

Maurice Doe
Broadway Farm
Broad Oak
Botley
SO30 2EU

Legal Services

Our Ref: CD/013872
Contact: Claire Dinnage
Direct Dial: 023 8068 8498
Email: claire.dinnage@eastleigh.gov.uk

5 February 2025

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Mr Doe,

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991) – Unauthorised change of use of land at Broadway Farm, Broad Oak, Botley, SO30 2EU

I write to inform you, since I understand you have an interest in the aforementioned property, that I have been asked to serve a formal Enforcement Notice upon you which was authorised by the Planning Manager on 19th September 2024. The Notice concerns the unauthorised change of use of land to parking and storage (B8) . A copy of the notice has also been served on others understood to have an interest in the property.

The Enforcement Notice will take effect on 10th March 2025 unless an appeal is lodged with the Planning Inspectorate before that date. Once the Enforcement Notice has taken effect, you must ensure that the steps required for compliance, specified in Paragraph 5 of the notice, are undertaken within the 6 months allowed for compliance. Failure to comply with the requirements of an Enforcement Notice, once it has taken effect, can result in a prosecution and/or remedial action being taken by the Council.

If you wish to appeal the enforcement notice, you are advised to visit the Planning Inspectorate Website at www.gov.uk/appeal-enforcement-notice. Information relating to the enforcement appeal process and procedures can be found here, as well as contact details should you wish to appeal by post. If you have any queries or questions, you can contact the Customer Service Team by phone at 0303 444 5000 or online via their website at <https://www.gov.uk/government/organisations/planning-inspectorate>.

You can submit your enforcement appeal online through the Appeals Casework Portal or by post. The online service gives you wider and easier access to the planning system and allows you to track the progress of your appeal. You can find this service at <https://acp.planninginspectorate.gov.uk/>. The Planning Inspectorate will publish details of your appeal on the internet. A copy of the appeal should be sent to the Council, and you are advised to keep a further copy of your own records.

If you would like to appeal by post, you will need to contact the Planning Inspectorate by phone to request an appeal form.

It is important to note that your appeal must be received, in the ordinary course of the post, by the Secretary of State before the date on which the notice takes effect, in this case the 10th March 2025. In calculating the dates to send your appeal so as to arrive in time in the ordinary course of the post, you must allow for two clear working days for first class post and four clear working days for second class post. Weekends and Bank Holidays do not count in any calculation you make. For example, if you post your appeal on a Monday by second class post it will be deemed to have been delivered the following Monday.

In the context of an appeal, I would like to draw your attention to the enclosed sections 171(a) to 177 of the 1990 Town and Country Planning Act and would inform you that any such appeal to the Secretary of State should be made in writing supported by a statement of the grounds of the appeal and the facts on which it is based.

Section 174 sets out the grounds of appeal. You may appeal on any one or more of the following grounds:-

- (a) that, in respect of any breach of planning control which may be constituted by 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;

Please note, if you are appealing under this ground you will need to pay £1296 for the deemed application for planning permission when submitting your appeal.

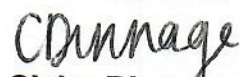
- (b) that those matters have not occurred;
- (c) that those matters (if they have occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (d) that copies of the enforcement notice were not served as required by section 172;
- (e) 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;
- (f) that any period for compliance specified in the notice falls short of what should reasonably be allowed.

The enclosed guidance sheet gives more information in respect of making an appeal.

This notice has also been served upon the following:-

Eileen Doe, Broadway Farm, Broad Oak, Botley, Southampton, SO30 2EU
Maurice F Doe, CCW Services Limited, C/O Palmer Riley & Co, 1st Floor Unit E2,
Fareham Heights, Standard Way, Fareham, Hampshire, PO16 8XT

Yours faithfully,


Claire Dinnage
Solicitor

for the Head of Legal Services

STATUTORY INSTRUMENTS

2002 No. 2682

The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

PART 2

ENFORCEMENT NOTICES UNDER SECTION 172

Explanatory note to accompany copy of enforcement notice

5. Every copy of an enforcement notice served by a local planning authority under section 172(2) of the Planning Act shall be accompanied by an explanatory note which shall include the following—

- (a) a copy of sections 171A, 171B and 172 to 177 of the Planning Act, or a summary of those sections including the following information—
 - (i) that there is a right of appeal to the Secretary of State against the enforcement notice;
 - (ii) that an appeal must be made 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 by sending such notice to him in a properly addressed, 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;
 - (iii) the grounds on which an appeal may be brought under section 174 of the Planning Act;
 - (iv) the fee payable under regulation 10 of the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989(1) for the deemed application for planning permission for the development alleged to be in breach of planning control in the enforcement notice;
- (b) notification that an appellant must submit to the Secretary of State, either when giving notice of appeal or within 14 days from the date on which the Secretary of State sends him a notice so requiring him, a statement in writing specifying the grounds on which he is appealing against the enforcement notice and stating briefly the facts on which he proposes to rely in support of each of those grounds.
- (c) a list of the names and addresses of the persons on whom a copy of the enforcement notice has been served.

(1) S.I. 1989/193, as amended by S.I. 1991/2735 and to which there are other amendments not relevant to these Regulations.

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990

(as amended by the Planning and Compensation Act 1991)

ENFORCEMENT NOTICE



ISSUED BY: Eastleigh Borough Council

1. THIS NOTICE ("Notice") is issued by Eastleigh Borough Council ("the Council") because it appears to the Council that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, on the land described below. The Council considers 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 to this Notice and the enclosures to which it refers contain important additional information.

2. THE LAND TO WHICH THIS NOTE RELATES

Land at **Broadway Farm, Broad Oak, Botley, SO30 2EU** as shown edged in red on the plan attached to this Notice ("the Plan").

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

Without planning permission, the unauthorised material change of use of land at Broadway Farm, Broad Oak, Botley, SO30 2EU to parking and storage B8 with associated unauthorised tarmac hardstanding, unauthorised drainage and unauthorised lighting.

4. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the unauthorised change of use of land at Broadway Farm, Broad Oak, Botley, SO30 2EU to parking and storage B8 with associated tarmac hardstanding, drainage and lighting has occurred within the last 10 years.

The unauthorised material change of use of the land at Broadway Farm, Broad Oak, Botley, SO30 2EU for parking, storage B8 and the laying of hardstanding with associated drainage and lighting does not benefit from planning consent. The owners of the site have been advised that the development is unauthorised and planning permission is required; a retrospective application was subsequently submitted and refused. A lawful development certificate was submitted under LDC/23/95111 for *an existing use or operation: Building operation by the laying of sub-base hardcore (type one crushed concrete) with concrete based cellular 'grasscrete', together with the parking of motorised vehicles to include heavy vehicles and trailers in accordance with an Operator's Licence* to regularise the use and development, which was refused by Eastleigh Borough Council. A subsequent appeal was raised with the Planning Inspectorate who examined the evidence and determined at a

public enquiry that the land had not been used for the parking of vehicles for a period in excess of 10 years and there was no evidence to support the claim that grasscrete had been laid at the site.

The use and development at the site are considered contrary to saved Policies S5, S6, DM1 and DM11 of the adopted Eastleigh Borough Local Plan 2016-2036 and the National Planning Policy Framework.

(4.1) The tarmac hardstanding, by virtue of its siting, massing, design and layout, results in an unduly prominent and visually intrusive built form, which is detrimental to and out of keeping with the character of the surrounding area, designated countryside and strategic gap, and therefore considered to be contrary to Policies DM1, S5 and S6 of the adopted Eastleigh Borough Local Plan 2016-2036, and the Council's Supplementary Planning Document 'Quality Places'.

(4.2) The tarmac hardstanding is adjacent to a Site of Importance for Nature Conservation and there is no agreed drainage strategy to protect the woodland from run off and contamination from the site, nor is there an agreed lighting strategy to ensure compliance with conservation and planning legislation which is therefore contrary to policy DM11 of the Eastleigh Borough Local Plan 2016-2036, and the Council's Supplementary Planning Document 'Biodiversity'.

(4.3) The use of the land for parking and storage has mostly consisted of the storage of a variety of vehicles including trucks, trailers and ambulances as well as pallets and other items associated with the business operating from Broadway Farm. This is out of keeping with the character of the surrounding woodland, designated countryside and strategic gap and is considered to be contrary to Policies DM1, S5 and S6 of the adopted Eastleigh Borough Local Plan 2016-2036, and the Council's Supplementary Planning Document 'Quality Places'.

5. WHAT YOU ARE REQUIRED TO DO

- Remove the tarmac hardstanding from the land.
- Remove the sub base hardcore and any other materials associated with the laying of the tarmac hardstanding from the land.
- Once the tarmac hardstanding, sub base and all other materials have been removed, reinstate the grassed surface.
- Remove all drainage and drainage infrastructure from the land.
- Remove all lighting from the land.
- Remove all vehicles, rubber matting, materials and other items associated with the B8 storage and parking use from the land.
- Cease the parking and storage (B8) use of the land.

6. TIME FOR COMPLIANCE

6 months after this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 10 March 2025 unless an appeal is made against it beforehand.

Dated: 3 February 2025

Signed:

A rectangular stamp containing a handwritten signature in black ink. The signature appears to be 'John Saunders' written in a cursive style.

On behalf of: Head of Legal Services and Data Protection Officer, Eastleigh Borough Council, Eastleigh House, Upper Market Street, Eastleigh, Hampshire, SO50 9YN

Nominated Officer: John Saunders

Telephone Number: 02380 688 038

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.

The enclosed information sheet published by the Planning Inspectorate gives details of how to make an appeal.

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.

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 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. (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 wish to appeal on grounds (a) of section 174(2) of the TCPA 1990 this is the equivalent of applying for planning permission for the development and/or use alleged in the notice and you will have to pay a fee of £1296.00. You should pay the fee to Eastleigh Borough Council. If the fee is not paid, that ground of appeal will not be valid.

STATEMENT ON GROUNDS OF APPEAL

If you decide to appeal, 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.

STATUTORY PROVISIONS

A copy of sections 171A, 171B and 172 to 177 of the TCPA 1990 are 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 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.

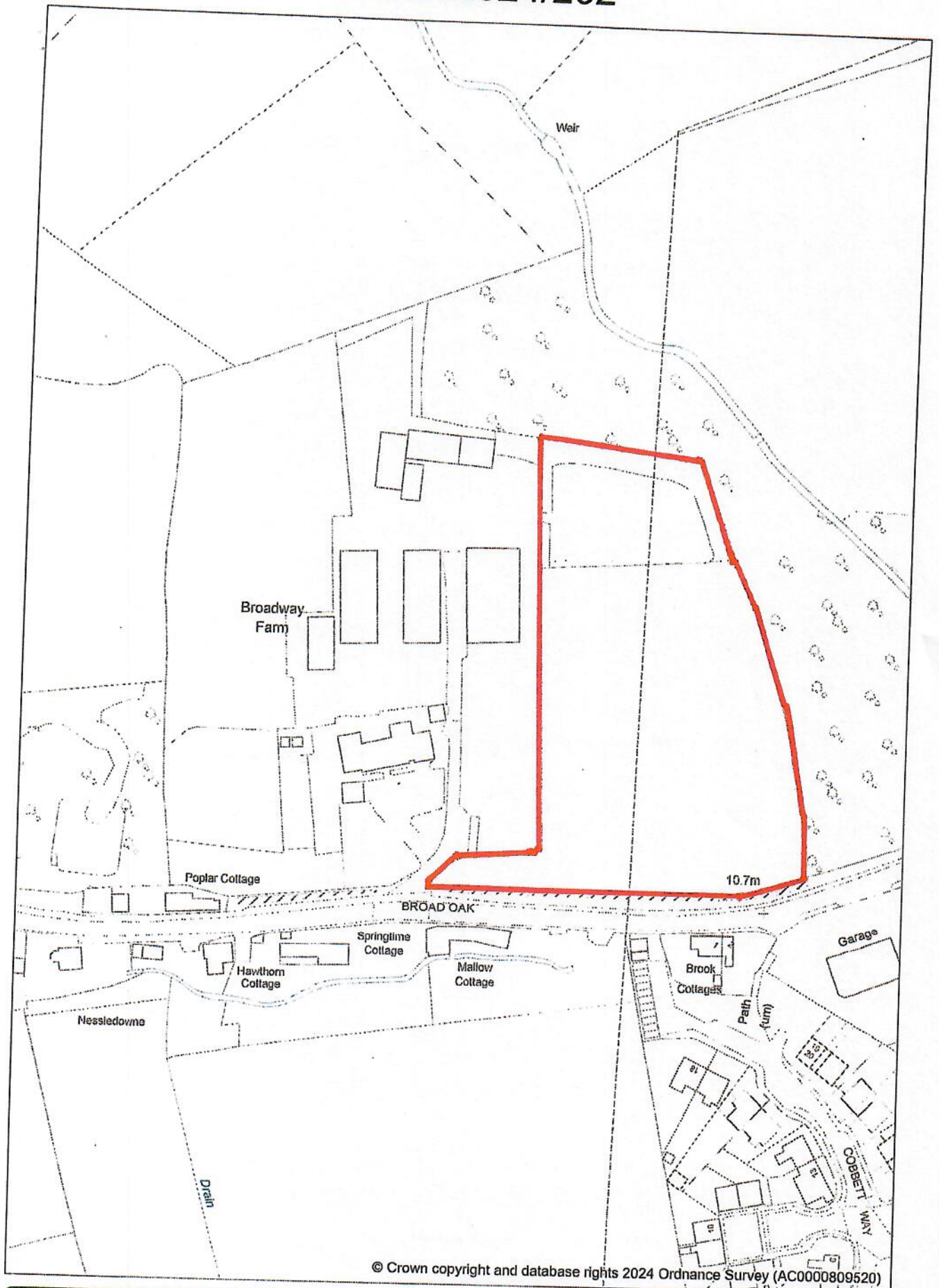
Persons served with a copy of this enforcement notice are as follows:

Maurice F Doe, CCW
Services Limited, C/O
Palmer Riley & Co, 1st
Floor, Unit E2, Fareham
Heights, Stnadard Way,
Fareham, PO16 8XT

Maurice Doe, Broadway
Farm, Broad Oak, Botley,
SO30 2EU

Eileen Doe, Broadway
Farm, Broad Oak, Botley,
SO30 2EU

ENF/2024/202



© Crown copyright and database rights 2024 Ordnance Survey (AC0000809520)

EASTLEIGH
BOROUGH COUNCIL



Department:	ENFORCEMENT
Date: 13/11/2024	Scale: 1:1767

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

Direct Line: 0303 444 5000

Email: enquiries@planninginspectorate.gov.uk

1. THIS IS IMPORTANT

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

- online 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> (<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.

**SECTIONS 171A, 171B, 172, 172ZA, 172A, 173, 173A, 174, 175, 176 and 177 OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

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—
 - (za) the issue of an enforcement warning notice in relation to land in England under section 172ZA;
 - (a) the issue of an enforcement notice (defined in section 172);
 - (aa) the issue of an enforcement warning notice in relation to land in Wales under 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—
 - (a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and
 - (b) in the case of a breach of planning control in Wales, 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—
 - (a) in the case of a breach of planning control in England, ten years beginning with the date of the breach, and
 - (b) in the case of a breach of planning control in Wales, 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

172ZA Enforcement warning notice: England

- (1) The local planning authority may issue a notice (an "enforcement warning notice") where it appears to them that—
 - (a) there has been a breach of planning control in respect of any land in England, and
 - (b) there is a reasonable prospect that, if an application for planning permission in respect of the development concerned were made, planning permission would be granted.
- (2) The notice must—
 - (a) state the matters that appear to the authority to constitute the breach of planning control, and
 - (b) state that, unless an application for planning permission is made within a period specified in the notice, further enforcement action may be taken.
- (3) A copy of the notice must be served—
 - (a) on the owner and the occupier of the land to which it relates, and
 - (b) on any other person having an interest in the land, being an interest that, in the opinion of the authority, would be materially affected by the taking of any further enforcement action.
- (4) The issue of an enforcement warning notice does not affect any other power exercisable in respect of any breach of planning control.

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 after the making of an application for planning permission that was related to the enforcement notice.
- (2AA) For the purposes of subsection (2A)—
 - (a) an application for planning permission for the development of any land is 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;
 - (b) an application for planning permission that the local planning authority or the Secretary of State declined to determine under section 70A, 70B or 70C is to be ignored.
- (2AB) But subsection (2A) does not apply if—
 - (a) the application for planning permission has ceased to be under consideration, and
 - (b) the enforcement notice was issued after the end of the period of two years beginning with the day on which the application ceased to be under consideration.
- (2AC) For the purposes of subsection (2AB), an application for planning permission has ceased to be under consideration if—
 - (a) the application was refused, or granted subject to conditions, and, in the case of an application determined by the local planning authority, the applicant did not appeal under section 78(1)(a);
 - (b) the applicant did not appeal in the circumstances mentioned in section 78(2) and the application was not subsequently refused;
 - (c) the applicant appealed under section 78(1)(a) or section 78(2) and—
 - (i) the appeal was dismissed,
 - (ii) the application was on appeal granted subject to conditions, or subject to different conditions, or
 - (iii) the Secretary of State declined under section 79(6) to determine the appeal.
- (2B) For the purposes of subsection (2AB), the day on which the application ceased to be under consideration is—
 - (a) in a case within subsection (2AC)(a), the day on which the right to appeal arose;
 - (b) in a case within subsection (2AC)(b), the day after the end of the prescribed period referred to in section 78(2);
 - (c) in a case within subsection (2AC)(c)(i), the day on which the appeal was dismissed;

- (d) in a case within subsection (2AC)(c)(ii), the day on which the appeal was determined;
 - (e) in a case within subsection (2AC)(c)(iii) relating to an appeal under section 78(1)(a), the day on which the right to appeal arose;
 - (f) in a case within subsection (2AC)(c)(iii) relating to an appeal under section 78(2), the day after the end of the prescribed period referred to in section 78(2).
- (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 —
 - (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.
- (6) If at any time before or during the determination of an appeal against an enforcement notice issued by a local planning authority in England it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, the Secretary of State may—

- (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are so specified for the expedition of the appeal, and
- (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.

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 (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—

- (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.