



DEPARTMENT OF THE ENVIRONMENT

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Your reference
JS/JMB/S96

Our reference
T/APP/C3620/A/88/106191/P5

Date

31 AUG 1989

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
AS AMENDED BY THE HOUSING AND PLANNING ACT 1986
LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
APPEAL AND APPLICATION FOR COSTS BY MR M SEYMOUR
AND APPLICATION FOR COSTS BY THE COUNCIL AGAINST THE APPELLANT
PLANNING APPLICATION NO:- MO/87/1236

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against the decision of the Mole Valley District Council to refuse planning permission for the change of use to garden centre including the erection of a brick built and tile roofed building and glazed courtyard, the laying out of a plant display and nursery growing area, tarmac car park, the erection of a security fence and associated landscaping, at the Michael Seymour Garden Centre, Station Road, Betchworth. I held a local inquiry into the appeal on 9 May 1989. There were applications for awards of costs made on behalf of the appellant against the council and by the council against the appellant and I deal separately with these below.

APPEAL

2. Originally the application the subject of this appeal had been refused not only because the council considered that it would contravene Green Belt policies, be visually intrusive, and create a precedent, but for highway reasons also. Subsequently the Local Highway Authority had reached agreement with you that the reasons for refusing the application which were based on highway grounds were not, after all, justified and before the inquiry was held the Local Planning Authority withdrew them.

3. From the evidence submitted and my inspection of the appeal site and surroundings I consider that the main issues in this case are first, whether the development proposed could be considered to be an appropriate form of development for a Green Belt location. Second, if not, whether there are any exceptional circumstances which might justify allowing it contrary to the general presumption against allowing inappropriate forms of new development in the Green Belt.

4. The appeal site is situated on the A25 about 1½ km to the east of Dorking and just to the south of the North Downs escarpment. It is within the Metropolitan Green Belt. Within the Surrey Structure Plan which was approved in 1980, there is a



general presumption against allowing most forms of new development into the Green Belt, although the policy does accept that certain forms of development including outdoor recreational facilities, public or private institutional development within large grounds, and gypsy caravan sites may be appropriate in the Green Belt in certain circumstances. The Surrey Structure Plan First Alteration of 1986 has undergone its examination in public and the Secretary of State's proposed modifications were published in March last year. Neither the First Alteration nor the proposed modifications alter the Structure Plan Green Belt Policy described above to any significant degree.

5. The Mole Valley (Rural Areas) Local Plan is a statutory plan adopted in 1988. It defines Green Belt boundaries, the settlements within them, and amongst other things, seeks to resist the introduction of new garden centres in rural areas outside the defined settlements.

6. You submitted that the appeal proposal would be an appropriate form of development and would therefore not be contrary to either the council's or national Green Belt policies. The appeal site, which is about 2.5 ha in area, has been used as a nursery for some time. There is a brick built shop on it, some polythene tunnels and a parking area for about 10 cars. Your client intends to landscape the site and plant trees and shrubs, indeed a large amount of trees and plants have already been planted. The central building and glazed courtyard area proposed have been designed carefully to blend in and would be built of external materials of good quality appropriate to the rural surroundings. Also, the proposed parking area would be laid out in a sensitive manner and well-landscaped. Once the trees and shrubs planted had matured buildings and cars on the site would be screened and the appearance of the garden centre would certainly not be out of keeping with the surrounding area.

7. You considered that there is a substantial unmet demand for new garden centres in the area and that it was difficult if not impossible to acquire a site within an existing urban area which would be big enough to enable a proper display of plants and garden layouts to be undertaken and which would not be too expensive for the use proposed. It followed that only sites in the Green Belt were available for garden centres of the proper size to meet current public demand.

8. While the design and landscaping of the garden centre which you propose might well result in a development of pleasant appearance, this does not in my view, put it into the category of a use appropriate to a rural area as envisaged in paragraph 13 of PPG2 and the council's own Green Belt policies. Also, while it might be desirable from the point of view of garden centre management and marketing policy, for sufficient space to be available for garden display areas, this is not essential in my view nor is it sufficient reason for allowing garden centres to be built in the Green Belt.

9. While I note that it would be your client's intention to continue to grow as many plants as possible in the garden centre, your own evidence showed quite clearly in my opinion that in addition to ancillary products like fertilizer and garden tools, a large proportion of plants would be brought to the centre from outside. Also, that, because of the changeability of the market it would not be possible to guarantee how much produce sold could be grown on the appeal site in the future. Your suggested condition (Document 3), would not secure this and a similar condition put forward in submissions by the council before the inquiry, would be too restrictive in my opinion and unreasonable. While you suggested that garden centres provide the public with a significant leisure outlet you also agreed with me that

they were predominantly retail in character in contrast to nurseries which mainly grew produce.

10. For these reasons I have concluded that the appeal proposal should not be considered as an appropriate use in the Green Belt and that, accordingly, it is contrary to the council's Green Belt policies. In my opinion it would be wholly commercial in character and have little in common with the activities normally to be expected in the Green Belt like farming or low-key recreational uses.

11. You did not try to argue that there were exceptional circumstances in your client's case which would justify overriding Green Belt policies although you did suggest that it was impossible to find a suitable site other than in the Green Belt and that demand by the public for the larger more landscaped garden centres was largely unmet in the area. These factors do not, in my view constitute the kind of exceptional circumstances, which could justify overriding the strong presumption against inappropriate forms of development in the Green Belt, as laid down in the Council's planning policies and in advice given in Circular 14/84 and Planning Policy Guidance Note 2. I have noted your references to what the Council has allowed at other garden centres in this area, and another garden centre permitted in Hertford (document 2) but the circumstances in these cases were somewhat different to your own in my judgement, and I have concluded that they do not materially alter the case.

12. The appeal site occupies a prominent position at the junction of the A25 with 3 other local roads. Buildings on the site could be seen from a point along a footpath at the top of the North Downs escarpment which is quite close by to the north of the appeal site. The appeal site is also almost certainly clearly visible from privately owned land along this part of the Downs. Although the buildings and car park would eventually be screened by the heavy tree and shrub planting proposed and partly carried out, the commercial character of the development proposed and the intensive use of the site that would be bound to occur, particularly at weekends and Bank Holidays, would be very intrusive in what is a rural and scenically very pleasant setting.

13. I have taken account of all the other matters raised but none of these has been of sufficient weight to override the considerations which have led me to my conclusion. Protection of the Green Belt is an important objective of national as well as local policy and this is well documented in for example Circular 14/84 and PPG2. To allow this proposal contrary to the council's well-established and up-to-date planning policies and without sufficient justification, would undermine such policies and encourage other proposals for development in the Green Belt and this would put the maintenance of the Green Belt in this area at risk.

14. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

APPLICATION FOR COSTS

The Appellant's Claim Against the Council

15. The basis of your client's claim was for a partial award of costs against the council and was because of reasons 4, 5 and 6 of the council's refusal of planning permission which were directed by the Local Highway Authority, Surrey County Council, and which had been withdrawn by the Local Highway Authority and local Planning Authority by a letter on 22 March 1989 (Appendix E Document 10).

16. It was your submission that the Local Highway Authority had not been justified in directing that the application the subject of this appeal be refused and that reasons 4, 5 and 6 were manifestly wrong. As a consequence of these reasons for refusal it had become necessary for your client to engage the services of a well known firm of consultants, Travers Morgan, to deal with the traffic implications of the proposed development and to prepare evidence for an appeal. These consultants were appointed by letters dated 17 and 25 October 1988 while the appeal itself had been lodged on 14 October 1988.

17. Travers Morgan carried out some work in connection with the traffic and highway implications of the appeal proposal and met with the Local Highway Authority in December 1988. They were able to resolve these matters with Surrey County Council's highway and traffic engineers at that time. The Local Highway Authority withdrew its objection by letter in March 1989.

18. Your client had incurred unnecessary additional expenditure in employing traffic and highway consultants, first to satisfy the Local Highway Authority as to matters which that Authority ought to have known all along were satisfactory and second, to prepare for an appearance at an inquiry which became unnecessary. The Local Highway Authority before directing refusal should have sought further information from the appellant and in any case it should have been obvious from an inspection of the appeal site that the development proposed would have little impact in highway terms.

19. The council responded that it had acted quite reasonably in terms of Circular 2/87 paragraph 18. It was quite usual and proper to negotiate with an applicant over matters connected with a proposal and to withdraw a refusal reason once such matters had been resolved.

20. In this particular case there had been insufficient information supplied at application stage about the traffic and highway implications of the appeal scheme. This had been set out in a letter sent to the appellant's agent by the County Council and dated 12 October 1988 (Document 10 Appendix P).

21. It was the council's view that the consultants would have had to have been employed anyway in order to supply the information needed by the Local Highway Authority and to satisfy the latter that the scheme would be acceptable in traffic and highway terms. In the event matters were resolved and the highway reasons for refusal withdrawn some time before the inquiry took place.

The Council's Claim Against the Appellant

22. The council's claim was for a full award of costs based on the circumstances outlined in paragraph 20 of Circular 2/87 namely that the appellant had behaved in an unreasonable manner in making an appeal.

23. It must have been obvious from official statements of policy that the appeal had no reasonable prospect of success. It was quite clear from Ministerial Statements, Circulars and the PPGs, as well as the council's own statutory planning policies, that the maintenance of the Green Belt is of overriding importance. The appellant needed to demonstrate exceptional reasons for allowing the appeal contrary to the normal presumption against. The appellant and his agent had misunderstood the importance of Green Belt policy and in evidence had manifestly failed to show either that the development proposal was appropriate or that it was of overriding importance.

24. In your reply you argued that there had been no previous appeals on the appeal site which would have shown that the current appeal had no chance of success.

CONCLUSIONS

25. In determining your claim for an award of costs and that of the council I have borne in mind that, in planning appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal, and that costs are awarded only on the grounds of unreasonable behaviour. Accordingly I have considered the application for costs in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties, and all the relevant circumstances of the appeal.

The Appellant's Claim for an Award of Costs Against the Council

26. The Secretary of State's power to award costs derives from Section 250 of the Local Government Act 1972. Section 250(1) empowers the Secretary of State to hold an inquiry. The remaining sub-sections of Section 250 relate to matters arising at or in connection with an inquiry. It follows that the Secretary of State's powers to make awards of costs under sub-section (5) are limited to the costs of the inquiry.

27. The reasons for refusal on which you based your claim were withdrawn in March this year, over a month before the time when the inquiry was held. Irrespective therefore of whether the expenses your client incurred were unnecessary and unreasonable or not, I have not been able to conclude that they formed any part of the inquiry proceedings or were necessary in preparation for these proceedings.

The Council's Claim for an Award of Costs Against the Appellant

28. In coming to a decision on this claim I have had particular regard to paragraph 20 of Circular 2/87 on costs, which deals with an unreasonable appeal made by an appellant. In particular it is stated:-

"An appeal may also be considered unreasonable when it must have been obvious from official statements of policy or judicial authority that the appeal had no reasonable prospect of success - for instance, an appeal relating to a major development which is in conflict with Green Belt policy."

Also PPG12 dealing with Local Plans and referring in paragraph 24 to awards of costs states:-

"Where the Planning Authority had clearly stated that the development is inconsistent with an identified policy in an adopted Local Plan which is up-to-date, and has substantiated this in their written statement on appeal, the applicant may be held to be liable for costs if he pursues the appeal to inquiry but is unable to show that there are other material considerations which should be taken into account."

29. In my view the evidence you submitted fell far short of showing either that the appeal proposal would be an appropriate form of development or that there were any special circumstances that would have justified overriding the normal presumption against permitted development in the Green Belt. In addition, the Structure Plan Alterations are almost at a stage where they will be fully approved and the Local Plan is also a statutory one adopted only last year. These policies are up-to-date and for that reason are of some importance.

30. Circular 2/87 also states in paragraph 20 that the Local Planning Authority will strengthen its case in this respect if it can show that it drew the appellant's attention to the relevant facts, and to the possible consequences of persisting with an appeal. In the case of this appeal, on behalf of the council it was stated that this had not been done. However, I do not regard this as crucial. A great deal of publicity has been given recently to the importance which the Secretary of State attaches to Green Belt policy and to the weight which should be attached to up-to-date statutory plans. There have been several important and much publicised appeal cases concerning development in the Green Belt in which costs were awarded by the Secretary of State against the appellant and several judicial decisions as well which also emphasise the overriding importance of Green Belt policy. For these reasons I consider that your client ought to have been aware of the difficulties he faced in pursuing this appeal. Its pursuit was unreasonable, in my view, and incurred the Council in costs.

FORMAL DECISION ON COSTS

31. My formal decision on costs is as follows:-

i. the appellant's claim against the council

For the above reasons, and in exercise of the powers transferred to me, I hereby determine that your application for an award of costs against the council be refused.

ii. the council's claim against the appellant

Accordingly, a formal order, which I have made in exercise of my powers under Section 250(5) of the Local Government Act 1972 and Section 36 of, and paragraph 5 of Schedule 9 to the Town and Country Planning Act 1971 as amended by the Housing and Planning Act 1986, has been forwarded to the Clerk and Chief Executive of the council. He has been invited to submit to you details of the costs referred to, with a view to reaching agreement on the amount. I enclose a copy of the order, together with a copy of the Guidance Note on Taxation Procedure referred to in Circular 2/87 (paragraph 28).

I am Sir
Your obedient Servant

EB. Williams

E B WILLIAMS DipTP ARICS MRTPI
Inspector

APPEARANCES

Ref No: T/APP/C3620/A/88/106191/P5

FOR THE APPELLANT

Mr J Steedman BA FRTPI

- of Steedman, Jervis & Clarke.

He called:

Mr M Seymour

- The Appellant.

Mr M Scott DipTP MRTPI ALI

- Principal, Malcolm Scott Partnership, Landscape Architects, Town Planning Consultants and Garden Centre Designers.

FOR THE COUNCIL

Mr N King

- of Counsel, instructed by the Assistant Clerk and Solicitor to the council.

He called:

Mr C Robertson BSc(Hons) DipTP

- Principal Planning Assistant with the council.

DOCUMENTS

Ref No: T/APP/ C3620/A/88/106191/P5

Document 1 - Attendance list for 9 May 1989.

Submitted on behalf of the appellant:

- Document 2 - Copy of Planning Committee Report, decision notice and plan for a garden centre proposal in Hertford.
- Document 3 - Suggested condition.
- Document 4 - Copy of a letter to Mr J Steedman from Travers Morgan dated 25 October 1988.
- Document 5 - Copy of a letter from Mr J Steedman to Travers Morgan dated 17 October 1988.
- Document 6 - Copy of a letter from Mr J Steedman to Travers Morgan dated 23 November 1988.
- Document 7 - Copy of notes of a meeting between Travers Morgan and M Green of Surrey County Council's Engineers Department on 20 December 1988.
- Document 8 - Copy of a letter from Travers Morgan to the County Engineer, Surrey County Council dated 22 December 1988.
- Document 9 - Copy of a letter from Travers Morgan to Mr Steedman dated 22 December 1988.

Submitted on behalf of the council:

- Document 10 - Appendices to Mr Robertson's proof of evidence.
- Document 11 - Copy of an appeal decision in the Journal of Planning Law of 1985 page 573.

PLANS

Ref No: T/APP/ C3620/A/88/106191/P5

- Plan A - Application Plan, Location Plan and layout and general landscaping, scales 1:2500 and 1:500.
- Plan B - Application Plan, plan and elevations of garden centre building, scale 1:100.

Submitted on behalf of the appellant:

- Plan C - Planting Plan for appeal site, scale 1:500.
- Plan D - Plan of area showing positions where photos taken, scale 1:10,000.

Submitted on behalf of the council:

- Plan E - Plan showing appeal site edged in red and the surrounding area, scale 1:2500.
- Plan F - Plan of the area showing appeal site and other garden centres, scale 1:10,000.

PHOTOGRAPHS

Bundle of 10 Photographs showing appeal site and views of the surrounding area, submitted on behalf of the appellant.

Annex to Enforcement Notice dated: 17th November 1989

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(s):-

1. The use is unsuitable in view of the location of the site within the Metropolitan Green Belt.
2. The use generates an unacceptable volume of traffic creating a potential hazard on adjacent highways particularly in the settlement of Bovingdon.

LOCATION

LAND AT BOVINGDON AIRFIELD D.



HM Prison

Airfield
(disused)

6463
94/ha
2.34

Plan referred to in Enforcement Notice dated

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

Scale 1:2500
Plan no.

IMPORTANT:— THIS COMMUNICATION AFFECTS YOUR PROPERTY

(a)

DACORUM BOROUGH

Council

TOWN AND COUNTRY PLANNING ACT 1971
(as amended)

Enforcement Notice

Material Change of Use

(b) Land at Bovingdon Airfield, Chesham Road,
Bovingdon, Hertfordshire, as shown edged red
and hatched blue on the plan annexed hereto

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

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88 (10) of the Act, on 20th December 1989.^(g)

Issued 17th November 1989.

Council's address —

CIVIC CENTRE
MARLOWES
HEREL HEMSTEAD
HERTS HP1 1HH

(Signed)

K. M. Pugh

(Designation)

Assistant Secretary (Legal)

(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 at Bovingdon Airfield Cherham Road Bovingdon
Hertfordshire

shown edged [red] [and hatched blue] 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 to use for the storage of motor vehicles

SCHEDULE 3

Steps required to be taken.^(k)

- (i) Cease the use of the land for the storage of motor vehicles and remove all motor vehicles presently stored thereon

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.

- (b) may require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
 - (c) may specify the matters to be included in such a statement;
 - (d) may require the authority or the appellant to give such notice of appeal under this section as may be prescribed, being notice, which in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated;
 - (e) may require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.
- (6) The Secretary of State—
- (a) may dismiss an appeal if the appellant fails to comply with subsection (4) of this section within the time prescribed by regulations under subsection (5); and
 - (b) may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph (b), (c) or (e) of subsection (5) of this section within the period prescribed by the regulations.
- (7) Subject to subsection (8) below, the Secretary of State shall, if either the appellant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(8) The Secretary of State shall not be required to afford such an opportunity if he proposes to dismiss an appeal under paragraph (a) of subsection (6) of this section or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection.

(9) If—

- (a) a statement under subsection (4) of this section specifies more than one ground on which the appellant is appealing against an enforcement notice; but
- (b) the appellant does not give information required under paragraph (b) of that subsection to each of the specified grounds within the time prescribed by regulations under subsection (5) of this section,

the Secretary of State may determine the appeal without considering any of the specified grounds as to which the appellant has failed to give such information within that time.

(10) Where an appeal is brought under this section, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(11) Schedule 9 to this Act applies to appeals under this section, including appeals under this section as applied by regulations under any other provision of this Act.

88A.—(1) On the determination of an appeal under section 88 of this Act, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice or for varying its terms.

(2) On such an appeal the Secretary of State may correct any informality, defect or error in the enforcement notice, or give directions for varying its terms, if he is satisfied that the correction or variation can be made without injustice to the appellant or to the local planning authority.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

88B.—(1) On the determination of an appeal under section 88 of this Act, the Secretary of State may—

- (a) grant planning permission for the development to which the enforcement notice relates or for part of that development or for the development of part of the land to which the enforcement notice relates;
- (b) discharge any condition or limitation subject to which planning permission was granted;
- (c) determine any purpose for which the land may, in the circumstances obtaining at the time of the determination, be lawfully used having regard to any past use of it and to any planning permission relating to it.

(2) In considering whether to grant planning permission under subsection (1) of this section, the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations; and any planning permission granted by him under that subsection may—

- (a) include permission to retain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;
 - (b) be granted subject to such conditions as the Secretary of State thinks fit;
- and where under that subsection he discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

(3) Where an appeal against an enforcement notice is brought under section 88 of this Act, the appellant shall be deemed to have made an application for planning permission for the development to which the notice relates and, in relation to any exercise by the Secretary of State of his powers under subsection (1) of this section—

- (a) any planning permission granted under that subsection shall be treated as granted on that application;
- (b) in relation to a grant of planning permission or a determination under that subsection, the Secretary of State's decision shall be final; and
- (c) for the purposes of section 34 of this Act, the decision shall be treated as having been given by the Secretary of State in dealing with an application for planning permission made to the local planning authority.

(4) On an appeal under section 88 of this Act against an enforcement notice relating to anything done in contravention of a condition to which section 71 of this Act applies, the Secretary of State shall not be required to entertain the appeal in so far as the appellant claims that planning permission free from that condition ought to be granted.

Penalties for non-compliance with enforcement notice

89.—(1) Subject to the provisions of this section, where a copy of an enforcement notice has been served on the person who, at the time when the copy was served on him, was the owner of the land to which the notice relates, then, if any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken within the period allowed for compliance with the notice, that person shall be liable on summary conviction to a fine not exceeding £2,000 or on conviction on indictment to a fine.

(2) If a person against whom proceedings are brought under subsection (1) of this section has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of the land, he shall, upon information duly laid by him, and on giving to the prosecution not less than three clear days' notice of his intention, be entitled to have the person who then became the owner of the land (in this section referred to as "the subsequent owner") brought before the court in the proceedings.

(3) If, after it has been proved that any steps required by the enforcement notice have not been taken within the period allowed for compliance with the notice, the original defendant proves that the failure to take those steps were attributable, in whole or in part, to the default of the subsequent owner—

- (a) the subsequent owner may be convicted of the offence; and
- (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the enforcement notice, shall be acquitted of the offence.

(4) If, after a person has been convicted under the preceding provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the enforcement notice, he shall be guilty of a further offence and liable—

- (a) on summary conviction to a fine not exceeding £200 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 £200 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.

(a)

DACORUM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971.

Enforcement Notice

*(Change of use without permission)

To: (b) Mr Mash
of Tarrington Farm
Chesham Bucks

1. WHEREAS

(i) You are the [owner [and] [occupier] of] ~~[a person having an interest in]~~ the land situate at and known as (c) land at Bovingdon Airfield, ^{Chesham Road} Bovingdon Herefordshire
~~as shown edged red and hatched blue on the plan annexed~~
hereto

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

(ii) The (a) DACORUM BOROUGH COUNCIL (hereinafter called "the Council") are the Local Planning Authority (*inter alia*) for the purposes of the provisions of section 87 of the Town and Country Planning Act 1971 as amended by the Local Government and Planning (Amendment) Act 1981 (hereinafter called "the Act of 1971").

(iii) It appears to the Council that after the 31st day of December 1963 [within four years prior to the issue of this notice] there has been a breach of planning control in that the said land has been developed by the making of a material change in the use [thereof] ~~[of the buildings situate thereon]~~ to a use for the purpose of storage of motor vehicles

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

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

[CONTINUED OVERLEAF]

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

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

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

(d) Insert a description of the development for which permission was granted, using the words of the grant of permission.

(e) Set out (in full) only the condition or conditions which it is alleged have not been complied with.

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

2. **NOW THEREFORE TAKE NOTICE** that in exercise of the powers contained in the said section 87 of the Act of 1971 the Council **HEREBY REQUIRE YOU** within the period of calendar months beginning with the date on which this notice takes effect to discontinue the use [of the said land] [of the buildings situate on the said land] for the purpose of

Storage of motor vehicles

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

3. **THIS NOTICE SHALL TAKE EFFECT**, subject to the provisions of section 88(10) of the Town and Country Planning Act 1971, on 19 . (d)

DATED this

day of

19 .

Signed.....

(e)

(Address to which all communications should be sent.)

(The officer appointed for this purpose)

(d) A copy of an enforcement notice must be served not later than 28 days after the date of its issue and not later than 28 days before the date on which it is to take effect. Where several persons are served with copies, ensure that the effective date is not less than 28 days after the latest date of service. (The period of 28 days cannot begin to run until the day following the day when service on all those persons entitled to be served has been completed.)

(e) Insert title of proper officer.

NOTES FOR PERSONS SERVED WITH A COPY OF AN ENFORCEMENT NOTICE

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

PENALTIES FOR NON-COMPLIANCE

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

RIGHT OF APPEAL

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

WHEN TO APPEAL

3. An appeal *must* be made *before* the date specified in the notice as the date on which it is to take effect, i.e. the date set out in paragraph 3 of the notice. *The Secretary of State has no power to extend this period not to accept an appeal made out of time.*

HOW TO APPEAL

4. The Council will have sent you a special form on which to appeal if you decide to do so, and also a spare copy of the enforcement notice. In many cases a fee will also be payable — this is not a charge for the appeal as such, but for the deemed application for planning permission that goes with every appeal. The Council will tell you if a fee is payable and how much it will be. You should complete the form in full and send it with the copy of the enforcement notice and the appropriate fee to [the Secretary of State, Department of the Environment, Cashiers, Albion Court, 197 Marlowes, Hemel Hempstead, Herts HP1 1BN (or, if no fee is payable, to the Secretary of State, Department of the Environment (PLUP 2), Tollgate House, Houlton Street, Bristol, Avon BS2 9DJ)] [the Secretary of State, Welsh Office, Cathays Park, Cardiff CF1 3NQ] and the envelope marked "Enforcement Appeal". If by any chance you do not receive a copy of the appeal form you should write saying you wish to appeal and giving as many details as possible to the Secretary of State [at the address at Tollgate House, Bristol, given above] [at the above address].

GROUND ON WHICH AN APPEAL CAN BE MADE

5. An appeal can be made on one or more of the grounds set out in Section 88(2) of the Town and Country Planning Act 1971, as amended by the Act of 1981 — reproduced with other relevant sections of the Act below/overleaf. In general, grounds (d) and (e) are mutually exclusive. Ground (d) can be pleaded only where the enforcement notice alleges one of the following types of breach:—

- a. the carrying out of building or other operations without planning permission; or
 - b. failure to comply with a condition requiring the carrying out of building or other operations;
- or

- c. change of use of any building to use as a single dwellinghouse without planning permission.
- d. failure to comply with a condition which prohibits or effectively prevents change of use of any building to use as a single dwelling house.

STATING THE FACTS

6. The statement of facts in support of the appeal must be more than just a reiteration of the grounds set out in section 88(2) of the Act and must at least give the basic facts on which you rely in pleading those grounds. For example, where ground (d) or (e) is pleaded, you should give, as far as you are able, the actual date when the building or other operations took place, when the use commenced, or when the failure to comply with the condition occurred, as the case may be.

SUBSEQUENT ACTION

7. The Secretary of State will acknowledge receipt of your appeal and contact the Council who served the notice. Unless the Secretary of State considers that an inquiry is essential, an opportunity will be given to both you, as appellant, and the Council to say whether you wish to appear before an Inspector at a local inquiry or are prepared to have the matter dealt with by way of written statements. This latter procedure may be more suitable where there is no dispute as to the facts of the case. All enforcement appeals are now transferred by the Secretary of State to Inspectors for determination. In a limited range of circumstances an appeal may subsequently be recovered for determination by the Secretary of State. If this is done you will be informed by letter, giving the reasons for recovery.

PROFESSIONAL ADVICE

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

NOTE

These notes are supplied for guidance only. Although they seek to draw your attention to the more important provisions of the legislation concerning enforcement of planning control, they do not purport to be a complete statement of the law. Further reference should be made to the Town and Country Planning Act, 1971 the amendments made by the Local Government, Planning and Land Act 1980 and the Local Government and Planning (Amendment) Act 1981, and associated Orders or Regulations.

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

Power to serve enforcement notice

87.—(1) Where it appears to the local planning authority that there has been a breach of planning control after the end of 1963, then, subject to 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 only 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;
 - (b) may require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
 - (c) may specify the matters to be included in such a statement;
 - (d) may require the authority or the appellant to give such notice of an 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 in relation 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 £1,000 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 £1,000, 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.