

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

**TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)**

ENFORCEMENT NOTICE 02

ISSUED BY BATH AND NORTH EAST SOMERSET COUNCIL

1. **THIS NOTICE** is 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 above Act, at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the development plan and to other material planning considerations. The Explanatory Note 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 the Former Fullers Earth Works, Odd Down, Bath, shown edged red on the attached plans '2012 *Enforcement Notice 02 location plan*' and '2012 *Enforcement Notice02 detail plan*'.

3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL:**
Without planning permission, the change of use of the Land from agriculture to use for the storage, distribution and repair of scaffolding.

4. **REASONS FOR ISSUING THIS NOTICE**
 - i) It appears to the Council that the breach of planning control has occurred within the last ten years.
 - ii) The increase in area of industrial uses, beyond the extent of the historical general industrial use of the Land marked "Area A" on '2012 *Enforcement Notice02 detail plan*'. (attached), including the associated fences, concrete, structures, containers, machinery, and other materials is inappropriate development within the Green Belt, results in a loss of openness, does not safeguard the countryside from encroachment and has an adverse impact upon the character and appearance of the rural area which is important for the setting of Bath, which is a World Heritage Site. The development is therefore contrary to policies GB.1, GB.2, NE.1, NE.4, and BH.1 of the Bath and North East Somerset Local Plan (including minerals and waste policies) adopted October 2007 and to the advice in the National Planning Policy Framework.
 - iii) There are no matters that the Council has been made aware of, that clearly outweigh the harm to the Green Belt and other harmful impacts. As such there are no very special circumstances to justify the

development and planning conditions could not overcome these objections.

5. WHAT YOU ARE REQUIRED TO DO:

- i) Permanently cease using the Land outlined in red on the plan '2012 Enforcement Notice02 detail plan' for the storage, distribution and repair of scaffolding;
- ii) Permanently remove from the land referred to in 5) i) above all scaffolding, steel containers, storage crates, storage bins, machinery and vehicles;
- iii) Demolish all fencing and remove all resultant materials from the Land;
- iv) Dismantle all concrete hardstandings, underlying sub-bases and remove the resultant materials from the Land;
- v) Restore the Land to its condition before the breach took place and level with top-soil.

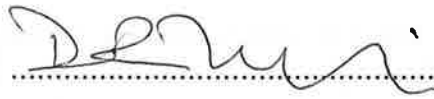
6. TIME FOR COMPLIANCE

Within 18 months from the date this Notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 12 July 2012 unless an appeal is made against it beforehand.

Dated 30/5/12 Signed



David Trigwell

Divisional Director for Planning and Transport Development

On behalf of Bath and North East Somerset Council

PO Box 5006

Bath

BA1 1JG

Served on:-

Company Secretary
Gazelle Properties Ltd
Lilliput House
Fosseway
Midsomer Norton
Radstock
BA3 4BB

SVENSKA HANDELSBANKEN

Trinity Tower

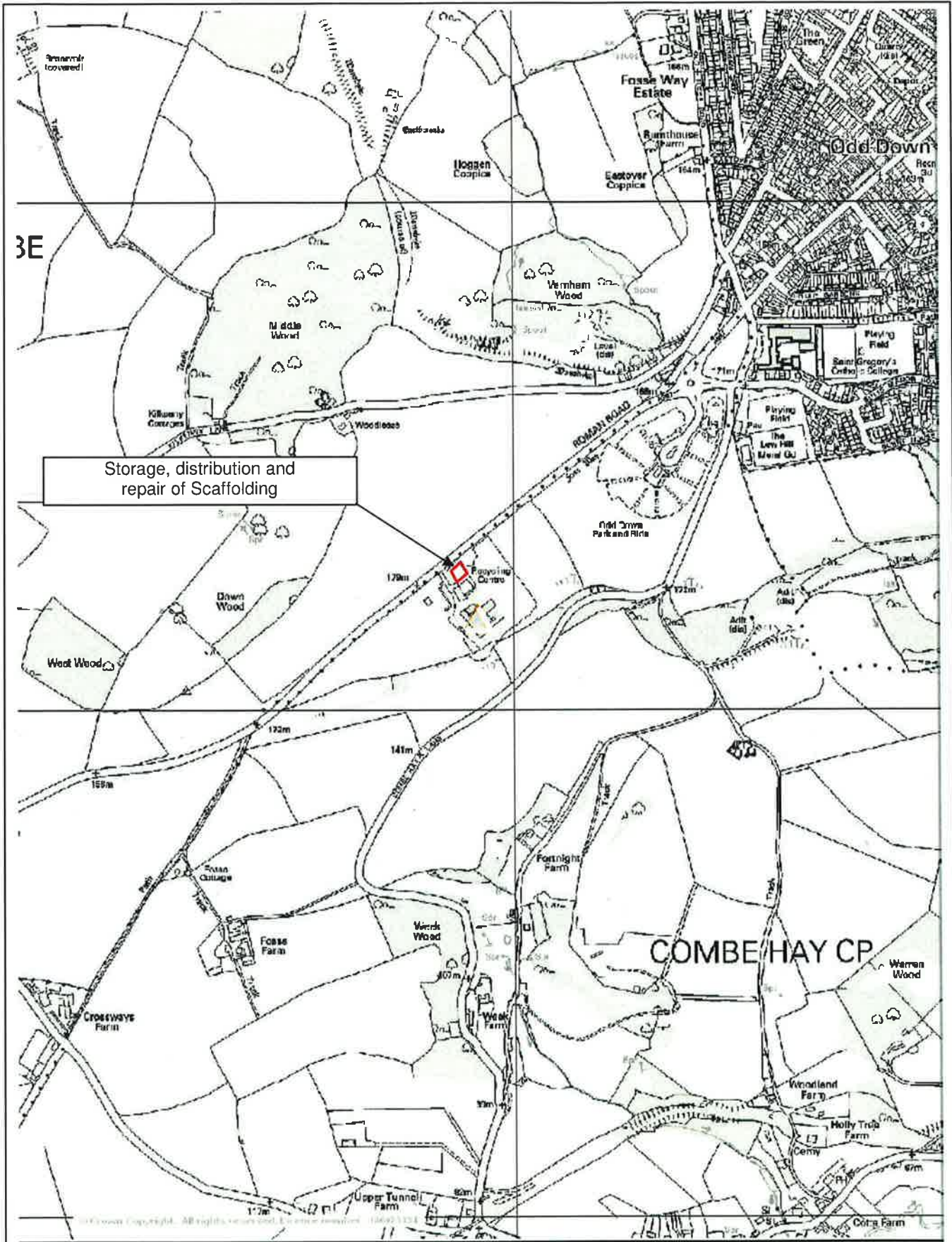
9 Thomas More Street

London

E1W 1WY

Company Secretary
Maple Scaffolding Ltd
46 Hillside View
Peasedown St John
Bath
BA2 8ET

"The Owners and any Occupiers"
Formers Fullers Earth Works
Fosseway
Combe Hay
Bath
BA2 8PD



Storage, distribution and repair of Scaffolding

Bath & North East Somerset Council

Bath & North East Somerset Council,
 Planning Services,
 Trimbridge House,
 Trim Street,
 Bath BA1 2DP

Land at Former Fullers Earth Works, Odd Down, Bath
2012 Enforcement Notice02 Location Plan

Scale 1/10000
 Date 23/5/2012
 Centre = 372963 E 161203 N
 Drawn by:



**Bath and North East Somerset:
District Online**

GMS Web Mapping PDF

2012 Enforcement Notice02 Detail plan

Date: 7-3-2012

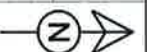
Scale: 1:2500 @ A4

Map Centre - easting / northing:

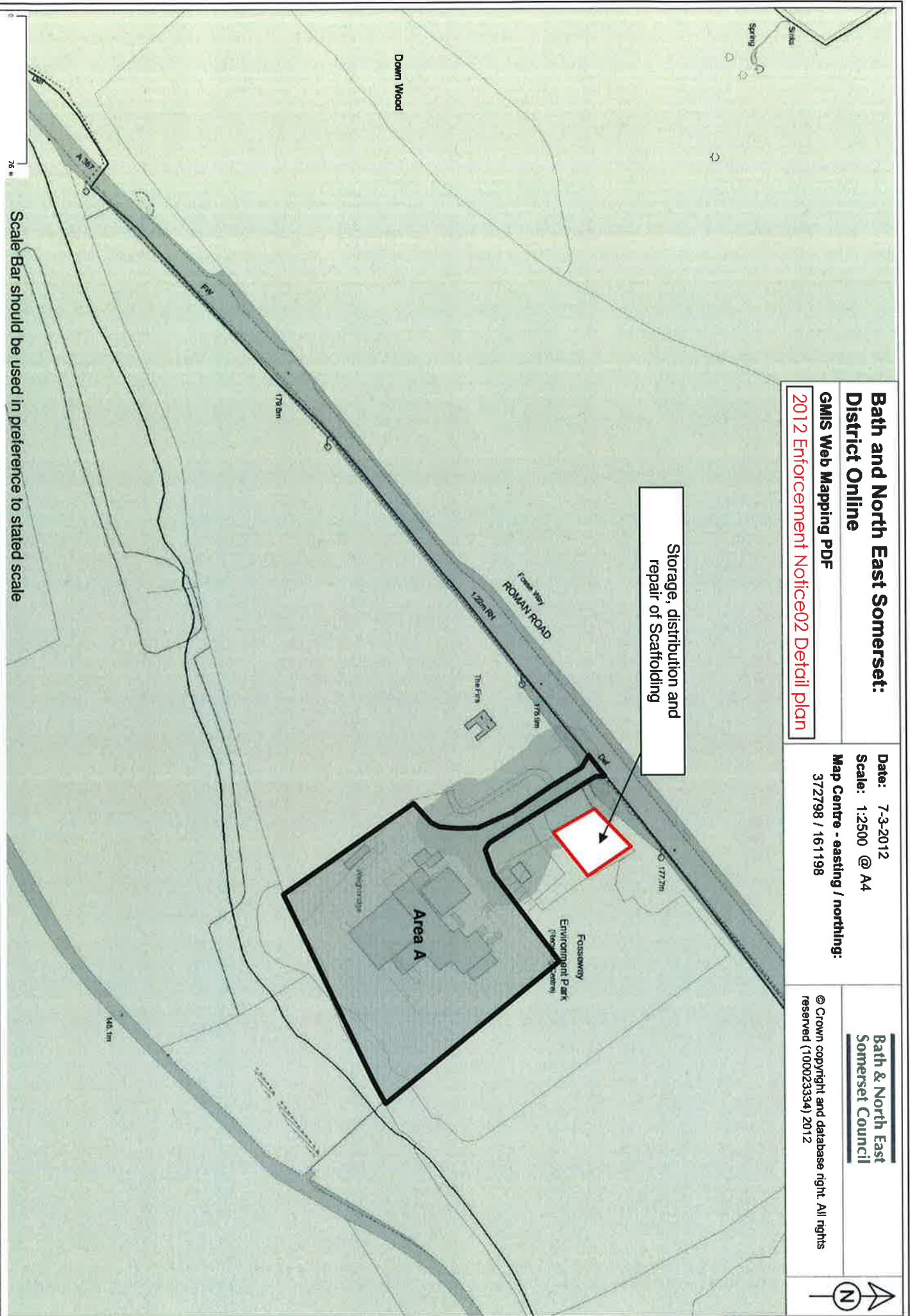
372798 / 161198

**Bath & North East
Somerset Council**

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Storage, distribution and
repair of Scaffolding



Scale Bar should be used in preference to stated scale

EXPLANATORY NOTE

YOUR RIGHT OF APPEAL

There is a right of appeal to the Secretary of State (at the Planning Inspectorate) against this Enforcement Notice.

If you appeal against this Notice, any appeal must be received or posted in time to be received by the Secretary of State BEFORE the date this Notice take effect as specified in Paragraph 7 of the Notice.

Unless an appeal is made, as described below, the Enforcement Notice will take effect on 12 July 2012 and you must then ensure that the required steps, for which you may be held responsible, are taken within the period(s) specified in the Notice.

Lodging your appeal

Any appeal to the Secretary of State must be made in writing. I also enclose an information sheet from the Planning Inspectorate which provides further information on how to obtain appeal forms and lodge an appeal.

As mentioned above, the appeal must be submitted in good time so that it is received by the Secretary of State BEFORE the date on which the Enforcement Notice takes effect.

Grounds of appeal

Under section 174 of the Town and Country Planning Act 1990 (as amended) you may appeal on one or more of the following grounds:-

- (a) That planning permission should be granted for what is alleged in the notice.
- (b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
- (c) That there has not been a breach of planning control
- (d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.
- (e) The notice was not properly served on everyone with an interest in the land.
- (f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
- (g) The time given to comply with the notice is too short.

Not all of these grounds may be relevant to you.

When you submit your appeal, you should state in writing the ground(s) on which you are appealing against the Enforcement Notice and you should also state briefly the facts upon which you intend to rely in support of each of those grounds of

appeal. 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.

Deemed planning application fee

If you appeal under Ground (a) above, this is the equivalent of applying for planning permission for the development detailed in the Enforcement Notice and you will have to pay a fee of £335 . You should pay half of the fee to Bath and North East Somerset Council (payable to Bath and North East Somerset Council) and the other half of the fee to the Planning Inspectorate (made payable to the Department for Communities and Local Government). Joint appellants need only pay one set of fees.

Additional Information

For your information, Sections 171A, 171B, and 172 – 177 of the Town and Country Planning Act 1990 (as amended) are set out in the Annex overleaf.

ANNEX

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
- (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 dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(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.

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.
- (3) An appeal under this section shall be made. . .—
- (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[; or
 - (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 . . . ; and

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

175 Appeals: supplementary provisions

(1) The 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.]

(4) Where an appeal is brought under section 174 the enforcement notice shall [subject to any order under section 289(4A)] 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.

[(7) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on an appeal under section 174 as if those proceedings were an inquiry held by the Secretary of State under section 250.]

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] the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) [of this section] 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].

(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.

(5) Where an appeal against an enforcement notice is brought under section 174, 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

CST Room 3/05
Temple Quay House
Direct Line 0117-372 6372
2 The Square Switchboard 0117-372 8000
Temple Quay Fax No 0117-372 8782
Bristol BS1 6PN
www.planning-inspectorate.gov.uk

THIS IS IMPORTANT

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

- on-line at the Planning Casework Service area of the Planning Portal (www.planningportal.gov.uk/pcs); or
- by getting enforcement appeal forms by phoning us on 0117 372 6372 or by emailing us enquiries@pins.gsi.gov.uk

You MUST make sure that we receive your appeal before the effective date on the enforcement notice.

In exceptional circumstances you may give notice of appeal by fax or letter. You should include:-

- the name of the local planning authority;
- the site address;
- your 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.

