

Enforcement Notice Three

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990 (as amended) (TCPA 1990)

ENFORCEMENT NOTICE

MATERIAL CHANGE OF USE

UNAUTHORISED DEVELOPMENT

Issued by: DORSET COUNCIL (the Council)

1. Enforcement notice

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

2. The land to which the notice relates

Land known as **Anchor Paddock, Batchelors Lane, Holtwood, Holt, BH21 7DS** shown edged red on the attached plan (the Land).

3. The Breach of Planning Control Alleged

Within the subject planning unit, identified on the map edged in green, and pursuant to s171A (1) (a):

Without planning permission construction of a separate C3 dwelling house

4. Reasoning for Issuing the Notice

It appears to the Council that the development referred to above has occurred within the past 4 years, and pursuant to s171B (1) of the TCPA 1990, is not immune from enforcement action. It also appears to the Council that the material change of use of the Land has occurred within the past 10 years and pursuant to s171B(3) of the TCPA 1990

is not immune from enforcement action.

The land and unauthorised development lie within open countryside and the South East Dorset Green Belt. In general, the essential characteristic of green belt is openness and permanence. The development is considered to be inappropriate. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. No special circumstances have been demonstrated.

The taking of enforcement action must be assessed against development (local) plan, and any other material considerations [s172 (1) (b)].

Local Plan Policy.

The relevant policies in respect of the Land and the breach alleged are –

- Christchurch and East Dorset Local Plan - Part 1 (Core Strategy) adopted April 2014 –
- Policy KS1: Presumption in Favour of Sustainable Development
- Policy KS2: Settlement Hierarchy
- Policy KS3: Green Belt
- Policy ME1: Safeguarding Biodiversity and Geodiversity
- Policy ME2: Protection of the Dorset Heathlands
- Policy HE2: Design of New development
- Policy LN1: Size and type of new dwellings

Other Material Considerations

- National Planning Policy Framework 2023 [NPPF] – in particular paragraph 11 and chapters 5,9, 12,13 and 15.
- Planning Practice Guidance [PPG] (since 2014 as amended)
- Countryside Design Summary
- Dorset Heathlands Planning Framework 2020-2025
- East Dorset Landscape Character Assessment (Woodlands)

Key Local Constraints

- Green Belt
- SSSI Impact Risk Zone
- Dorset Heathland 5KM Zone

Planning Assessment

Principle of Development

The site is outside any settlement identified in the Christchurch & East Dorset Local Plan, Part 1 Core Strategy 2014 (CS) under Policy KS2.

As the site falls outside of the settlement known as Holt, it falls under the 'Hamlets' category within local policy KS2 where 'development would not be allowed unless it was functionally required to be in the rural area'.

- The dwelling has been created without planning permission. Aerial photographs suggest that the land previously formed part of the residential garden of the main dwelling house, front garden.
- New boundary fencing appears to have been installed, separating the Tree House from the Garden of the main house.
- This building now forms a separate residential planning unit with its own garden area.
- The site is in a rural area outside of any settlement. In this location policy KS2 identifies that only development that is functionally required to be in the rural area is appropriate. The site is close to other buildings but is physically isolated from any settlement offering facilities and does not meet any of the special circumstances that justify isolated dwelling set out in paragraph 84 of the NPPF.
- The building would not benefit from any of the exceptions to inappropriate development in the Green Belt within the NPPF at paragraphs 154-155. The development results in harm to the Green Belt by reason of inappropriateness and harm to openness. Furthermore, no very special circumstances have been identified that outweigh the harm arising.
- Impact upon Protected Heathland

The site lies within 5km of internationally designated heathland. The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document sets out that harm to protect Dorset Heathlands is likely to arise from the residential development. This document also identifies opportunities to mitigate that harm which is usually secured via the Community Infrastructure Levy payments.

Policy ME2 allows new residential development, subject to an appropriate assessment and appropriate mitigation via CIL. In this case no Habitats Regulation application has been made which would have been required if permitted development rights were being relied upon. CIL has not been paid, so no mitigation has been secured for the new dwelling which is likely to result in significant harm to the conservation objectives of the Dorset Heath lands habitats sites within 5km of the site.

It appears to the Council that planning conditions would not overcome the objection to the development.

The dwelling has an internal floor area of 40sqm which is well below the minimum national space standards for a two bedroom property (61/70sqm) and fails to provide adequate amenity for future occupiers contrary to Policy LN2 and para 135 of NPPF.

5. What You Are Required to Do:

In respect of the development and use of the land outlined in green on the map. Permanently:

1. Remove the building and its foundations identified as brown on the map;
2. Disconnect all utilities provided to the building;
3. Remove all waste and sewage connections from the land;
4. Remove all building materials occurring from the works to dismantle the building from the land;
5. Restore the land and allow to recover.

6. Time for Compliance

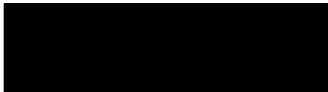
6 months from the date the notice takes effect.

7. When this notice takes effect

This Notice takes effect on 4th September 2024 unless an appeal is made against it beforehand.

Dated: 24th July 2024

Signed



Mike Garrity
Head of Planning
Economic Growth and Infrastructure

On behalf of:

Dorset Council, County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ

Case officer: Jane Meadows

Email address: planningenforcementteameast@dorsetcouncil.gov.uk

ANNEX

Dorset Council has issued an enforcement notice relating to the Land and you are served with a copy of that notice as you have an interest in the Land. Copies of the notice have also been served on the parties listed at the end of this Annex.

Please refer to page 4 of the document 'Enforcement Notice Appeals: How to complete your appeal form' for guidance on who has the right of appeal against this notice, as not everyone served with a copy has a right of appeal.

<https://www.gov.uk/government/publications/enforcement-notice-appeals-how-to-complete-your-appeal-form>.

THE RIGHT OF APPEAL

If any appeal against the service of an enforcement notice is lodged, it must be received by the Planning Inspectorate (or be posted or electronically communicated at such time that, in the ordinary course of post or transmission, it would be delivered to the Planning Inspectorate) before the date specified in paragraph 7 of the notice.

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

- Online at the Planning Casework Service area of the Planning Portal (www.planningportal.gov.uk/pcs).
- By getting enforcement appeal forms from the Planning Inspectorate on 0303 444 5000 or by e-mailing the Planning Inspectorate at enquiries@pins.gsi.gov.uk.

You MUST make sure that PINS receive your appeal before the date the notice takes effect.

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.
- The effective date of the enforcement notice.

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

The Planning Inspectorate's address and contact details are as follows:

The Planning Inspectorate
CST Room 3/13
Temple Quay House
2 The Square
BRISTOL BS1 6PN

Direct line: 0303 444 5000 Fax number: 0117 372 8782

Under section 174 of the TCPA 1990 you may appeal on one or more of the following grounds that:

- a) 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) Those matters have not occurred.
- c) Those matters (if they have occurred) do not constitute a breach of planning control.
- d) 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) Copies of the enforcement notice were not served as required by section 172 of the TCPA 1990.
- f) 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.
- g) Any period specified in the notice in accordance with section 173(9) of the TCPA 1990 falls short of what should reasonably be allowed.

Not all of these grounds above may be relevant to you.

If you appeal under ground (a) of section 174(2) of the TCPA 1990 this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay a fee of

£516.00 in respect of Enforcement notice one.

£1,156.00 in respect of Enforcement notice two

£1,156.00 in respect of Enforcement notice three.

You should pay the fee to Dorset Council.

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.

WHAT HAPPENS IF YOU DO NOT APPEAL

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

EXPLANATORY NOTE

Your attention is drawn to the provisions of Sections 171A, 171B and 172-177 of the Town and Country Planning Act 1990, as follows: -

S.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.

S.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.

S.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

S.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 has 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

S.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 either –

- (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 an 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 in writing; and
 - (b) continues so to occupy the land when the appeal is brought.

S.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.
- (4) Where an appeal is brought under section 174 the enforcement notice shall [subject to any order under s.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.

S.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 the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection, he need not comply with section 175(3).
- (5) Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

S. 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 of 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 the 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 of 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.