice, it seems to me that the appeal on ground (e) in respect of that part of the field affected by that notice must fail. I have therefore considered the appeal on ground (e) in respect of that part of the field which is not affected by the 1976 notice.

27. The evidence is patchy. The appellant and her husband did not know the area nor come to live nearby until 1976, and their evidence of earlier events is based on conversations with Mr Poulton, and a man known to them as Ted, who lived in a caravan on the field from time to time. Although the appellant and her husband had made considerable efforts to find witnesses who could give first hand evidence of the use of the appeal site for the stationing of caravans for residential purposes since the relevant date, they had been unable to find anyone. They had not asked Mr Poulton to give evidence on their behalf, partly because he would be likely to agree to whatever was asked of him, but mainly because he was no longer capable of dealing with his affairs, which were now dealt with by the Court of Protection.

28. In relation to the site history prior to their arrival in Tring in 1976, all Mr and Mrs Foy could say with any reasonable degree of certainty was that Ted's caravan had been brought to the appeal sites sometime before the death of Mr Poulton's father in 1966. Bearing in mind that, in 1966, the present Mr Poulton applied for planning permission for the stationing of a caravan on the western land, I consider that, on the balance of probabilities, that application was likely to have been made in respect of the stationing of Ted's caravan. Be that as it may, there is no sound evidence before me that the part of the field on which caravans A and B now stand has been used for the storage of caravans which are or have been used for human habitation since before 1976, when the appellant moved to the area and when the 1976 enforcement notice plan indicated a caravan on that part of the field which was excluded from that enforcement notice site. In all these circumstances, the appeal on ground (e) fails.

THE APPEAL ON GROUND (c)

29. It was admitted that, as far as other caravans which are brought to the appeals sites from time to time, the alleged breach has taken place. This appeal related solely to caravan B, which, it was alleged, was used for storage as a replacement for a shed on the land. However, since it was admitted by the appellant's husband that he uses it for his war games hobby, and that the storage of the chemical toilet is in connection with the use of caravan A, and from the evidence of my inspection, I consider that the use of caravan B is ancillary to the residential use of caravan A. In addition, caravan B has clearly been used for human habitation at some stage. Consequently, I conclude that the presence of caravan B on the appeal site comes within the allegation as worded. The appeal on ground (c) therefore also fails.

THE APPEAL ON GROUND (a)

30. Policy 7 of the adopted Dacorum District Plan sets out a presumption against the use of land in rural areas as a site for residential caravans and that applications for planning permission for such development will be treated in the same way as for permanent residential development. In these circumstances, and bearing in mind my conclusions in respect of the appeal under s36, although caravans which are being or have been used for human habitation have been stored on the appeals sites for several years, I consider that the continuation of this use would have a detrimental impact on the rural character of the locality and upon the appearance of this part of the Chilterns Area of Outstanding Natural Beauty. Accordingly, the appeal on ground (a) fails.

31. As the correct fee payable under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1985 has not been paid, I do not propose to deal with the application for planning permission deemed to have been made under section 88B(3) of the 1971 Act as amended.

FORMAL DECISION

32. For the above reasons and in exercise of the powers transferred to me, I hereby dismiss these appeals, and uphold the enforcement notice.

RIGHT OF APPEAL AGAINST DECISION

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

I am Gentlemen
Your obedient Servant

G. J. Bowman

MRS G J BOWMAN MA(Cantab) Barrister
Inspector

ENC.

APPEARANCES

FOR THE APPELLANT

The appeal under s88

Mrs D Allen

Solicitor, Lance Kent & Co.

She called:

(1) Mrs M A Foy

Appellant

(2) Mr T Foy

Husband of Appellant

The appeal under s36

Mr D Stanley

Contract Draughtsman

He gave evidence and he called:

Mr T Foy

FOR THE PLANNING AUTHORITY

Mr Steven Baker

Solicitor

He called:

(1) Miss N Mitchell

Housing Finance Officer

(2) Mr J P Smith

Planning Enforcement Officer

(3) Mr D Sibley

Senior Engineer, Hertfordshire County Council

(4) Mr G Bailey ARICS

Acting Principal Assistant Planner

DOCUMENTS

- Document 1 Bundle lists of persons present at the inquiry on each day.
- " 2 Notice of inquiry and list of addressees
- " 3 Letter of representation from Tring Rural Parish Council
- " 4 Copy Letter from Lance Kent & Co dated 9 January 1989 giving undertaking to pay the appeal fees.
- " 5 Inland Revenue Valuation of Land records, c.1910
- " 6 & 7 Extracts Conveyances dated 24 September 1895.
- " 8 Receipt for £450 for mobile home.
- " 9 Bundle applications for Supplementary Benefit.

- " 10 Copy Enforcement Notice dated 16 August 1976.
- " 11 Copy Council's Written Statement on appeal against enforcement notice dated 16 August 1976.
- " 12 Decision letter dated 14 April 1977 reference: T/APP/5252/C/76/4692/G4 & T/APP/5252/A/76/7120/G4.
- " 13 Bundle appendices to Mr Sibley's Proof of Evidence.
- " 14 Bundle appendices to Mr Bailey's Proof of Evidence.

PLANS

- Plan A Copy enforcement notice plan
- " B.1 Planning application plans and elevations
- " B.2 Planning application site location plan
- " B.3 Planning application land ownership plan
- " C Illustrative drawing of proposed chalet bungalow with cottages
- " D Plan GB 1, showing appeals sites
- " E Extracts 1924 Ordnance Survey map
- " F 1966 Planning application plan
- " G 1976 copy enforcement notice plan
- " H Office copy plan issued by the Stevenage District Land Registry
- " K JPS 1 the appeals sites 28 January 1987
- " L JPS 2 the appeals sites 16 July 1987
- " M JPS 3 the appeals sites 11 November 1987
- " N JPS 4 the appeals sites 17 January 1988
- " P Dacorum District Plan Proposals Map

PHOTOGRAPHS

- Photos 1-2 The appeals sites 23 October 1986
- " 3-7 The appeals sites 27 November 1986
- " 8-18 The appeals sites 28 January 1987
- " 19-22 The appeals sites 11 November 1987

(a)

DACORUM BOROUGH

Council

TOWN AND COUNTRY PLANNING ACT 1971
(as amended)

Enforcement Notice

Material Change of Use

(b) Land adjacent to Pear Tree Cottage,

Wilstone, Tring, Hertfordshire

WHEREAS:

(1) It appears to the^(a) **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^(c)

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.^(d)

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

within [the period of 2 [days] [months] from the date on which this notice takes effect] ^(f) ~~the period specified in respect of each step in that schedule~~ ^(g)

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88 (10) of the Act, on 16 March 1987 ^(h)

Issued 4 February 1987

Council's address —
DACORUM BOROUGH COUNCIL
CIVIC CENTRE
MARLOWES
HEMEL HEMPSTEAD
HERTFORDSHIRE

(Signed) *Keith Hunt*

(Designation) 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)(c) 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

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

Land adjacent to Pear Tree Cottage, Wilstone, Hertfordshire

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

SCHEDULE 2

Alleged breach of planning control

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

Change of use from agricultural land to use as a caravan site within the definition contained in the Caravan Sites and Control of Development Act 1960 (namely land on which a caravan site is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed).

SCHEDULE 3

Steps required to be taken.^(k)

(i)

Cease using the land as a caravan site within the definition contained in the Caravan Sites and Control of Development Act 1960 (namely land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed). Within 2 months of the date of this notice coming into effect.

(ii)

To remove all vehicles and caravans which are being or have been used for human habitation from the site within two months of the date of this notice coming into effect.

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.

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—

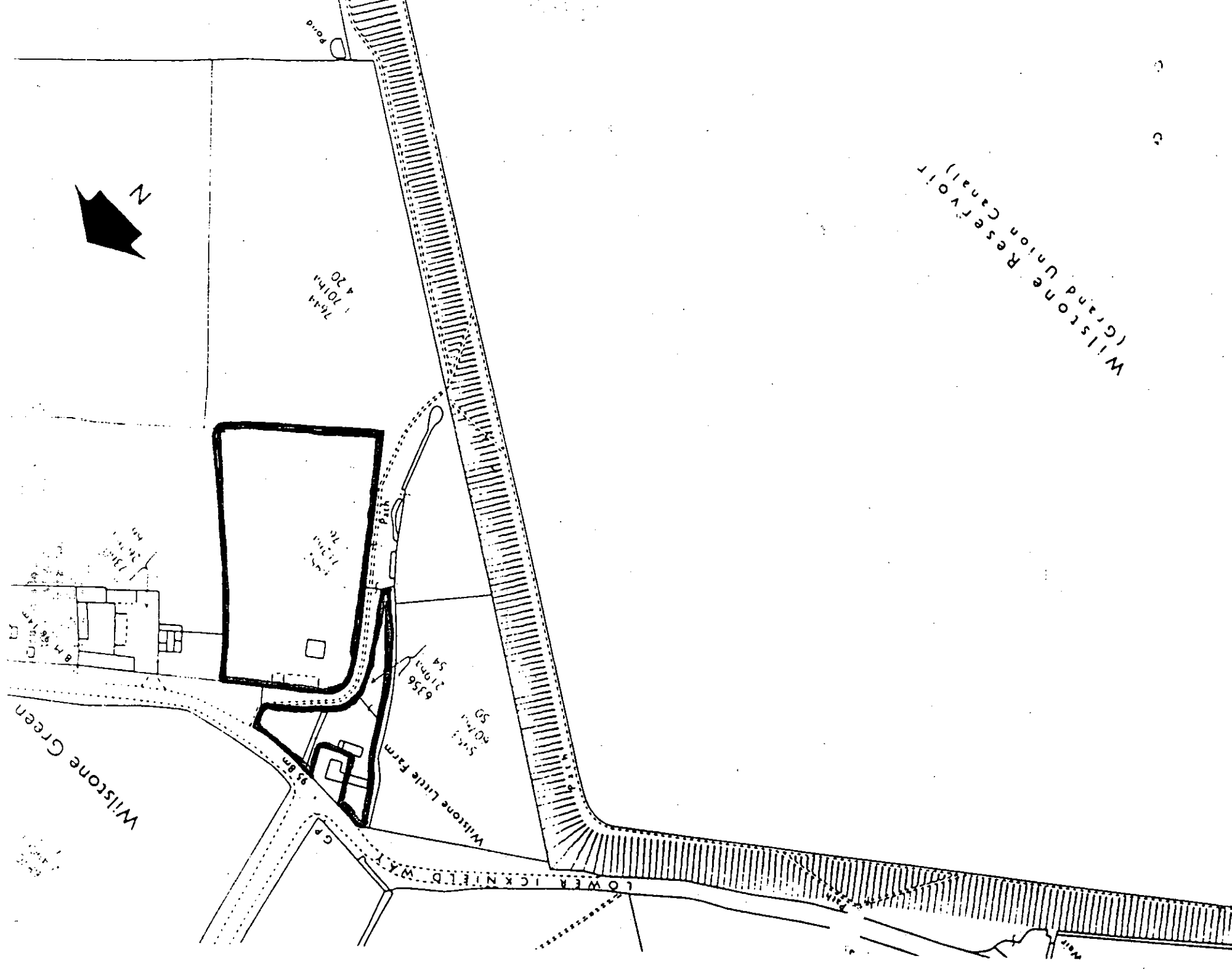
* (a) may prescribe the time within which an appellant is to submit a statement under subsection (4) of this section and the matters on which information is to be given in such a statement;

*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.

- (c) may specify the matters to be included in 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 Enforcement Notices.

Q



ANNEX TO ENFORCEMENT NOTICE DATED 4/2/87

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 on you for the following reasons:-

The site is within a rural area beyond the Green Belt on the adopted Dacorum District Plan wherein permission will only be given for use of land, the construction of new buildings, changes of use of existing buildings for agricultural or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. No such need has been proven and the development is unacceptable in the terms of this policy.

The adopted Dacorum District Plan shows the site to be within the Chilterns Area of Outstanding Natural Beauty wherein the policy of the local planning authority seeks to preserve the appearance of the area, encourage agriculture and conserve wildlife by the restriction of further development having particular regard to the siting, design and external appearance of buildings. The development is unacceptable in the terms of this policy.

TM/AJP/ANN.ENF.NOT/169/138/1/0/1/BS.5/2.87

IMPORTANT:— THIS COMMUNICATION AFFECTS YOUR PROPERTY

(a)

DACORUM BOROUGH COUNCIL

Council

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

**Enforcement Notice
Material Change of Use**

(b) Land adjacent to Peartree Cottage, Wilstone, Tring, Hertfordshire

WHEREAS:

(1) It appears to the^(a) 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^(c)

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.^(d)

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

within [the period of two ~~days~~ months] from the date on which this notice takes effect] [~~the period specified in respect of each step in that schedule.~~]

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88 (10) of the Act, on 18th March 1988 ^(g)

Issued 11th February 1988 .

Council's address —

Civic Centre
Marlowes
HEMEL HEMPSTEAD
Herts

(Signed) Keith Hunt

(Designation) 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)(c) 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

Land or premises to which this notice relates

(Address or description)

Land adjacent to Peartree Cottage, Wilstone, Tring Hertfordshire

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

SCHEDULE 2

Alleged breach of planning control

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

Change of use from agricultural land to use for storage of caravans and other vehicles which are being or have been used for human habitation.

SCHEDULE 3

Steps required to be taken.^(k)

- (i) Cease the use of land for storage of caravans and other vehicles which are being or have been used for human habitation.
- (ii) Remove all caravans and other vehicles which are being or have been used for human habitation from the land.

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.

ANNEX TO ENFORCEMENT NOTICE DATED:

11th February 1988

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, considers it expedient to serve this Notice upon you for the following reason:-

The site is in a rural area beyond the Green Belt on the adopted Dacorum District Plan wherein permission will only be given for development for agriculture or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. No such need has been proven and the use is therefore unacceptable.

The adopted Dacorum District Plan shows the site to be within the Chilterns Area of Outstanding Natural Beauty wherein the policy of the local planning authority seeks to preserve the appearance of the area, encourage agriculture and conserve wildlife by the restriction of further development having particular regard to the siting, design and external appearance of buildings. The development is unacceptable in the terms of this policy.



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.

- (c) may require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they have to put forward on the appeal;
- (d) may specify the matters to be included in such a statement;
- (e) 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 Enforcement Notices.

NO 6

Enforcement Notice

Consensus

WITHDRAWN

(a)

DACORUM BOROUGH

Council

TOWN AND COUNTRY PLANNING ACT 1971
(as amended)

Enforcement Notice

Material Change of Use

(b) Land adjacent to Pear Tree Cottage,

Wilstone, Tring, Hertfordshire

WHEREAS:

(1) It appears to the^(a) **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^(c)

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.^(d)

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

within [the period of — 2 —] [days] [months] from the date on which this notice takes effect] ^(f)

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88 (10) of the Act, on 16 March 1987 ^(g)

Issued 4 February 1987

Council's address —
DACORUM BOROUGH COUNCIL
CIVIC CENTRE
MARLOWES
HEMEL HEMSTEAD
HERTFORDSHIRE

(Signed) *Keith Hunt*

(Designation) **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)(c) 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

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

Land adjacent to Pear Tree Cottage, Wilstone, Hertfordshire

shown edged [red] [

] on the attached plan.^(h)

SCHEDULE 2

Alleged breach of planning control

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

Change of use from agricultural land to use as a caravan site within the definition contained in the Caravan Sites and Control of Development Act 1960 (namely land on which a caravan site is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed).

SCHEDULE 3

Steps required to be taken.^(k)

(i)

Cease using the land as a caravan site within the definition contained in the Caravan Sites and Control of Development Act 1960 (namely land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed). Within 2 months of the date of this notice coming into effect.

(ii)

To remove all vehicles and caravans which are being or have been used for human habitation from the site within two months of the date of this notice coming into effect.

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.

ANNEX TO ENFORCEMENT NOTICE DATED 4/2/87

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

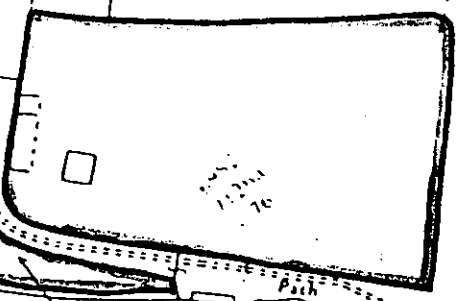
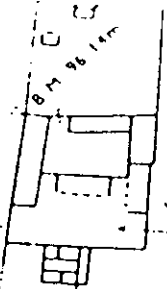
The Council, as the local planning authority consider it expedient to serve this Notice on you for the following reasons:-

The site is within a rural area beyond the Green Belt on the adopted Dacorum District Plan wherein permission will only be given for use of land, the construction of new buildings, changes of use of existing buildings for agricultural or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. No such need has been proven and the development is unacceptable in the terms of this policy.

The adopted Dacorum District Plan shows the site to be within the Chilterns Area of Outstanding Natural Beauty wherein the policy of the local planning authority seeks to preserve the appearance of the area, encourage agriculture and conserve wildlife by the restriction of further development having particular regard to the siting, design and external appearance of buildings. The development is unacceptable in the terms of this policy.

TM/AJP/ANN.ENF.NOT/169/138/1/0/1/BS.5/2.87

Wilstone Green



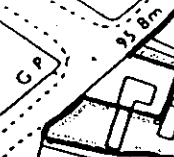
7644
101ha
420

Wilstone Little Farm

6356
219ha
54

544
807ha
50

LOWER JACKFIELD WAY



95.8m

Path

Pond

Wilstone Reservoir
(Grand Union Canal)

(a)

DACORUM BOROUGH COUNCIL

Council

TOWN AND COUNTRY PLANNING ACT 1971
(as amended)

Enforcement Notice
Material Change of Use

(b) Land adjacent to Peartree Cottage, Wilstone, Tring, Hertfordshire

WHEREAS:

(1) It appears to the^(a) 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^(c)

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.^(d)

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

within [the period of two ~~days~~ ^{12 days} [months] from the date on which this notice takes effect] [~~the period specified in respect of each step in that schedule~~]

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88 (10) of the Act, on 17th March 19 88 ^(g)

Issued 11th February 19 88 .

Council's address —

Civic Centre
Marlowes
HEMEL HEMPSTEAD
Herts

(Signed)

Keith Hunt

(Designation)

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)(c) 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

Land or premises to which this notice relates

(Address or description)

Land adjacent to Peartree Cottage, Wilstone, Tring Hertfordshire

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

SCHEDULE 2

Alleged breach of planning control

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

Change of use from agricultural land to use for storage of caravans and other vehicles which are being or have been used for human habitation.

SCHEDULE 3

Steps required to be taken.^(k)

- (i) Cease the use of land for storage of caravans and other vehicles which are being or have been used for human habitation.
- (ii) Remove all caravans and other vehicles which are being or have been used for human habitation from the land.

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.

ANNEX TO ENFORCEMENT NOTICE DATED:

11th February 1988

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, considers it expedient to serve this Notice upon you for the following reason:-

The site is in a rural area beyond the Green Belt on the adopted Dacorum District Plan wherein permission will only be given for development for agriculture or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. No such need has been proven and the use is therefore unacceptable.

The adopted Dacorum District Plan shows the site to be within the Chilterns Area of Outstanding Natural Beauty wherein the policy of the local planning authority seeks to preserve the appearance of the area, encourage agriculture and conserve wildlife by the restriction of further development having particular regard to the siting, design and external appearance of buildings. The development is unacceptable in the terms of this policy.

- (b) may require the local planning authority to submit, within such time as may be prescribed, a statement indicating the grounds on which they propose to bring an appeal under this section;
- (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 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 costs of works required by enforcement notice, section 110 which contains supplementary provisions as to appeals to the Secretary of State and section 243 relating to the validity of Enforcement Notices.

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