

4/2328/88

Town Planning Ref. No. A/1403/84

Other Ref. No.

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

DACORUM

THE DISTRICT COUNCIL OF
IN THE COUNTY OF HERTFORD

To Mr. Goodwin,
77 London Road,
Hemel Hempstead,
Herts.

Detached double garage
at 77 London Road, Hemel Hempstead, Herts.

Brief description and location of proposed development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby permit the development proposed by you in your application dated 22nd October 1984 and received with sufficient particulars on 26th October 1984 and shown on the plan(s) accompanying such application, subject to the following conditions:-

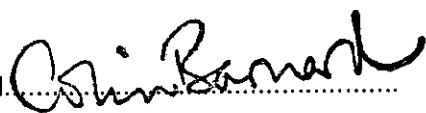
- (1) The development to which this permission relates shall be begun within a period of 5 years commencing on the date of this notice.
(2) The development hereby permitted shall be used for domestic purposes only, incidental to the enjoyment of the dwelling within the same curtilage and for no other purpose.

The reasons for the Council's decision to grant permission for the development subject to the above conditions are:—

(1) To comply with the requirements of Section 41 of the Town & Country Planning Act, 1971.

(2) To maintain the residential character of the area.

Dated.....3rd.....day of.....January.....1985.....

Signed..........

Designation ..Chief Planning Officer..

NOTE

(1) If the applicant wishes to have an explanation of the reasons for this decision it will be given on request and a meeting arranged if necessary.

(2) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with section 36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. Appeals must be made on a form which is obtainable from the Secretary of State for the Environment, Marsham Street, London, S.W.1.) The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.

(3) If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Common Council, or on the Council of the county borough, London borough or county district in which the land is situated, as the case may be, a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.

(4) In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act 1971.

1) DN
2) CB



Planning Inspectorate
 Department of the Environment
 Room 1121 Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321 PLANNING DEPARTMENT Direct Line 0272-218911
 DACORUM BOROUGH COUNCILS Switchboard 0272-218811

Ref.	Ack.	GTN	1374

CHIEF EXECUTIVE OFFICER
 3 JUL 1989

File no. ...
 Refer to **CP0/3/7**
 Cleared

Mr M Leyland
 138 Cemetery Road
 Houghton Regis
 BEDS LU5 5DE

3 JUL 1989

Your Ref -
 Our Ref T/AEP/C/88/A1910/15-17/P6
 Council's Ref
 JK/IP/RB/2205/88E

30019

28 JUN 89

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
 LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
 APPEALS BY MR W BAILEY
 LAND AND BUILDINGS AT 77 LONDON ROAD, APSLEY

1. I have been appointed, as you know, by the Secretary of State for the Environment to determine the above mentioned appeals, which are against 3 enforcement notices issued by the Dacorum District Council. I have considered the representations made by you and by the council, as well as those of interested persons. I inspected the site on Tuesday 6 June 1989.

THE NOTICES

2. The details of the 3 notices are:

Notice 1

- a. The date of the notice is 26 September 1988.
- b. The breach of planning control alleged in the notice is a material change of use of the land from a mixed use as a shop and residential accommodation to office use.
- c. The requirements of the notice are to cease the office use.
- d. The period for compliance with the notice is 6 months.
- e. The appeal was made on grounds 88(2)(a) and (h) of the 1971 Act as amended.
- f. The council issued the notice because the site lies outside the commercial area as defined in the Dacorum District Plan where office accommodation would normally be permitted. No special justification has been put forward to support an exception to the general policies applying and the use is therefore contrary to Policy S3.



Notice 2

- a. The date of the notice is 26 September 1988
- b. The breach of planning control alleged in the notice is the erection of a building which is used for the storage of building and roofing materials.
- c. The requirements of the notice are to cease the storage of building and roofing materials and remove the unauthorised building.
- d. The period for compliance with the notice is 6 months.
- e. The appeal was made on grounds 88(2)(a) and (h) of the 1971 Act as amended.
- f. The council issued the notice because it was considered that the use is detrimental to the amenities of the adjoining residential properties resulting in a loss of privacy and quiet enjoyment.

Notice 3

- a. The date of the notice is 26 September 1988.
- b. The breach of planning control alleged in the notice is failure to comply with condition (2) subject to which planning permission was granted on 3 January 1985 for a detached double garage at 77 London Road, Apsley.
- c. The condition which is alleged not to have been complied with is
"The development hereby permitted shall be used for domestic purposes only, incidental to the enjoyment of the dwelling within the same curtilage and for no other purpose."
- d. It is alleged that the condition has not been complied with in that the garage is being used for the storage of building and roofing materials.
- f. The requirements of the notice are to cease the use.
- g. The period for compliance with the notice is 6 months.
- h. The appeal was made on grounds 88(2)(a) and (h) of the 1971 Act as amended.
- i. The council issued the notice because it was considered
 - (1) that the use deprives 77 London Road of necessary facilities for vehicle parking.
 - (2) that the use is detrimental to the amenities of the adjoining residential properties resulting in a loss of privacy and quiet enjoyment.

THE SITE AND SURROUNDING AREA

3. The appeal site, which is known as 77A London Road, Apsley and not 77 as referred to in the Notice, occupies a long narrow plot extending south-west to a rear access on to Kents Avenue. Immediately adjoining it, to the left as seen from the road is No 77, which occupies a wider plot and deals in fireplaces. The appeal premises consist of a front customer counter with an office area behind. Stairs lead up to a first floor drawing office and to a second floor area under the roof. The latter was in course of refurbishment at the time of my inspection, with dormer windows to the front and rear. From the council's statement it appears that the upper floors were in the past accessible, as living accommodation, solely from No 77. There is now no connection from that building.

4. The rear of the building gives access to the back of the site, which leads to the building the subject of Notice 2. This building is open ended, with breeze block side walls and a transparent plastic sheeting roof. It was in use for the covered storage of various roofing materials at the time of my inspection. Beyond this is the double (tandem) garage the subject of Notice 3. This too contained roofing materials. Between the garage and access gates to Kents Avenue is an open area which was largely taken up by a skip containing waste material, preventing any vehicular access to the garage.

5. Immediately opposite the Kents Avenue access are terraced dwellings, while to the left of these is a small industrial estate. Adjoining the north-west boundary of the site is a recent residential development, Millbank. On the other side towards the rear is garden land and garage access serving a small group of older dwellings facing towards London Road.

INSPECTOR'S COMMENTS ON THE NOTICES

6. In my opinion Notice 1, which refers to the alleged contravention as an office, incorrectly describes the use of the property. It is apparent from my inspection and the representations of local residents that your client is running a roofing business, of which the office use forms a part. The whole of the area of the business is covered by the site edged red on all 3 enforcement notice plans. I consider it to be a sui generis use, embracing administrative and sales activity and the storage of roofing and building materials, outside any of the classes of the 1987 Use Classes Order.

7. I am satisfied, despite the incorrect description, that your client fully understands the essential and overall nature of the allegations and the requirements of the notices as issued. In the circumstances I consider that I can use my powers under section 88A(2) of the Act to correct Notice 1 without injustice either to your client or to the local planning authority. I shall therefore alter the allegation at Schedule 2 to "Change of use from a mixed use as a shop and residential accommodation to use for the purposes of a roofing business"

8. Notice 2 relates to operational development in the form of a building which has been erected on the site. I will deal with this on its merits in the context of the use of the site as a whole.

9. As a result of the correction to Notice 1 I consider that Notice 3 is inappropriate. The use of the double garage for the storage of building and roofing materials is in my opinion now part of the use alleged in the

corrected Notice 1 rather than a use in non-compliance with an earlier planning condition, I shall therefore quash Notice 3 and take no further action upon it, apart from, as in the case of all three notices, correcting the land at (b) in each notice to "77A London Road, Apsley".

THE PLANNING ISSUES

10. All the appeals were lodged on grounds (a) and (h). Your client does not seek a permanent permission but wishes to continue for a further 12 months while relocation and redevelopment plans are worked out. There is a planning permission for a new dwelling at the rear of the site. To this end he seeks either a temporary permission or an extension of the period to comply with the notice. In my opinion the central issue in both remaining appeals is whether the activity on the site is so damaging to local residential amenity as to require its cessation with minimum delay.

11. The representations, show that the business generates significant traffic and loading activity at the Kents Avenue access, to the disturbance of local residents. The area is, from my inspection, also quite busy with traffic from the nearby industrial. The appeal site however is much more inserted into the residential part of Kents Avenue.

12. On balance I consider that, while the site is unsuitable for long term use, a continuation of the roofing business for another 12 months would not be unreasonable, in anticipation of redevelopment at the rear which may help to finance relocation. In my opinion this would best be achieved by an extension of the period to comply rather than a temporary planning permission. The former approach will ensure that the use ceases at the end of the period, without the possibility of the need for further enforcement action. This decision will apply both to the use of the land, Notice 1, and the unauthorised building, Notice 2.

13. The council have expressed concern about the loss of residential accommodation on the upper floors of 77A. It seems to me however that the area, which used to be occupied with access from No 77 is now so limited as to be unsuitable for self-contained living accommodation. The physical work, including the new internal staircase makes it improbable that the upper floors can reasonably be expected to be re-united with the next-door property. I have taken into account all the other matters raised but do not find that they outweigh the factors which lead me to my decision.

FORMAL DECISION

14. For the above reasons, and in exercise of the powers transferred to me, I hereby direct:

A. That Notice 1 be corrected as follows:

- (i) by the deletion at (b) of the address "77 London Road, Apsley" and the substitution of "77A London Road, Apsley".
- (ii) by the deletion from Schedule 2 of the words "Change of use from a mixed use as a shop and residential accommodation to office use" and the substitution of the words "Change of use from a mixed use as a shop and residential accommodation to use for the purposes of a roofing business".

Subject to these corrections I dismiss the appeal, uphold the notice and refuse to grant planning permission for the application deemed to have been made under section 88(B)(3).

- B. That Notice 2 be corrected by the deletion at (b) of the address "77 London Road, Apsley" and the substitution of "77A London Road, Apsley".

Subject to this corrections I dismiss the appeal, uphold the notice and refuse to grant planning permission for the application deemed to have been made under section 88(B)(3).

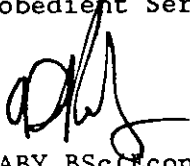
- C. That Notice 3 be corrected by the deletion at (b) of the address "77 London Road, Apsley" and the substitution of "77A London Road, Apsley".

Subject to this correction I quash the notice.

RIGHTS OF APPEAL RELATING TO THE DECISION

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

I am Sir
Your obedient Servant



A D RABY BSc(Econ) MRTPI ARICS
Inspector

ENC

IMPORTANT:— THIS COMMUNICATION AFFECTS YOUR PROPERTY

(b)

DACORUM BOROUGH

Council

**TOWN AND COUNTRY PLANNING ACT 1971
(as amended)****Enforcement Notice^(a)**

2

**Breach of Planning Condition to which the 4 Year Rule applies
(Operational Development or Preventing Change of Use to Single Dwellinghouse)**

(c) 77 LONDON ROAD APSLEY

HERTFORDSHIRE

WHEREAS:

(1) It appears to the^(b) 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 within the period of 4 years before the date of issue of this notice on the land or premises ("the land") described in Schedule 1 below.

(2) The breach of planning control which appears to have taken place consists in the failure to comply with the following condition(s) subject to which planning permission was granted on 3 January 1985 for^(d) detached double garage at 77 London Road Apsley

[that] ~~those~~ conditions^(s) appearing not to have been complied with in the respect(s) set out in Schedule 2 below:

(e) (2) The development hereby permitted shall be used for domestic purposes only, incidental to the enjoyment of the dwelling within the same curtilage and for no other purpose.

(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.^(f)

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

within [the period of six [days] [months] from the date on which this notice takes effect] ~~[the period specified in respect of each step in that Schedule]~~^(h)

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88(10) of the Act, on 31st October 1988 ^(j)

Issued 26th September 1988.

Council's address
Civic Centre
Marlowes
Hemel Hempstead
Hertfordshire HP1 1HH

(Signed)

Keith Hunt

(Designation)

BOROUGH SECRETARY

(The officer appointed for this purpose)

CONTINUED OVERLEAF — P.T.O.**NOTES TO THE LOCAL PLANNING AUTHORITY**

- (a) This notice is appropriate for breach of a planning condition relating to the carrying out of operations or preventing a change of use of a building to a single dwellinghouse.
 (b) Insert the name of the Council issuing the notice.
 (c) Insert the address or a description of the land to which the notice relates.
 (d) Insert a description of the development for which planning permission was granted, using the words of the grant of permission.
 (e) Set out (in full) only the condition(s) which it is alleged has/have not been complied with.
 (f) See paragraph 29 of DOE Circular 38/81 (Welsh Office Circular 37/81).
 (g) 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.
 (h) 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.
 (j) The date selected must be not less than 28 days after all the copies of the notice have been served (see section 87(5) of the Act).

SCHEDULE 1

Land or premises to which this notice relates

(address or description)

77 London Road Apsley
Hertfordshire

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

SCHEDULE 2

Alleged breach of planning control

Failure to comply with the condition(s) recited overleaf in that^(l)

The detached double garage (shown coloured blue on the attached plan) is being used for the storage of building and roofing materials

SCHEDULE 3

Steps required to be taken^(m)

(i)

Cease the use of the detached double garage for storage of building and roofing materials

NOTES TO THE LOCAL PLANNING AUTHORITY

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

(l) State how it is alleged the condition(s) has/have been breached.

(m) 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 (g) and (h) above.

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

Power to issue enforcement notice

87.—(1) Where it appears to the local planning authority that there has been a breach of planning control after the end of 1963, then subject to the following provisions of this section, the authority, if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may issue a notice requiring the breach to be remedied and serve copies of the notice in accordance with subsection (5) of this section.

(2) A notice under this section is referred to in this Act as an "enforcement notice".

(3) There is a breach of planning control—

(a) if development has been carried out, whether before or after the commencement of this Act, without the grant of the planning permission required in that behalf in accordance with Part III of the Act of 1962 or Part III of this Act; or

(b) if any conditions or limitations subject to which planning permission was granted have not been complied with.

(4) An enforcement notice which relates to a breach of planning control consisting in—

(a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land; or

(b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land; or

(c) the making without planning permission of a change of use of any building to use as a single dwelling-house; or

(d) the failure to comply with a condition which prohibits or has the effect of preventing a change of use of a building to use as a single dwelling-house.

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

(5) A copy of an enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in the notice as the date on which it is to take effect—

(a) on the owner and on the occupier of the land to which it relates; and

(b) on any other person having an interest in that land, being an interest which in the opinion of the authority is materially affected by the notice.

(6) An enforcement notice shall specify the matters alleged to constitute a breach of planning control.

(7) An enforcement notice shall also specify—

(a) any steps which are required by the authority to be taken in order to remedy the breach;

(b) any such steps as are referred to in subsection (10) of this section and are required by the authority to be taken.

(8) An enforcement notice shall specify the period within which any such step as is mentioned in subsection (7) of this section is to be taken and may specify different periods for the taking of different steps.

(9) In this section "steps to be taken in order to remedy the breach" means (according to the particular circumstances of the breach) steps for the purpose—

(a) of restoring the land to its condition before the development took place; or

(b) of securing compliance with the conditions or limitations subject to which planning permission was granted,

including—

(i) the demolition or alteration of any buildings or works;

(ii) the discontinuance of any use of land; and

(iii) the carrying out on land of any building or other operations.

(10) The steps mentioned in subsection (7)(b) of this section are steps for the purpose—

(a) of making the development comply with the terms of any planning permission which has been granted in respect of the land; or

(b) of removing or alleviating any injury to amenity which has been caused by the development.

(11) Where the matters which an enforcement notice alleges to constitute a breach of planning control include development which has involved the making of a deposit of refuse or waste materials on land, the notice may require that the contour of the deposit shall be modified by altering the gradient or gradients of its sides in such manner as may be specified in the notice.

(12) The Secretary of State may by regulations direct—

(a) that enforcement notices shall specify matters additional to those which they are required to specify by this section; and

(b) that every copy of an enforcement notice served under this section shall be accompanied by an explanatory note giving such information as may be specified in the regulations with regard to the right of appeal conferred by section 88 of this Act.

(13) Subject to section 88 of this Act, an enforcement notice shall take effect on a date specified in it.

(14) The local planning authority may withdraw an enforcement notice (without prejudice to their power to issue another) at any time before it takes effect.

(15) If they do so, they shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.

(16) Where—

(a) an enforcement notice has been issued in respect of development consisting of the erection of a building or the carrying out of works without the grant of planning permission; and

(b) the notice has required the taking of steps for a purpose mentioned in subsection (10)(b) of this section; and

(c) the steps have been taken,

for the purposes of this Act planning permission for the retention of the building or works as they are as a result of compliance with the notice shall be deemed to have been granted on an application for such permission made to the local planning authority.

Appeal against enforcement notice

88.—(1) A person having an interest in the land to which an enforcement notice relates may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought on any of the following grounds—

(a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged;

(b) that the matters alleged in the notice do not constitute a breach of planning control;

(c) that the breach of planning control alleged in the notice has not taken place;

(d) in the case of a notice which, by virtue of section 87(4) of this Act, may be issued within the period of four years from the date of the breach of planning control to which the notice relates, that that period had elapsed at the date when the notice was issued;

(e) in the case of a notice not falling within paragraph (d) of this subsection, that the breach of planning control alleged by the notice occurred before the beginning of 1964;

(f) that copies of the enforcement notice were not served as required by section 87(5) of this Act;

(g) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or to achieve a purpose specified in section 87(10) of this Act;

(h) that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed.

(3) An appeal under this section shall be made by notice in writing to the Secretary of State.

(4) A person who gives notice under subsection (3) of this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed by regulations under subsection (5) of this section*, a statement in writing—

(a) specifying the grounds on which he is appealing against the enforcement notice; and

(b) giving such further information as the regulations may prescribe.

(5) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under this section, and in particular, but without prejudice to the generality of this subsection—

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

*NOTE: The Secretary of State has specified that such a statement must be submitted to him either when the appellant is giving notice of appeal, or within 28 days from the date on which the Secretary of State sends the appellant a notice requiring such a statement to be submitted.

- (b) may require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
 - (c) may specify the matters to be included in such a statement;
 - (d) may require the authority or the appellant to give such notice of appeal under this section as may be prescribed, being notice which in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated;
 - (e) may require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.
- (6) The Secretary of State—
- (a) may dismiss an appeal if the appellant fails to comply with subsection (4) of this section within the time prescribed by regulations under subsection (5); and
 - (b) may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph (b), (c) or (e) of subsection (5) of this section within the period prescribed by the regulations.
- (7) Subject to subsection (8) below, the Secretary of State shall, if either the appellant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (8) The Secretary of State shall not be required to afford such an opportunity if he proposes to dismiss an appeal under paragraph (a) of subsection (6) of this section or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection.
- (9) If—
- (a) a statement under subsection (4) of this section specifies more than one ground on which the appellant is appealing against an enforcement notice; but
 - (b) the appellant does not give information required under paragraph (b) of that subsection to each of the specified grounds within the time prescribed by regulations under subsection (5) of this section,
- the Secretary of State may determine the appeal without considering any of the specified grounds as to which the appellant has failed to give such information within that time.
- (10) Where an appeal is brought under this section, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (11) Schedule 9 to this Act applies to appeals under this section, including appeals under this section as applied by regulations under any other provision of this Act.

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

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

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

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

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

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

- (a) include permission to retain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;
- (b) be granted subject to such conditions as the Secretary of State thinks fit;

and where under that subsection he discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

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

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

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

Penalties for non-compliance with enforcement notice

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

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

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

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

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

- (a) on summary conviction to a fine not exceeding £100 for each day following his first conviction on which any of the requirements of the enforcement notice (other than the discontinuance of the use of land) remain unfulfilled; or
- (b) on conviction on indictment to a fine.

(5) Where, by virtue of an enforcement notice, a use of land is required to be discontinued, or any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations thereon, then if any person uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, in contravention of the notice, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £2,000, or on conviction on indictment to a fine; and if the use is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £100 for each day on which the use is so continued, or on conviction on indictment to a fine.

(6) Any reference to this section to the period allowed for compliance with an enforcement notice is a reference to the period specified in the notice for compliance therewith of such extended period as the local planning authority may allow for compliance with the notice.

Note.—Attention is also directed to section 91 relating to the execution and costs of works required by enforcement notice, section 110 which contains supplementary provisions as to appeals to the Secretary of State and section 243 relating to the validity of Enforcement Notices.

Annex to Enforcement Notice dated: 26th September 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, consider it expedient to serve this Notice upon you for the following reason(s):-

- (1) The use will deprive 77 London Road of necessary facilities for vehicle parking.
- (2) The use is detrimental to the amenities of the adjoining residential properties resulting in loss of privacy and quiet enjoyment of the properties