

Enforcement notice: material change of use without planning permission

IMPORTANT- THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990 (TCPA 1990)

ENFORCEMENT NOTICE

Issued by: Eastbourne Borough Council (the Council)

1. ENFORCEMENT NOTICE

This is a formal notice issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the TCPA 1990, at the Land. It is considered expedient to issue this notice, having regard to the provisions of the development plan and to all other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. THE LAND TO WHICH THE NOTICE RELATES

Land at Jordans, Jordans Lane West, Eastbourne BN22 0LL, shown edged red on the attached plan (“the Land”).

3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission, the material change of use from the use of a rear outbuilding as a pool enclosure to a residential dwelling.

4. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the above breach of planning control has occurred within the last four years.

- The building in question was substantially completed less than four years ago.
- The development is contrary to Policy B2 of the Eastbourne Borough Core Strategy in that it has a detrimental effect on the residential and environmental amenity of existing and future residents.
- The development is contrary to Policy D10A of the Eastbourne Borough Core Strategy in that its design and layout do not contribute to local distinctiveness and sense of place and is not appropriate to its setting in terms of its relationship to adjoining buildings.
- The development is contrary to Policy UHT1 in that it does not harmonise with the appearance and character of the local environment respecting local

distinctiveness and is inappropriate in scale, form and materials, setting alignment and layout.

- The development is contrary to Policy UHT4 in that it contributes to the erosion of local distinctiveness.
- The Council consider that planning permission should not be given, because planning conditions could not overcome these objections to the development.

5. WHAT YOU ARE REQUIRED TO DO

You must

- i. Cease the use of the rear outbuilding as a residential dwelling
- ii. Remove all fixtures and fittings that facilitate the unauthorised use of the rear outbuilding as a residential dwelling.
- iii. Remove all waste materials from the site.

6. TIME FOR COMPLIANCE

The periods for compliance with the steps set out in paragraph 5 are:

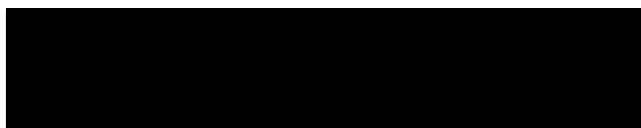
- (i) Six months from the date this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 18th December 2019 unless an appeal is made against it beforehand.

Dated: 6th November 2019

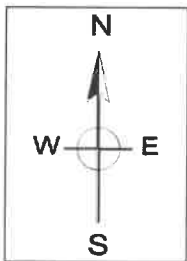
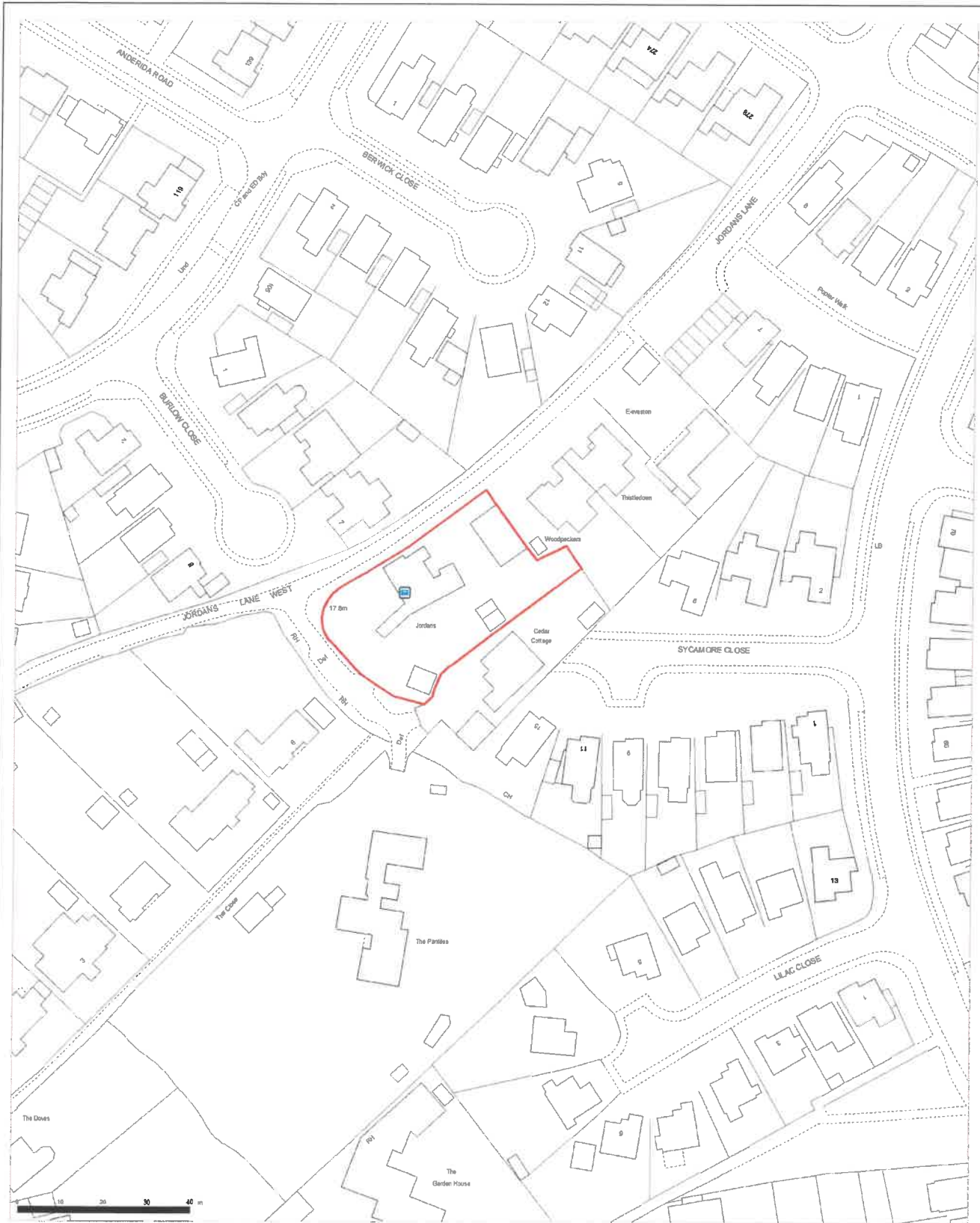
Signed:



on behalf of
Eastbourne Borough Council

Nominated officer: Gavin Palmer

Telephone number: 01323 415385



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1:1250

Jordans Jordans Lane West BN22 0LL

EASTBOURNE
Borough Council
www.eastbourne.gov.uk

ANNEX

Eastbourne Borough Council has issued an enforcement notice relating to land at Jordans, Jordans Lane West, Eastbourne BN22 0LL and you are served with a copy of that notice as you have an interest in the Land. Copies of the notice have also been served on the parties listed at the end of this Annex.

YOUR RIGHT OF APPEAL

You can appeal against this enforcement notice, but any appeal must be **received** by the Planning Inspectorate (or be posted or electronically communicated at such time that, in the ordinary course of post or transmission, it would be delivered to the Planning Inspectorate) **before** the date specified in paragraph 7 of the notice.

If you intend to appeal against this notice you should follow the instructions given on the information sheet from the Planning Inspectorate which accompanies this notice

GROUND OF APPEAL

The grounds of appeal are set out in section 174 of the TCPA 1990. You may appeal on one or more of the following grounds that:

In respect of any breach of planning control which may have been constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged (ground a).

Those matters have not occurred (ground b).

Those matters (if they have occurred) do not constitute a breach of planning control (ground c).

At the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters (ground d).

Copies of the enforcement notice were not served as required by section 172 of the TCPA 1990 (ground e).

The steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by such breach (ground f).

Any period specified in the notice in accordance with section 173(9) of the TCPA 1990 falls short of what should reasonably be allowed (ground g). Not all of these grounds may be relevant to you.

PLANNING APPLICATION FEE

If you appeal under ground (a) of section 174(2) of the TCPA 1990 this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay a fee of £924. You should pay the fee to Lewes District Council. If the fee is not paid then that ground of appeal will not be valid.

STATEMENT ON GROUNDS OF APPEAL

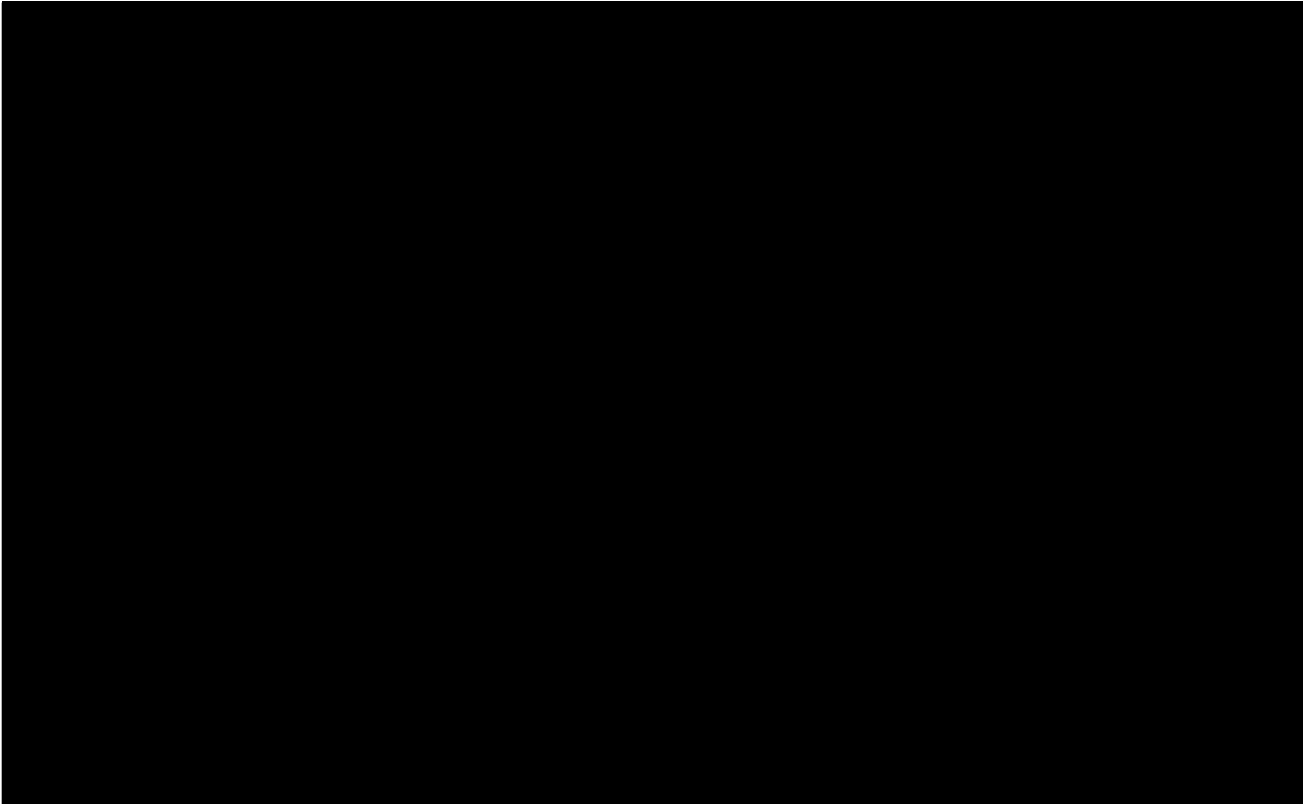
If you decide to appeal, you should state in writing the grounds(s) on which you are appealing against the enforcement notice and you should state briefly the facts on which you intend to rely in support of each of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

STATUTORY PROVISIONS

A copy of sections 171A, 171B and 172 to 177 of the TCPA 1990 is attached for your information.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period[s] specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.



LEGISLATION

171A.— Expressions used in connection with enforcement.

(1) For the purposes of this Act—

- (a) carrying out development without the required planning permission; or
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted,

constitutes a breach of planning control.

(2) For the purposes of this Act—

- (a) the issue of an enforcement notice (defined in section 172); or
- (aa) the issue of an enforcement warning notice (defined in [section 173ZA](#));
- (b) the service of a breach of condition notice (defined in [section 187A](#)),

Constitutes taking enforcement action.

(3) In this Part “*planning permission*” includes permission under Part III of the 1947 Act, of the 1962 Act or of the 1971 Act.

171B.— Time limits.

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of [section 196D](#)).

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

- (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
- (b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.”

172.— Issue of enforcement notice.

(1) The local planning authority may issue a notice (in this Act referred to as an “*enforcement notice*”) where it appears to them—

- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

(2) A copy of an enforcement notice shall be served—

- (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 the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

(3) The service of the notice shall take place—

- (a) not more than twenty-eight days after its date of issue; and

(b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect.

172A Assurance as regards prosecution for person served with notice

(1) When, or at any time after, an enforcement notice is served on a person, the local planning authority may give the person a letter—

(a) explaining that, once the enforcement notice had been issued, the authority was required to serve the notice on the person,

(b) giving the person one of the following assurances—

(i) that, in the circumstances as they appear to the authority, the person is not at risk of being prosecuted under [section 179](#) in connection with the enforcement notice, or

(ii) that, in the circumstances as they appear to the authority, the person is not at risk of being prosecuted under [section 179](#) in connection with the matters relating to the enforcement notice that are specified in the letter,

(c) explaining, where the person is given the assurance under paragraph (b)(ii), the respects in which the person is at risk of being prosecuted under [section 179](#) in connection with the enforcement notice, and

(d) stating that, if the authority subsequently wishes to withdraw the assurance in full or part, the authority will first give the person a letter specifying a future time for the withdrawal that will allow the person a reasonable opportunity to take any steps necessary to avoid any risk of prosecution that is to cease to be covered by the assurance.

(2) At any time after a person has under subsection (1) been given a letter containing an assurance, the local planning authority may give the person a letter withdrawing the assurance (so far as not previously withdrawn) in full or part from a time specified in the letter.

(3) The time specified in a letter given under subsection (2) to a person must be such as will give the person a reasonable opportunity to take any steps necessary to avoid any risk of prosecution that is to cease to be covered by the assurance.

(4) Withdrawal under subsection (2) of an assurance given under subsection (1) does not withdraw the assurance so far as relating to prosecution on account of there being a time before the withdrawal when steps had not been taken or an activity had not ceased.

(5) An assurance given under subsection (1) (so far as not withdrawn under subsection (2)) is binding on any person with power to prosecute an offence under [section 179](#).

173.— Contents and effect of notice.

(1) An enforcement notice shall state—

(a) the matters which appear to the local planning authority to constitute the breach of planning control; and

(b) the paragraph of [section 171A\(1\)](#) within which, in the opinion of the authority, the breach falls.

(2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.

(3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.

(4) Those purposes are—

(a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of

the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or

(b) remedying any injury to amenity which has been caused by the breach.

(5) An enforcement notice may, for example, require—

(a) the alteration or removal of any buildings or works;

(b) the carrying out of any building or other operations;

(c) any activity on the land not to be carried on except to the extent specified in the notice; or

(d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.

(6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this section referred to as a “*replacement building*”) which, subject to subsection (7), is as similar as possible to the demolished building.

(7) A replacement building—

(a) must comply with any requirement imposed by any enactment applicable to the construction of buildings;

(b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;

(c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b)).

(8) An enforcement notice shall specify the date on which it is to take effect and, subject to [sections 175\(4\)](#) and [289\(4A\)](#), shall take effect on that date.

(9) An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

(10) An enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 174.

(11) Where—

(a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and

(b) all the requirements of the notice have been complied with,

then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of [section 73A](#) in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

(12) Where—

(a) an enforcement notice requires the construction of a replacement building; and

(b) all the requirements of the notice with respect to that construction have been complied with,

planning permission shall be treated as having been granted by virtue of [section 73A](#) in respect of development consisting of that construction.

173A.— Variation and withdrawal of enforcement notices.

(1) The local planning authority may—

(a) withdraw an enforcement notice issued by them; or
(b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9).

(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

(3) The local planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not affect the power of the local planning authority to issue a further enforcement notice.

174.— Appeal against enforcement notice.

(1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may 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, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

(b) that those matters have not occurred;

(c) that those matters (if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as required by section 172;

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

(g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

(2A) An appeal may not be brought on the ground specified in subsection (2)(a) if—

(a) the land to which the enforcement notice relates is in England, and

(b) the enforcement notice was issued at a time—

(i) after the making of a related application for planning permission, but

(ii) before the end of the period applicable under [section 78\(2\)](#) in the case of that application.

(2B) An application for planning permission for the development of any land is, for the purposes of subsection (2A), related to an enforcement notice if granting planning permission for the development would involve granting planning permission in respect of the matters specified in the enforcement notice as constituting a breach of planning control.

(2C) Where any breach of planning control constituted by the matters stated in the notice relates to relevant demolition (within the meaning of [section 196D](#)), an appeal may also be brought on the grounds that—

(a) the relevant demolition was urgently necessary in the interests of safety or health;

(b) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter; and

(c) the relevant demolition was the minimum measure necessary.

(2D) An appeal against an enforcement notice may not be brought on the ground that planning permission ought to be granted in respect of a breach of planning control constituted by a matter stated in the notice, as specified in subsection (2)(a), if—

(a) the land to which the enforcement notice relates is in Wales, and

(b) the enforcement notice was issued after a decision to refuse planning permission for a related development was upheld on an appeal under [section 78](#) (and for this purpose development is “related” if granting planning permission for it would involve granting planning permission in respect of the matter concerned).

(2E) An appeal may not be brought on the ground that a condition or limitation ought to be discharged, as specified in subsection (2)(a), if—

(a) the land to which the enforcement notice relates is in Wales, and

(b) the enforcement notice was issued after a decision to grant planning permission subject to the condition or limitation was upheld on an appeal under [section 78](#).

(2F) For the purposes of subsections (2D) and (2E), references to a decision that has been upheld on an appeal include references to a decision in respect of which—

(a) the Welsh Ministers have, under [section 79\(6\)](#), declined to determine an appeal or to proceed with the determination of an appeal;

(b) an appeal has been dismissed under [section 79\(6A\)](#).

(3) An appeal under this section shall be made [...] ⁵—

(a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or

(b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date

(c) by sending such notice to him using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to him before that date.

(4) A person who gives notice under subsection (3) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing—

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

(b) giving such further information as may be prescribed.

(5) If, where more than one ground is specified in that statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.

(6) In this section “*relevant occupier*” means a person who—

(a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence [...] ⁶; and

(b) continues so to occupy the land when the appeal is brought

175.— Appeals: supplementary provisions.

(1) [...] ¹The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under [section 174](#) and, in particular, but without prejudice to the generality of this subsection, may—

(a) 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;

(b) specify the matters to be included in such a statement;

(c) require the authority or the appellant to give such notice of such an appeal as may be prescribed;

(d) 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.

(2) The notice to be prescribed under subsection (1)(c) shall be such notice as 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.

(3) Subject to [section 176\(4\)](#), the Secretary of State shall, if either the appellant or the local planning authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(3A) Subsection (3) does not apply to an appeal against an enforcement notice issued by a local planning authority in England.

(3B) Subsection (3) does not apply to an appeal against an enforcement notice issued by a local planning authority in Wales.

(4) Where an appeal is brought under [section 174](#) the enforcement notice shall [subject to any order under [section 289\(4A\)](#)]⁴ be of no effect pending the final determination or the withdrawal of the appeal.

(5) Where any person has appealed to the Secretary of State against an enforcement notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(6) [Schedule 6](#) applies to appeals under [section 174](#), including appeals under that section as applied by regulations under any other provisions of this Act.

176.— General provisions relating to determination of appeals.

(1) On an appeal under [section 174](#) the Secretary of State may—

(a) correct any defect, error or misdescription in the enforcement notice; or

(b) vary the terms of the enforcement notice,

if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.

(2) Where the Secretary of State determines to allow the appeal, he may quash the notice.

(2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.

(3) The Secretary of State—

(a) may dismiss an appeal if the appellant fails to comply with [section 174\(4\)](#) within the prescribed time; 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 \(a\), \(b\), or \(d\) of section 175\(1\)](#) within the prescribed period.

(4) If [[section 175\(3\)](#) would otherwise apply and]² the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) [of this section]³ or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection, he need not comply with [section 175\(3\)](#).

(5) Where it would otherwise be a ground for determining an appeal under [section 174](#) 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.

177.— Grant or modification of planning permission on appeals against enforcement notices.

(1) On the determination of an appeal under [section 174](#), the Secretary of State may—

(a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;

(b) discharge any condition or limitation subject to which planning permission was granted;

(c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 191.

(1A) The provisions of [sections 191 to 194](#) mentioned in subsection (1B) shall apply for the purposes of subsection (1)(c) as they apply for the purposes of section 191, but as if—

(a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and

(b) references to the local planning authority were references to the Secretary of State.

(1B) Those provisions are: [sections 191\(5\) to \(7\)](#), [193\(4\)](#) (so far as it relates to the form of the certificate), [\(6\) and \(7\)](#) and [194](#).

(1C) [Subsection]⁴ (1)(a) applies only if the statement under [section 174\(4\)](#) specifies the ground mentioned in [section 174\(2\)\(a\)](#).

(2) In considering whether to grant planning permission under subsection (1), 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.

(3) The planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part III.

(4) Where under subsection (1) the Secretary of State discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

(4A) [Section 100ZA](#) (which makes provision about restrictions on the power to impose conditions or limitations on a grant of planning permission in relation to land in England) applies in relation to conditions substituted under subsection (4) as it applies in relation to conditions imposed on a grant of planning permission to develop land which is granted on an application made under [Part 3](#).

(5)

[Where—]⁸

(a) an appeal against an enforcement notice is brought under [section 174](#), and

(b) the statement under [section 174\(4\)](#) specifies the ground mentioned in [section 174\(2\)\(a\)](#), the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control.

(5A) Where—

(a) the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2)(a) of that section;

(b) any fee is payable under regulations made by virtue of [section 303](#) in respect of the application deemed to be made by virtue of the appeal; and

(c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

(6) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(7) In relation to a grant of planning permission or a determination under subsection (1) the Secretary of State's decision shall be final.

(8) For the purposes of [section 69](#) the Secretary of State's decision shall be treated as having been given by him in dealing with an application for planning permission made to the local planning authority.



The Planning Inspectorate

Customer Support Team
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line 0303-444 5000
Email enquiries@planninginspectorate.gov.uk

THIS IS IMPORTANT

If you want to appeal against this enforcement notice you can do it:-

- on-line at the Appeals Casework Portal (<https://acp.planninginspectorate.gov.uk/>); or
- sending us enforcement appeal forms, which can be obtained by contacting us on the details above.

You MUST make sure that we RECEIVE your appeal BEFORE the effective date on the enforcement notice.

Please read the appeal guidance documents at <https://www.gov.uk/appeal-enforcement-notice/how-to-appeal>.

In exceptional circumstances you may give written notice of appeal by letter or email. You should include the name and contact details of the appellant(s) and either attach a copy of the Enforcement notice that you wish to appeal or state the following:

- the name of the local planning authority;
- the site address; and
- the effective date of the enforcement notice.

We MUST receive this BEFORE the effective date on the enforcement notice. This should immediately be followed by your completed appeal forms.