Somerset West and Taunton

[redacted]

Our Ref: E/0210/20/19
Your Ref:
Date: 26 July 2021

Dear Sir or Madam

Town and Country Planning Act 1990
Planning Enforcement Notices relating to (1) change of use of land from agricultural to domestic (2) erection of two kennels
Land at Cattlewash, Fitzroy, Norton Fitzwarren, Taunton, Somerset TA2 6PL

I write further to my letter of 12 July, in which I advised you that the Somerset West and Taunton Council as local planning authority had decided (using delegated powers) that two Enforcement Notices be issued and served in respect of two breaches of planning control at Cattlewash.

Enclosed with the letter were copies of the two enforcement notices, which were duly served upon you.

I have now become aware that in the second notice – that relating to the erection of two kennels – there was an inconsistency in the identification of the date on which the notice was to take effect, i.e.

- In the notice itself, this date was given as 9 August 2021
- In the annex to the notice (and also in the letter accompanying the notices), the date was given as 23 August 2021

For the avoidance of doubt, the correct date is indeed 23 AUGUST 2021. This is the date on which the notice is due to take effect, and before which any appeal against the notice must be submitted. To confirm the position, I now enclose a revised copy of the second notice, with the corrected date shown in red on the second page.

As stated in my initial letter, if an appeal is not made by 23 August 2021, both the Enforcement Notices will take effect at that point, and you must then ensure that the steps outlined in the Enforcement Notices are taken within the further period of one month.

Yours faithfully



Rebecca Miller
Planning Manager
Somerset West and Taunton Council

Tel: 0300 304 8000
Line opening hours 8:00 am to 6:00 pm Monday to Friday
Email: planning@somersetwestandtaunton.gov.uk

Important - This Communication Affects Your Property

Town and Country Planning Act 1990
(as amended by the Planning and Compensation Act 1991)

Enforcement Notice: E/0210/20/19
Issued by: Somerset West and Taunton Council
("the Council")

1. **This Notice** is issued by the Council because it appears to them that there has been a breach of planning control, within Section 171A (1) (a) 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 Annex at the end of this Notice and the enclosures to which it refers contain important additional information.

2. **The Land To Which The Enforcement Notice Relates**
Land at Cattlewash, Fitzroy, Norton Fitzwarren, Taunton, Somerset TA2 6PL ("the Land") shown edged red on the plan annexed to this notice ("the Plan")

3. **The Matters Which Appear To Constitute The Breach Of Planning Control**
The construction on the Land of two dog kennels in the approximate positions shown delineated in green on the Plan.

4. **Reasons For Issuing This Enforcement Notice**
It appears to the Council that the above breach of planning control has occurred within the last four years.

The development unacceptably harms the character and appearance of the landscape contrary to Policy DM1(d) of the Taunton Deane Borough Council Adopted Core Strategy 2011-2028.

The development is considered to be contrary to Policy CP8 of the Taunton Deane Borough Council Adopted Core Strategy 2011-2028 by virtue of its failure to conserve, protect or enhance the natural landscape.

The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections.

5. **What You Are Required To Do**

1. Demolish the kennels referred to in paragraph 3 of this notice
2. Remove from the Land all materials resulting from such demolition

6. Time For Compliance
One month from the date on which this Enforcement Notice takes effect.

7. When This Enforcement Notice Takes Effect
This Enforcement Notice takes effect on 23 August 2021, unless an appeal is made against it beforehand.

Dated: 12 July 2021

Signed:

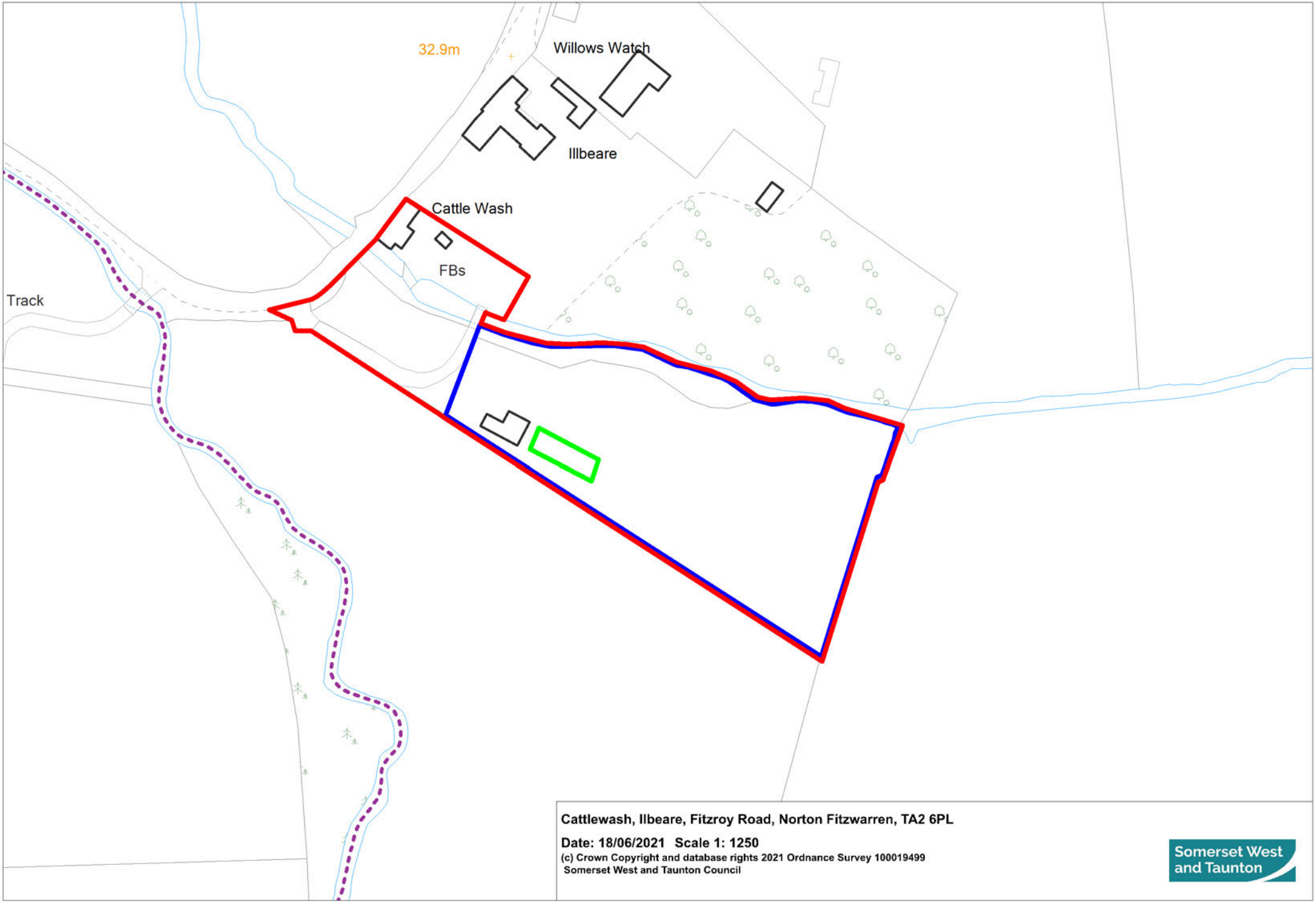


……..

On behalf of:

Somerset West and Taunton Council,
Deane House
Belvedere Road
Taunton
TA1 1HE

Nominated Officer: Ms. Stacey Salter
Telephone Number: 01823 219502



Cattlewash, Ilbeare, Fitzroy Road, Norton Fitzwarren, TA2 6PL

Date: 18/06/2021 Scale 1: 1250

(c) Crown Copyright and database rights 2021 Ordnance Survey 100019499
Somerset West and Taunton Council

Somerset West and Taunton

ANNEX
Important - This Communication Affects Your Property
Town and Country Planning Act 1990
(as amended by the Planning and Compensation Act 1991)

Enforcement Notice relating to
Land at Cattlewash, Fitzroy, Norton Fitzwarren,
Taunton, Somerset TA2 6PL
("the Land")

This local planning authority, Somerset West and Taunton Council, has issued an Enforcement Notice relating to the Land and I now serve on you a copy of that Notice as you have an interest in the Land.

YOUR RIGHT OF APPEAL

You can appeal against this Notice, but any appeal must be received, or posted in time to be received, by the Planning Inspectorate acting on behalf of the Secretary of State before 23 August 2021. An information sheet published by the Planning Inspectorate gives details of how to make an appeal and is available at:
http://www.planningportal.gov.uk/uploads/pins/enfinfosheet.pdf

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, 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.

Not all of these grounds may be relevant to you.

If you appeal under Ground (a) of Section 174(2) of the Town and Country Planning Act 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 £468.00. You should pay the fee to Somerset West and Taunton Council. Joint appellants need only pay one fee.

If you decide to appeal, when you submit it, you should state in writing the ground(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.

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 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.

Parties on whom the Enforcement Notice has been served:-



TOWN AND COUNTRY PLANNING ACT 1990

Part VII

Enforcement – (Amended by the Planning and Compensation Act 1991, s 4)

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);

(aa) the issue of an enforcement warning notice (defined in section 173ZA); 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.

(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.

171BA Time limits in cases involving concealment

(1) Where it appears to the local planning authority that there may have been a breach of planning control in respect of any land in England, the authority may apply to a magistrates' court for an order under this subsection (a "planning enforcement order") in relation to that apparent breach of planning control.

(2) If a magistrates' court makes a planning enforcement order in relation to an apparent breach of planning control, the local planning authority may take enforcement action in respect of–

(a) the apparent breach, or

(b) any of the matters constituting the apparent breach,

at any time in the enforcement year.

(3) "The enforcement year" for a planning enforcement order is the year that begins at the end of 22 days beginning with the day on which the court's decision to make the order is given, but this is subject to subsection (4).

(4) If an application under section 111(1) of the Magistrates' Courts Act 1980 (statement of case for opinion of High Court) is made in respect of a planning enforcement order, the enforcement year for the order is the year beginning with the day on which the proceedings arising from that application are finally determined or withdrawn.

(5) Subsection (2)–

(a) applies whether or not the time limits under section 171B have expired, and

(b) does not prevent the taking of enforcement action after the end of the enforcement year but within those time limits.

Enforcement notices

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.

(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.

(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.

(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)] 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 [in England] 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.

(1C) *If the land to which the enforcement notice relates is in England, subsection* [Subsection] (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.

(5) *Where an appeal against an enforcement notice is brought under section 174 and–*

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

(b) that land is in England and [Where–

(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.