Circular 24/97
(Welsh Office)

Circular from the

Welsh Office
Cathays Park, Cardiff CF1 3NQ

31 December 1997

ENFORCING PLANNING CONTROL : LEGISLATIVE PROVISIONS AND PROCEDURAL REQUIREMENTS

1. This Circular brings together and updates the earlier guidance, in WO Circulars 76/91 and 8/92, on how to use the amended planning enforcement provisions in Part VII of the Town and Country Planning Act 1990. It should be kept in mind that although the guidance reflects the Department's current considered views, interpretation of the law is ultimately for the Courts.

2. The Annexes to the Circular provide detailed procedural advice as follows:

Annex 1: the planning contravention notice;
Annex 2: enforcement notices and appeals;
Annex 3: the stop notice;
Annex 4: enforcement of planning conditions: the breach of condition notice (BCN);
Annex 5: an injunction to restrain a breach of planning control;
Annex 6: rights of entry to land for enforcement purposes;
Annex 7: control of development on Crown land;
Annex 8: lawfulness and the lawful development certificate (LDC);
Annex 9: the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992.

Where appropriate, these Annexes mention the comparable provisions for enforcement of listed building and conservation area control, minerals planning control, hazardous substances control and control for protected trees.

Subordinate legislation

3. The Town and Country Planning (Enforcement Notices and Appeals) Regulations 1991 (SI 1991/2804) re-enact, with some amendments (in SI 1992/1904), the previous Regulations (SI 1981/1742) in respect of all enforcement notices issued by local planning authorities (LPAs) and all enforcement appeals submitted to the Secretary of State.

Further copies of this circular are available from:

The Stationery Office, Oriel Bookshop,
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4. The Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1981 (SI 1981/1743) were revoked and replaced by the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992 (SI 1992/1903). The 1992 Rules apply to planning enforcement, listed building enforcement and conservation area enforcement notice appeal inquiries, and to LDC appeal inquiries.

5. The "permitted development" and procedural provisions of the Town and Country Planning General Development Order 1988 and subsequent amending Orders have been consolidated in, respectively, the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418) ("the GPDO") and the Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419) ("the GDPO"). The main changes introduced by the Orders are explained in WO Circular 29/95.

6. The Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (SI 1989/193) have been amended by SI 1990/2473, SI 1991/2735, SI 1992/1817, SI 1992/3052 and SI 1993/3170. The 1991 amendment provides (in regulation 4) for the payment of a deemed planning application fee to the LPA (as well as to the Secretary of State) with effect from 2 January 1992 in all enforcement appeals against a notice issued on or after that date. The 1992 Amendment Regulations apply to applications for a LDC, including applications to "convert" an "established use" certificate into a LDC, and provide for the enforcement notice appeal "deemed application" fee to be retained where, exceptionally, the Secretary of State or a Planning Inspector issues a LDC, in exercise of the power in section 177(1)(c) of the Town and Country Planning Act 1990 ("the 1990 Act").

7. The 1984 Regulations (SI 1984/1016) have been superseded and updated by the Town and Country Planning (Special Enforcement Notices) Regulations 1992 (SI 1992/1562).

8. The Town and Country Planning (Crown Land Applications) Regulations 1992 (SI 1992/2683) have been revoked by the Town and Country Planning (Crown Land Applications) Regulations 1995 (SI 1995/1139), with effect from 3 June 1995. The 1995 Regulations modify article 24 of the GDPO by inserting a new paragraph 2A. Regulation 3 of the 1995 Regulations requires notice of disposal where a certificate has been issued under section 192(2) of the 1990 Act.

9. The Town and Country Planning (Environmental Assessment and Unauthorised Development) Regulations 1995 (SI 1995/2258) came into effect on 2 October 1995. The Regulations ensure that the enforcement appeal procedure complies with the requirements of the EIA Directive. Certain types of development that are the subject of an appeal against enforcement action may require the provision of an environmental statement since the introduction of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1988/1199).

Planning Guidance (Wales): Planning Policy Technical Advice Note (Wales) 9: Enforcement of Planning Control

10. PG (Wales):PP (ISBN O-7504-1839-7, PRICE £10.00) and TAN(Wales) 9 (ISBN O-7504-2264-5, PRICE £2.50) give policy guidance on enforcing planning control and are obtainable from The Stationery Office Bookshops. LPAs are expected to have regard to this guidance in deciding whether enforcement action is expedient to remedy a breach of planning control, where earlier attempts to do so by informal negotiation have proved unsuccessful.

Enforcement appeals: revised appeal forms and explanatory booklets

11. The official WO enforcement appeal form and the explanatory booklet for appellants ("Enforcement Notice Appeals - a Guide to Procedure") have been revised to take account of the amended provisions. The booklet is reprinted periodically, with appropriate revisions to the text. Copies of the appeal form and booklet are available from the Planning Inspectorate, Crown Buildings, Cathays Park, Cardiff CF1 3NQ (telephone 01222 825670 or facsimile 01222 825150).

Lawful development certificate appeals (LDC)

12. The Department has produced an official form for LDC appeals and a booklet "Lawful Development Certificates - a user's guide". Prospective appellants may obtain LDC appeal forms and copies of the booklet from the Planning Inspectorate, Crown Buildings, Cathays Park, Cardiff CF1 3NQ (telephone 01222 825670 or facsimile 01222 825150).

Financial and manpower implications

13. As this Circular consolidates and updates earlier guidance it involves no change in local authorities' financial or manpower commitments.

Cancellation of Circulars

14. Circulars 164/77, 76/91 and 38/92 are cancelled. A separate Circular has been issued by the Department of the Environment, Transport and the Regions

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The Chief Executive
County and County Borough Councils

The National Park Officer
Brecon Beacons National Park
Pembrokeshire Coast National Park
Snowdonia National Park

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THE PLANNING CONTRAVENTION NOTICE

Introduction

1.1 Sections 171C and 171D of the Town and Country Planning Act 1990 ("the 1990 Act") provide, respectively, for -

(1) the local planning authority (LPA) to require information about activities on land by serving a "planning contravention notice"; and

(2) penalties for non-compliance with a planning contravention notice.

1.2 These provisions are intended to supplement, for planning enforcement purposes, the LPA's more limited powers, in section 330 of the 1990 Act and section 16 of the Local Government (Miscellaneous Provisions) Act 1976, to require information about interests in land. LPAs may still use the earlier versions to require information, if they prefer. These powers to obtain information may also be used when the LPA contemplate making a discontinuance order, under section 102 of the 1990 Act. The planning contravention notice is not available for use in respect of suspected breaches of listed building or conservation area control, hazardous substances control or control of protected trees.

An optional procedure

1.3 Section 171C(7) of the 1990 Act provides that "the service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control". This emphasises the fact that the service of a planning contravention notice is entirely optional. The LPA need not serve a planning contravention notice before considering whether it is expedient to issue an enforcement notice, or to take any other appropriate enforcement action. Service of a planning contravention notice does *not* constitute "taking enforcement action" as defined in section 171A(2) of the 1990 Act. The recipient of an enforcement notice need not be given the opportunity, provided by section 171C(4), to make personal representations before the LPA decide whether to issue an enforcement notice. Where the LPA already have information they regard as adequate about the activities taking place on land in breach of planning control, and they consider it expedient to initiate any enforcement action, their enforcement decision should not be open to challenge on the ground that it was unreasonable to proceed with enforcement action without first serving a planning contravention notice and considering the recipient's response to it. Nor should a LPA's enforcement decision, when reasonably taken in the circumstances, put the authority at risk of an award of appeal costs against them because they decided not to serve a planning contravention notice.

1.4 A planning contravention notice may only be served when it appears to the LPA that a breach of planning control may have occurred - **R v Teignbridge District Council ex parte Teignmouth Quay Co Ltd** [1995] JPL 828.

1.5 There is no requirement to enter a planning contravention notice in the LPA's register of enforcement notices, stop notices and breach of condition notices. The notice is not a legal charge on the land.

The recipient of a notice

1.6. Section 171C(1) provides that the recipient of a planning contravention notice is to be

(1) anyone who is the owner or occupier of the land to which the notice relates, or has any other interest in it; or

(2) anyone who is carrying out operations on the land, or is using it for any purpose.

1.7 When serving planning contravention notices on persons who have an interest in the land, the LPA should try to ensure, so far as practicable, that any known mortgagees of the land are served with the relevant notice. In cases where the owner of the land is a defaulting mortgagor, it may not be possible to locate him or her, and the mortgagee-in-possession will need to be made aware of the situation.

What a notice may require of the recipient

1.8 The LPA may require the recipient of a planning contravention notice to provide any information they want for enforcement purposes about activities on land. Section 171C(2) describes the information as relating to -

(a) any operations being carried out on the land, any use of the land and any other activities being carried out on the land; and

(b) any matter relating to the conditions or limitations subject to which any planning permission in respect of the land has been granted."

At this preliminary stage of obtaining information, the LPA need not state their opinion on the "planning unit", or whether the activity to which the notice relates is subordinate or ancillary to some main use of the land.

1.9 Without prejudice to the generality of section 171C(2), section 171C(3) specifies in more detail what information a planning contravention notice may require its recipient to give to the LPA, so far as he or she is able to do so. The matters are specified as -

" (a) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;

(b) to state when any use, operations or activities began;

(c) to give the name and address of any person known to him to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;

(d) to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operation;

(e) to state the nature of his interest (if any) in the land and the name and address of any other person known to him to have an interest in the land."

The opportunity to make representations in response to the notice

1.10 Section 171C(4) also enables the LPA, to give the recipient of a notice the opportunity to make a constructive response to the matters with which the notice is concerned, and to make any representations about the notice he or she may wish. The purpose of these provisions is to facilitate discussion, between the LPA and the recipient of a notice, about how any suspected breach of control may be remedied. The provisions are intended particularly for use in circumstances where the LPA consider that formal enforcement action could be avoided if the recipient of the notice would agree to apply for a conditional planning permission to regularise the activities taking place on the land; or to cease any operations or activities; or to carry out any remedial works. The opportunity to make representations in person, at a specified time and place, is intended especially for use where the LPA consider that face-to-face discussion with the recipient of the notice could be helpful. Someone who has proved uncooperative in the absence of any requirement to negotiate could be asked to a discussion of the problem.

1.11 The LPA may consider that no useful purpose would be served by face-to-face

discussion with the recipient of the notice. If so, the LPA would be justified in using the notice for the limited purpose of obtaining relevant information they require to decide whether to initiate formal enforcement action. There is nothing to prevent the recipient of a planning contravention notice seeking to discuss a suspected breach of planning control with the LPA's development control officers.

The consequences of failing to respond to a notice

1.12 Section 171C(5) provides that a planning contravention notice must inform the recipient about the likely consequences of failure to respond to the notice (in particular, that formal enforcement action may be taken by the LPA). It must also refer to the effect of the provisions of section 186(5)(b) of the 1990 Act (which are that no financial compensation shall be payable, in consequence of a stop notice, to a claimant who was required to provide information under section 171C, in respect of any loss or damage which could have been avoided if the claimant had provided the information or co-operated when responding to the notice). This warning might best be included as part of the text of a planning contravention notice, as in the model notice appended to this Annex.

1.13 Someone who is served with a planning contravention notice cannot reasonably be expected to provide information they do not possess or could not reasonably find out. Any factual information given in reply to a notice will be part of the relevant information the LPA will have to examine in deciding whether a breach of control has occurred; and, if so, what action may be appropriate to deal with it. The information may support a decision that enforcement action is appropriate; or it may reveal a different use or activity from what had been suspected; or it may show that there is no breach of control on the land. If the reply to a notice creates doubt about the use of the land, or any activity taking place on it, a site-inspection will usually be essential to resolve the doubt and ensure that any subsequent enforcement decision is well-founded.

Non-compliance with a planning contravention notice

1.14 Section 171D provides that non-compliance with any requirement of a notice, after 21 days, is an offence. The maximum penalty, on summary conviction, of this offence is "level 3" on the standard scale, currently £1,000, as provided by the Criminal Justice Act 1991. The same penalty applies when there is a continuing failure to provide the required information. It is a defence for anyone charged with this offence to prove that he or she had a reasonable excuse for failing to comply with the requirement of a notice.

False or misleading statements

1.15 It is also an offence if anyone makes any statement purporting to comply with a requirement of a planning contravention notice which is knowingly false or misleading in a material particular; or recklessly makes such a statement which is false or misleading in a material particular. The maximum summary penalty for this offence is "level 5" on the standard scale, currently £5,000, as provided by the Criminal Justice Act 1991.

Cautioning alleged offenders

1.16 When investigating the facts, prior to initiating any proceedings, LPAs should have regard to the provisions of sections 66 and 67(9) of the Police and Criminal Evidence Act 1984 with regard to cautioning alleged offenders.

Model notice

1.17 A model planning contravention notice is appended to this Annex.

APPENDIX TO ANNEX 1

MODEL PLANNING CONTRAVENTION NOTICE

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

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

PLANNING CONTRAVENTION NOTICE

SERVED BY: *[Name of Council]*

To:

[Name[s] of those thought to be owner[s] or occupier[s] of land or person[s] having any other interest in it]
[Name[s] of person[s] thought to be responsible for a possible breach of planning control]

1. **THIS NOTICE** is served by the Council because it appears to them that there may have been a breach of planning control, within section 171A(1) of the above Act, at the land described below. It is served on you as a person who appears to be the owner or occupier of the land or has another interest in it, or who is carrying out operations in, on, over or under the land or is using it for any purpose. The Council require you, in exercise of their powers under section 171C(2) and (3), so far as you are able, to provide certain information about interest in, and activities on, the land.

2. **THE LAND TO WHICH THE NOTICE RELATES**

Land at *[address or description of land][shown edged red on the attached plan].*

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

[Without planning permission]

[Specify the suspected breach of planning control]

[The failure to comply with a condition or limitation]

4. **WHAT YOU ARE REQUIRED TO DO**

Provide in writing, the following information:-

(1) *[Specify the information required, having regard to the terms of section 171C(2) and (3)]*

(2)

(3)

Time within which the information must be provided: (*within twenty-one days*, beginning with the day on which this notice is served on you):

5. **OPPORTUNITY TO MAKE REPRESENTATIONS IN RESPONSE TO NOTICE**

If you wish to make an offer to apply for planning permission, or to refrain from carrying out any operations or activities, or to undertake remedial works; or to make any representations about this notice, the Council, or representatives of the Council, will consider them on *[date and time]* at *[address where the person served with the notice may be heard]* where you will be able to make any such offer or representations in person at that time and place.

6. **WARNING**

It is an offence to fail, without reasonable excuse, to comply with any requirements of this notice within twenty-one days beginning with the day on which it was served on you. The maximum penalty on conviction of this offence is a fine of £1,000. Continuing failure to comply following a conviction will constitute a further offence. It is also an offence knowingly or recklessly to give information, in response to this notice, which is false or misleading in a material particular. The maximum penalty on conviction of this offence is a fine of £5,000.

7. ADDITIONAL INFORMATION

If you fail to respond to this notice, the Council may take further action in respect of the suspected breach of planning control. In particular, they may issue an enforcement notice, under section 172 of the 1990 Act, requiring the breach, or any injury to amenity caused by it, to be remedied. *[Add any other "likely consequences", in accordance with section 171C(5)(a), if appropriate.]* If the Council serve a stop notice, under section 183 of the 1990 Act, section 186(5)(b) of the 1990 Act provides that should you otherwise become entitled (under section 186) to compensation for loss or damage attributable to that notice, no such compensation will be payable in respect of any loss or damage which could have been avoided had you given the Council the information required by this notice, or had you otherwise co-operated with the Council when responding to it.

Dated: *[date of notice]*

Signed: *[Council's authorised officer]*

On behalf of: *[Council's name and address]*

ENFORCEMENT NOTICES AND APPEALS

Introduction

2.1 This Annex provides guidance on enforcement notice and appeal procedures. Policy advice on planning enforcement is given in Planning Guidance (Wales): Planning Policy and TAN(Wales) 9. The WO booklet entitled "Enforcement Notice Appeals - A Guide to Procedure" gives up-to-date guidance on appealing to the Secretary of State against an enforcement notice. The booklet is available from the local planning authority's (LPA's) office. As explained in paragraph 2 of the main text of this Circular, the main text of this Annex relates to planning enforcement notices and appeals only. Paragraphs 2.56 to 2.77 of this Annex refer specifically to the comparable provisions for the enforcement of listed building and conservation area control, minerals planning control, control for protected trees and hazardous substances control.

Deciding whether to issue an enforcement notice

2.2 The power (in the amended section 172 of the Town and Country Planning Act 1990 ("the 1990 Act")) to issue an enforcement notice is discretionary. A notice requires remedial steps to be taken within a specified time-limit. It should only be used where the LPA are satisfied that there has been a breach of planning control *and* it is expedient to issue a notice, having regard to the provisions of the development plan and to any other material considerations.

2.3 The provisions of amended section 173(3) are intended to remove any doubt that an enforcement notice can be directed at only part of a breach of control and require it to be remedied. In deciding on the precise requirements of a notice and the appropriate compliance period, the LPA should always examine the intended result *and* the likely practical outcome. In cases of "under-enforcement", involving the partial demolition of a structure, the LPA should consider whether any "permitted development" rights under the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO") would enable the structure to be subsequently replaced, possibly in a less acceptable way.

Time-limits for issuing an enforcement notice

2.4 Enforcement action in respect of all breaches of planning control is subject to time-limits. Section 171B of the 1990 Act specifies these time-limits as follows:-

(1) for operational development - **four years** from the date on which the operations were "substantially completed". *This applies to all breaches of planning control consisting in the carrying out without planning permission of all forms of "operational development", namely, the carrying out of building, engineering, mining or other operations in, on, over or under land;*

(2) for breaches of planning control consisting in the change of use of any building (which, for the purposes of the 1990 Act, includes part of a building) to "use as a single dwellinghouse" - **four years** from the date of the breach. *This time-limit applies either where the change to use as a single dwellinghouse involves development without planning permission, or where it involves a failure tocomply with a condition or limitation subject to which planning permission has been granted;*

(3) in the case of any other breach of planning control (ie other than those already referred to in sub-paragraphs (1) and (2) above) - **ten years** from the date of the breach. *In practice, this ten-year time-limit therefore applies to breaches of planning control involving any material change in the use of land (other than a change to use as a single dwellinghouse) and to any breach of condition orlimitation (including one where the breach is of an occupancy condition imposed on permission for the erection of a dwellinghouse, but not including one where the breach consists in using a building as a single dwellinghouse).*

How the time-limits apply in practice

2.5 The time-limits stated in paragraph 2.4 above do not prevent enforcement action after the relevant dates in two circumstances:

(1) section 171B(4)(a) provides for the service of a breach of condition notice, ifthere is already an enforcement notice in effect in respect of the breach, thus enabling the LPA to strengthen the effect of the enforcement notice;

(2) section 171B(4)(b) provides for the taking of "further" enforcement action in respect of any breach of planning control within four years of previous enforcement action (or purported action) in respect of the same breach. This mainly deals with the situation where earlier enforcement action has been taken, within the relevant time-limit, but has later proved to be defective, so that a further notice may be issued or served, as the case may be, even though the normal time-limit for such action has since expired.

Drafting an enforcement notice

2.6 The provisions of amended sections 172 and 173 were intended to reduce the likelihood that a technical defect in drafting the notice would result in its being quashed on appeal, or found to be a nullity. Every notice should nevertheless be drafted with the utmost care. The Secretary of State's power, in section 176(1)(a), to correct, on appeal, any *misdescription* in the enforcement notice, may be used only where there would be no injustice to either the appellant or LPA: it does not extend to the correction of notices which are so fundamentally defective that correction would result in a substantially different notice. To help LPAs to minimise technical drafting defects in notices, model notices are appended to this Annex. The models are intended to cater for most enforcement situations; but the terms of each notice must correspond exactly to the specific breach of control it is intended to remedy.

2.7 Section 171A of the 1990 Act defines a breach of planning control as -

(1) the carrying out of development without the required planning permission; or

(2) failing to comply with any condition or limitation subject to which planning permission has been granted.

Any contravention of the limitations on or conditions pertaining to "permitted development" rights, under the GPDO, constitutes a breach of planning control against which enforcement action may be taken.

2.8 Paragraphs 2.52 to 2.54 of this Annex draw attention to a particular difficulty, highlighted by recent judicial authority, which may occur when seeking to take enforcement action in respect of any failure to comply with a condition subject to which planning permission has been granted for the carrying out of building, engineering, mining or other operations on land.

Stating the breach of control clearly

2.9 An enforcement notice must enable every person who receives a copy to know -

(1) exactly what, in the LPA's view, constitutes the breach of control; and

(2) what steps the LPA require to be taken, or what activities are required to cease, to remedy the breach.

It must also specify whether the breach is regarded as carrying out development without planning permission, or a failure to comply with any condition or limitation. Enforcement notices are not improved by over-elaborate wording or legalistic terms: plain English or Welsh is always preferable. An eventual prosecution under section 179 of the 1990 Act may fail if the Court finds the terms of the notice incomprehensible to the lay person.

"Under-enforcement" and deemed planning permission

2.10 Section 173(11), as amended, corresponds substantially to the previous section 173(8) of the 1990 Act, except that, after full compliance with the requirements of an enforcement notice, the provisions apply to any remaining uses or activities on the land and to any remaining buildings or works. It deals with the situation where "under-enforcement" has occurred, by providing that planning permission shall be treated as having been granted for the development or the activity, as it is in the state resulting from the owner or occupier having complied with the enforcement notice's requirements. As the section applies to all the remaining uses or activities on land once the enforcement notice has been complied with, LPAs should ensure that they identify all the relevant breaches of planning control involving the use of land before they issue an enforcement notice. Where the land is in mixed use, it is important that the notice should allege a change of use to that mixed use, specifying all the component elements in the notice's allegation. The deemed application for planning permission under section 177(5), arising from any appeal against the notice, which the Secretary of State or a Planning Inspector will need to consider, should properly relate to the mixed use in its entirety, not just to those elements of the use which the LPA may have identified as being in breach of planning control and which are covered by the notice's requirements. This is because the planning merits of a particular use of land will not necessarily be the same, where that use is only one of a number of uses taking place, as the planning merits of that use where it is the land's sole use. For example, if the other uses were to cease and the single remaining use were to occupy the entire "planning unit", to the exclusion of the others, that change could well constitute, as a matter of fact and degree, a "material" change of use of the planning unit, to which different planning considerations might apply (**Wipperman v Barking LBC** [1965] 17 P&CR 225). Accordingly, if the LPA do not specify all the uses taking place on a planning unit in a mixed use case, the Secretary of State's or an Inspector's appeal decision will correct that notice, to reflect the actual situation on the land as it was when the notice was issued, before dealing with any "deemed planning application" on that basis. In these circumstances, if the LPA have failed to identify any uses of the land which may not already be lawful, and to which planning objections would apply if they were to become lawful, the effect of section 173(11) could be to grant deemed planning permission for those uses if they are specified in the allegation but are not required to cease.

2.11 If it emerges, during an enforcement appeal, that the LPA have inadvertently omitted any component of a mixed use from the allegation in their notice, they and the appellant will be given the opportunity to make representations on the planning merits of the whole mixed use before the Secretary of State or an Inspector corrects the notice as in paragraph 2.10 above. It is normally not possible to expand the requirements of an enforcement notice without causing injustice to the appellant or other "relevant occupiers" as defined in section 174(6). In those circumstances the LPA might wish to withdraw the notice and issue another, rather than have a corrected notice upheld and the provisions of section 173(11) apply to formerly unlawful elements of a mixed use, of which they may have been unaware. (The "second bite" provisions of section 171B(4)(b) of the 1990 Act should ensure that the LPA are still "in time" to issue a further enforcement notice in these circumstances.)

2.12 In cases where the allegation as drafted by the LPA correctly specifies all the elements of a mixed use, LPAs will need to ensure that the requirements of the notice also fully reflect their intentions for the land, once the notice is complied with and section 173(11) comes into operation.

2.13 Section 173(11) does not specify any procedure for this "deemed grant of planning permission". The Department suggests that the LPA need only notify the recipient of a copy of an enforcement notice that permission is deemed to have been granted at the time when, in the LPA's view, the requirements of the enforcement notice have been fully complied with. The deemed grant of planning permission should also be entered in the enforcement and stop notice register.

Effect of compliance with an enforcement notice

2.14 Compliance with an enforcement notice does not discharge the notice. It remains in effect in relation to the land unless it is withdrawn. In these circumstances, if the land subsequently changed hands, prospective purchasers might seek some further assurance of full compliance, in addition to their own observations and interpretations of the requirements of the enforcement notice. This clarification might be needed to satisfy potential lenders for loan security purposes, or to satisfy purchasers that they would not be liable to prosecution.

2.15 If an assurance is sought, by an existing or prospective owner or occupier of the land, and can be given, it is considered reasonable for the LPA to confirm in writing that the enforcement notice in question had been, or was continuing to be, complied with at a particular date. If a more formal assurance is required, it will be open to the applicant to apply for a "lawful development certificate" and pay the appropriate application fee.

2.16 A similar assurance might also be given in the circumstances of section 173(12), where a "replacement building" has been constructed in full compliance with the requirements of an enforcement notice.

Statement of reasons for issuing the enforcement notice

2.17 It is vital that anyone served with a copy of an enforcement notice should understand, from the outset, the reasons why the LPA issued the notice. Consequently, regulation 3 of the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1991 (SI 1991/ 2804), ("the 1991 Regulations") requires every enforcement notice to specify why the LPA consider it "expedient" to issue the notice. The statement of reasons should therefore be included in the text of the enforcement notice, and, in the light of the advice contained in paragraphs 2.30 to 2.33 below, should make clear whether or not those reasons are **only** for the purpose of remedying an injury to amenity.

Identification of the site

2.18 Regulation 3 of the 1991 Regulations also requires that the enforcement notice shall specify the precise boundaries of the land to which it relates. This is always best done by means of a plan (preferably on an Ordnance Survey base with a scale of not less than 1/2500) attached to the enforcement notice, on which the *exact* boundary of the land is clearly indicated by a suitably coloured outline. If this is insufficient to identify the boundary exactly, the plan should be supplemented by a brief written description, or an accurately surveyed drawing to a larger scale.

Personal circumstances

2.19 The personal circumstances, including such matters as health, housing needs and welfare, of persons suspected of acting in breach of planning control must be taken into account when deciding whether to take enforcement action. (See **R v Kerrier DC ex parte Uzell** [1996] 71 P&CR 566.)

Issuing of enforcement notice and service of copies

2.20 The concept of "issuing" an enforcement notice, rather than serving it, derives from the Local Government and Planning (Amendment) Act 1981. The requirement to "issue" a notice is interpreted as meaning that the LPA should prepare a properly authorised document and retain it in their records. Copies of that notice are then served on interested persons, as described in paragraph 2.22 of this Annex.

2.21 It is important that, as soon as possible, details of every enforcement notice issued are entered, in accordance with article 26 of The Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419) (the "GDPO"), in the enforcement and stop notice register which LPAs are required to keep (under section 188 of the 1990 Act). Section 179(7)(b) of the 1990 Act provides a defence for persons charged with offences under that section if they can show that the notice was not contained in the register, a copy was not served on them and they were not aware of its existence.

2.22 Section 172 of the 1990 Act requires that a copy of an enforcement notice shall be served -

(1) on the owner and on the occupier of the land to which the notice relates; and

(2) on any other person having an interest in the land, being an interest which, in the LPA's opinion, is materially affected by the notice.

Service of the notice must take place not more than twenty-eight days after its date of issue and not less than twenty-eight days before the effective date specified in it. (The effective date is the date from which the compliance period starts to run.) When serving enforcement notices, the LPA should ensure that any known mortgagees are served with a copy. In cases where the owner of the land is a defaulting mortgagor it may not be possible to locate him or her, and the mortgagee-in-possession will need to be made aware of the situation. In accordance with section 173A(3) of the 1990 Act, a mortgagee should also be notified of any withdrawal of a notice, or the waiving or relaxation of any requirement.

2.23 Regulation 4 of the 1991 Regulations, as amended by SI 1992/1904, requires every copy of an enforcement notice served by a LPA, under section 172, to be accompanied by an explanatory note which includes a copy of, or a summary of, sections 171A, 171B and 172 to 177 of the 1990 Act explaining -

(1) that there is a right of appeal to the Secretary of State against the notice;

(2) that any appeal must be made in writing before the date specified in the notice as the date on which it takes effect; and

(3) the grounds on which an appeal may be made.

Regulation 4 also requires the LPA to explain that an appeal must be supported simultaneously (or within the time-limit of fourteen days which can be imposed by the Secretary of State, under this regulation) by a statement of the grounds of appeal and facts on which it is based. LPAs should decide how to fulfil the requirement of this regulation. Regulation 13 of the Town and Country Planning General Regulations 1992 (SI 1992/1492) requires that notices and envelopes be marked with the words:

"Important - This communication affects your property".

2.24 It is usually best to enclose three copies of each enforcement notice and a copy of the WO explanatory booklet ("Enforcement Notice Appeals - A Guide to Procedure") and three copies of the official appeal form. This will ensure that every intending appellant has the same information and knows the procedure for submitting an appeal. *(The explanatory booklet and appeal form are not appropriate for listed building and conservation area enforcement notices, to which regulation 4 does not apply.)*

Secretary of State's power to require information and to quash an enforcement notice

2.25 LPAs are asked to send three copies of every enforcement notice they issue, so that an intending appellant can submit one with any appeal to the Secretary of State. If this procedure does not work satisfactorily, the Department must be able to obtain a copy of the notice quickly. Regulation 6 of the 1991 Regulations requires the LPA to send the Secretary of State a copy of the notice, not later than 14 days from the date on which he notifies them that an appeal has been made, together with a list of the names and addresses of the people served with a copy of it. If the LPA fail to observe this requirement, the Secretary of State has power to quash the notice, by virtue of section 176(3). It should be most exceptional to quash a notice in these circumstances. If quashing does seem appropriate, the Department will give the LPA seven days' final notice of the intention to quash and will examine any representations from the LPA, during that period, that there are extenuating circumstances making it inappropriate to quash the notice. Any decision to quash a notice is open to challenge in the High Court, and does not prevent the LPA from issuing another notice, within any relevant time-limit.

Withdrawal of an enforcement notice

2.26 Section 173A enables the LPA to withdraw an enforcement notice issued by them, or to waive or relax any of its requirements, and to extend any period specified for compliance with it. This power may be used whether or not the enforcement notice has taken effect. When it is used, the LPA are required to notify immediately anyone who has been served with a copy of the enforcement notice or would have been served with a copy. Withdrawing an enforcement notice does not prevent the LPA from issuing a further notice relating to the same site or to the same breach, if it is otherwise open to them to do so.

Right of appeal to the Secretary of State against an enforcement notice

2.27 Section 174(1) provides a right of appeal for anyone who has an interest in the land to which the enforcement notice relates, or who is a "relevant occupier", whether or not they have been served with a copy of the notice. "Interest" means a legal or equitable interest, such as ownership, or the grant of a tenancy or lease, or the securing on the land of a mortgage or other loan. "Relevant occupier" is defined in section 174(6). Anyone occupying the land with the owner's oral or written consent is a relevant occupier.

2.28 The grounds of appeal in section 174(2) of the 1990 Act are as follows -

"(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 planningcontrol 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."

Liability to pay the deemed planning application fee

2.29 Section 177(5A) provides that, on an appeal under ground (a), if any deemed planning application fee is payable under Regulations made by virtue of section 303, and the Secretary of State gives written notice of the period in which the fee must be paid, then if the appellant does not pay the fee within that period, the appeal on ground (a) *and* the deemed application will lapse. The fee is payable to the Secretary of State and the LPA in equal shares, within whatever time-limit may be specified in writing. A reasonable time-limit for the payments will be given. If a reasonable request for more time to pay is made within the initial time-limit, the Department may extend the period for payment, in writing. In that event, the LPA will be notified accordingly.

Stating the LPA's requirements in an enforcement notice

2.30 Some appellants who have not paid the deemed application fee have instead attempted to introduce arguments on the planning merits of their appeal in the context of an appeal on ground (f) in section 174(2). In the Department's view, the provisions of section 174(2) must be construed in accordance with the larger scheme of this Part of the 1990 Act. In particular, it is necessary to construe the grounds of appeal in relation to the provisions of subsections (1) to (4) of section 173 of the Act. By the words "wholly or partly", subsection (3) makes it clear that the LPA may "under-enforce", in specifying the steps they require to be taken, or the activities they require to cease, in order to achieve the purposes specified in subsection (4). Subsection (4) enables the LPA to specify either of two different categories of remedial requirement in an enforcement notice, namely -

(a) making any development comply with the terms ... 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.

So the LPA must first choose which route to take in specifying their requirements. If the LPA follow the pattern of the model enforcement notices in Appendices 1 to 3 of this Annex, it should be clear, by considering what is said in paragraphs 3, 4 and 5 of the notice, read as a whole, whether the remedial requirements ought to follow from paragraph (a) or paragraph (b) of section 173(4). Nevertheless, it is still possible that a notice which "under-enforces" does so for purposes other than solely to remedy an injury to amenity. Equally, a notice whose requirements follow from paragraph (a) and which requires development to comply totally with the terms of a planning permission, or total removal of a building, or total cessation of a use, may have been issued solely to remedy an injury to amenity caused by the breach and for no other reason. So it is also pertinent that regulation 3(a) of the 1991 Regulations requires that an enforcement notice should specify the reasons why the LPA considered it expedient to issue the notice.

2.31 The LPA must formulate their remedial requirements so as to correspond clearly to **either** purpose (a) **or** purpose (b) in section 173(4). It follows from the construction of these provisions that the only type of enforcement notice open to appeal on the second element of ground (f) ("or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;") is a notice where the LPA's **reasons** for issuing it (paragraph 4 of the model notice) state that its **only** purpose is to remedy some injury to amenity caused by the breach.

2.32 The wording of ground (f) is also important in this respect. The basic ground differs little from ground (g) of section 174(2) of the 1990 Act, as originally enacted. But ground (f) is now worded so as to split the two arguments that can be employed under this element more significantly by the words "or, as the case may be,". Examination of the enforcement notice should clearly disclose exactly what the LPA sought to achieve by their notice. If it appears that the breach may be contrary to the development plan, or gives rise to a traffic hazard, or there are any objections to it other than on the sole ground of detriment to amenity, and the LPA required its total cessation, that is not considered to be a situation where "the case may be" that all that is necessary is simply a remedy of any injury to amenity that might have been caused. In such a case it is considered that the Act cannot sensibly be interpreted as allowing any appeal submission under the second head of ground (f) where the deemed application has not been considered and objections other than on grounds of detriment to amenity have not been satisfactorily resolved. The only available appeal submission in that case should be that, as a matter of fact, the requirements exceed what is necessary to remedy the breach.

2.33 Alternatively, if it is clear that the **only** reason for issuing a notice, or the only objection to the breach, is an amenity one, and no other objections have been raised to it on policy or traffic or infrastructure grounds, then, and only then, will any appeal submission under the second head of ground (f) be taken into account where the deemed application has not been considered. Consideration of ground (f) in these circumstances would be limited to amenity issues only, without the need to address planning policy or any other issue of planning merit.

Additional points about requirements

2.34 In the case of **Kaur v SSE and Greenwich LBC** [1990] JPL 814, it was held that a requirement of an enforcement notice which provided for the subsequent submission and approval of a restoration scheme introduced an unacceptable degree of uncertainty. While such a requirement can be validated by a provision for such a scheme to be determined non-statutorily, in default of agreement (see **Murfitt v Secretary of State for the Environment and East Cambridgeshire DC** [1980] JPL 598), the Secretary of State should not be invoked as the arbitrator of such a scheme in a LPA's enforcement notice, in which, in the absence of any appeal against that notice, he may have had no previous involvement. LPAs are therefore encouraged to avoid such requirements in enforcement notices, but instead, wherever possible, to set out specific steps which they require to be taken in order to remedy a breach of planning control. If this is impractical, perhaps because the precise condition of the land before the breach took place is peculiarly within the knowledge of the developer, an alternative is simply to require restoration of the land to its condition before the breach of planning control took place, leaving it to the developer to comply in accordance with his or her knowledge of that condition.

2.35 On the other hand, LPAs should be wary of imposing over-dated requirements in enforcement notices, such as specifying the exact mixture of grass seed to be used for re-seeding land in order to return it to its former state, as such requirements may be excessive.

Time-limits for appealing

2.36 Section 174(3) provides that an appeal 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.

Since an appeal is usually the only way in which a recipient of an enforcement notice can challenge the LPA's action in issuing the notice, it is vital that all intending appellants are made aware of this absolute time-limit, which the Secretary of State has no discretion to vary, for making a valid appeal. The explanatory booklet emphasises the strict time-limits which will be applied to enforcement appeals and the advisability of not waiting until the end of the appeal period before submitting an appeal.

Conduct of enforcement appeals: procedures

2.37 Where an appeal is made against an enforcement notice, both the appellant and the LPA have the right to appear before, and be heard by, a person appointed by the Secretary of State. Where this right is exercised, a public local inquiry will usually be held. Where the grounds of appeal suggest a dispute about the relevant facts, between the LPA and the appellant, eg under grounds (c) and (d) of section 174(2), an inquiry is generally essential. In that event, the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992 (SI 1992/ 1903) will apply. Where the dispute is solely about the planning merits of the development, or the requirements of the notice or the period for compliance, and there has been a request to be heard, it may be appropriate to proceed by way of an informal hearing rather than a public inquiry. The less formal procedure of a hearing makes it inappropriate in any case where there is a dispute on evidential facts, or on most legal grounds in section 174(2).

2.38 In suitable cases, the Department will suggest that the appeal be dealt with by the written representations procedure. If an appeal proceeds on this basis, it will often be necessary for a Planning Inspector to inspect the site. Where this requires entry to land, arrangements will usually be made for the Inspector to be accompanied by a representative of the appellant and the LPA.

Conduct of enforcement appeals: requirements applicable to appellants

2.39 Regulation 5 of the 1991 Regulations requires that any person who gives notice to the Secretary of State appealing against an enforcement notice, listed building enforcement notice or conservation area enforcement notice, and who does not send with it a statement in writing specifying the grounds on which he is appealing, and stating briefly the facts in support of each of those grounds, should do so within fourteen days of the Secretary of State giving him or her notice to that effect. Section 174(5) enables the Secretary of State to determine the appeal without considering any ground of appeal for which the appellant fails to provide the required information within the specified time.

2.40 Intending appellants (and their agents) should consider most carefully the LPA's statement of reasons for issuing the enforcement notice when they are contemplating an appeal. In any subsequent appeal, they should address their arguments to the alleged breach of planning control and the LPA's statement. If the LPA state that they are prepared to grant conditional planning permission for the allegedly unlawful development, an intending appellant should consider whether to make the appropriate planning application, instead of appealing. This should be discussed urgently with the LPA to establish whether they would be prepared to withdraw the notice if such permission were granted. If the proposed conditional permission would be unacceptable, the appeal should state any modified conditions which would make it acceptable.

2.41 If an enforcement appeal is delayed because the appellant fails to provide sufficient information, and the Department's requests for it are ignored, the Department will invoke the Secretary of State's powers in regulation 5 to require time-limits to be observed. If there is a continued failure to provide the information, the Secretary of State may proceed to dismiss the appeal (or determine it only on those grounds of appeal for which he has sufficient information) unless the appellant can show genuine extenuating circumstances preventing him or her from providing the required information. When an appeal is dismissed under section 176(3), the deemed planning application will not have been considered and any fee already paid by the appellant will be refunded by the Department and the LPA.

2.42 An appellant's statement is sometimes insufficiently informative or detailed for the purposes of a public inquiry. If so, the Department will use the Secretary of State's power, in rule 8(6) of the 1992 Enforcement Inquiries Procedure Rules, to require the appellant to serve a written statement of the submissions he or she intends to make at the inquiry. A copy of the appellant's statement will have to be served on the LPA and the Secretary of State at a specified time before the inquiry date.

Conduct of enforcement appeals: requirements applicable to LPAs

2.43 The Department sometimes experiences great difficulty in obtaining the LPA's written statement for the appeal, even when it is relatively straight-forward and the parties are proceeding by way of written representations and a site-inspection by a Planning Inspector. LPAs' statements are sometimes inadequate as a means of preparing for a public inquiry, with the result that the appeal parties, and the Planning Inspector who conducts the inquiry, spend more time than should be necessary at the inquiry. If the LPA fail to adhere to the time-table set by the Department, the Secretary of State may exercise the powers in regulation 7 of the 1991 Regulations (as amended).

2.44 Regulation 7(2) requires the LPA's statement of submissions on the appeal to be served-

(1) *in those inquiry cases where the date arranged for the inquiry is less than 18 weeks after written notice of intent to hold one has been given by the Secretary of State to the appeal parties* - at least 6 weeks before the inquiry date;

(2) *in other inquiry cases* - not later than 12 weeks after written notice of intent to hold an inquiry; and

(3) *where no local inquiry is held* - not later than 28 days from the Secretary of State's notice to the LPA requesting a statement.

If the LPA do not comply with these requirements, the Secretary of State has a discretionary power to quash the enforcement notice, in accordance with section 176(3)(b). Such cases should be rare because the time-limits provide ample opportunity for a LPA's statement to be served. If an enforcement notice is quashed under section 176(3)(b), the notice will cease to have effect; and any deemed planning application fee already paid by an appellant will be refunded by the Department and the LPA. The quashing of a notice in these circumstances does not affect the LPA's powers to issue another, provided the relevant time-limit for taking enforcement action is not exceeded.

Conduct of enforcement appeals: public notification of an appeal

2.45 Regulation 8 of the 1991 Regulations requires the LPA, when the appeal is to be dealt with other than by an inquiry, to give notice of the appeal to occupiers of land in the neighbourhood of the appeal site who, in the LPA's opinion, are affected by the alleged breach of planning control. When giving this notification, the LPA must include in it a description of the alleged breach of control, their reasons for serving the notice, the grounds on which the appeal has been made, and the time-limit for interested persons to submit written representations to the LPA. This notification should be given as soon as practicable during the progress of an enforcement appeal.

Transferred appeals

2.46 Most enforcement appeals are transferred to Planning Inspectors for determination. The classes of transferred appeal are specified in the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1981 (SI 1981/804, as amended by SIs 1986/443, 1986/623, 1989/1087, 1995/2259 and 1997/420). The question whether an appeal is to be "recovered" for determination by the Secretary of State is decided by reference to the category of breach of planning control alleged in the enforcement notice and the circumstances of the appeal.

Costs

2.47 The parties to an enforcement notice appeal are normally expected to meet their own expenses. Unlike litigation, costs do not normally "follow the event" of the appeal and are only awarded, on an application, against a party if it is shown that they behaved "unreasonably" in the appeal process. WO Circular 23/93 gives comprehensive guidance on the policy and procedures for awarding costs to parties in an appeal. By virtue of section 175(7) of the 1990 Act (inserted by paragraph 3 of Schedule 4 to the Planning (Consequential Provisions) Act 1990), an award of costs may be made in an enforcement notice appeal whether the appeal has proceeded by written representations or by local inquiry.

Finality of the appeal decision

2.48 Once the Secretary of State, or an Inspector exercising transferred powers, has decided an appeal, he has no further jurisdiction and cannot reconsider or correct it. An application for leave to submit a further appeal in the High Court can be made on a point of law, under section 289 of the 1990 Act. The Supreme Court Rules require it to be made within 28 days of the date when the decision is given, or within an extended period at the Court's discretion. Where planning permission is granted, under section 177(1)(a) and (b) of the 1990 Act, an appeal can be made, under section 288, within six weeks of the date of the decision, on the ground that the action is not within the powers of the 1990 Act or that any "relevant requirement" as defined in the section has not been complied with.

2.49 Section 175(4) includes a reference to section 289(4A) under which the High Court, or the Court of Appeal, may order (on terms which may include requiring the LPA to give an undertaking as to damages or any other matters) that the enforcement notice shall have effect, or have effect to the extent specified in the order, pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State. Proceedings under section 289 of the 1990 Act may not be brought without the leave of the High Court or Court of Appeal. A Court of Appeal judgment (**Huggett, Wendy Fair Markets Ltd and Bello v Secretary of State for the Environment and Others**, [1995] JPL 649) has held that there is no right of appeal to that Court against the High Court's refusal of leave under section 289 of the 1990 Act.

2.50 When it is justified by the particular circumstances, the LPA should not be dissuaded from applying to the Courts for an Order under section 289(4A), by the possibility that they might be required to give an undertaking as to damages, in the event, for example, of their enforcement notice eventually being quashed. In the light of the House of Lords' approach to public authority action in the case of **Kirklees MBC v Wickes Building Supplies Ltd** [1993] AC 227, it appears that the Court may well not require a LPA to give any such undertaking. Alternatively, the LPA could offer an undertaking that, despite the immediate coming into effect of the enforcement notice, they would not seek to prosecute in respect of any failure to comply with it, or to exercise their powers in section 178 of the 1990 Act, until the litigation had been decided in their favour, or the appeal finally redetermined and the enforcement notice upheld as the case may be, and the expiration of the period allowed for compliance, commencing from either of those dates as appropriate.

2.51 Where the final determination of an appeal against an enforcement notice has been considerably delayed by litigation, or for any other reason, LPAs should ensure that the passage of time does not remove their future ability to control the alleged breach of planning control to which their notice relates, if and when the appeal against that notice is finally determined. Within four years of the date on which the LPA first took enforcement action, it is open to them to take further enforcement action under what has become known as the "second-bite provision" in section 171B(4)(b) (see paragraph 2.5 of this Annex). Accordingly, within four years of first taking enforcement action in respect of it, no use, operation or other matter can usually become "lawful" within the meaning of section 191(2) or (3) of the 1990 Act, because, by virtue of the "second-bite provision" , the time for taking (further) enforcement action in respect of that use, operation or other matter, may not then have expired (see section 191(2)(a) and (3)(a)). The exception to this will be in those cases where an appeal against a previous enforcement notice has succeeded on any of the grounds in section 174(2)(a), (c) or (d), or planning permission has since been granted for the matter in question. In those circumstances it clearly would not be open to the LPA to take further enforcement action. However, where an enforcement notice has yet to take effect, because an appeal against it is still outstanding, it is possible that it would not be regarded as being "in force" for the purposes of section 191(2)(b) and (3)(b); and where a period of more than four years has expired since that notice was issued, without a further notice having been issued under the "second-bite provision", it is possible that the passage of time may, by then, have made the use, operation or other matter to which the outstanding enforcement notice relates, lawful for the purposes of section 191(2) or (3), as the case may be, by virtue of the normal time limits for the taking of enforcement action. In these circumstances, a subsequent
application for a LDC, made before the outstanding enforcement notice has come into effect, may be difficult to resist. There is currently no judicial authority on the question whether a LDC granted in these circumstances would be a defence against an enforcement notice issued before, but coming into effect after, the date specified in that LDC. LPAs need to be aware of this possible difficulty where an appeal against an enforcement notice is outstanding for nearly four years, usually as a result of protracted litigation, and to use the provisions of sections 171B(4)(b) and/or 289(4A) expeditiously in order to safeguard their continued ability to remedy the alleged breach of planning control.

Enforcing conditions imposed on permission for operational development

2.52 Paragraph 29 of the Annex to WO Circular 35/95, on the use of conditions in planning permissions, together with its explanatory footnote, draws attention to the implications of the Court of Appeal's judgment in the case of **Handoll and Others v Warner Goodman and Streat (A firm) and Others** [1995] JPL 930.

2.53 Where the LPA are themselves responsible for ensuring that the works comply with Building Regulations, it is suggested that the responsible inspecting officer should liaise closely with colleagues in the Planning Department, to avoid the need for both Departments to inspect the development. In other cases the authority's Planning Department will need to make their own detailed check that the development complies with the approved plans. The Court of Appeal's judgment may therefore have implications for the administrative organisation of work in those authorities which do not already carry out these checks as a matter of routine, but instead rely on others to report or complain about any failure to comply with approved plans. Such failures will not necessarily prompt complaints, but they may render unenforceable any conditions imposed on the permission.

2.54 Whether a deviation from an approved plan is sufficiently significant as to render the whole development in breach of planning control is a matter of fact and degree in every case. In both the **Handoll** case, and the **Kerrier DC** case which it overturned, the deviations from the approved plans were clearly apparent from cursory inspection of the development.

2.55 As more fully explained in Annex 4, **any** condition imposed on a planning permission may be enforced, within the appropriate time-limits, by the use of either or both an enforcement notice (alleging a breach of condition) and a breach of condition notice.

Enforcement of listed building control

2.56 Schedule 3 (paragraphs 2 to 6) to the Planning and Compensation Act 1991 ("the 1991 Act") amended the listed building enforcement provisions in sections 38 to 43 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act"). Paragraph 8 of Schedule 3 introduced a new section 65(3A) and amended section 65(5) of the Listed Buildings Act to reflect changes made to the planning enforcement régime in section 289(4A) and (6) of the 1990 Act (see paragraphs 2.48 to 2.50 above). In particular it should be noted that Planning Guidance (Wales): Planning Policy (ISBN 0-7504-1839-7, price £10) and Welsh Office Circular 61/96 "Planning and the Historic Environment: Historic Buildings and Conservation Areas" (ISBN 1-85760-097-5), which are obtainable from The Stationery Office Bookshops give specific policy and other guidance on listed building and conservation area control, including its enforcement. The main differences between the enforcement of planning control and the enforcement of listed building and conservation area control are: that neither listed building and conservation area consent applications, nor appeals under section 39 of the Listed Buildings Act attract application fee; that there are no time-limits for issuing listed building or conservation area enforcement notices; that carrying out work without the necessary listed building or conservation area consent, or failing to comply with a condition attached to that consent, is an offence under section 9 of that Act, whether or not an enforcement notice has first been issued; and that listed building and conservation area consents are never made retrospective.

Enforcement of minerals planning control

2.57 In his report, "Enforcing Planning Control", Robert Carnwath QC, as he then was, recognised that minerals planning control is well established as part of the planning system and recommended no special amendments to the enforcement provisions for minerals. But unauthorised mineral working involves particular problems. Damage to amenity, which is sometimes irremediable, can be caused very quickly. LPAs therefore need to be able to stop unauthorised activity immediately it is detected. LPAs' attention is drawn to section 184(3) which enables a stop notice to be made immediately effective where special reasons justify it (see paragraph 3.29 of Annex 3). While formal enforcement action may well prove necessary where unauthorised mineral working is taking place, or where authorised working is being carried out, but planning conditions are not being observed, it is preferable for liaison and routine discussion between LPAs and operators to be sufficiently good to avoid the occurrence of breaches of planning control. Any problems are best handled by discussion and co-operation in the first instance.

Tree preservation orders: enforcement

The duty to replace trees

2.58 Under section 206 of the 1990 Act, landowners are placed under a duty to replace trees which are protected by tree preservation orders (TPOs) in certain circumstances. The duty arises where a tree is removed in contravention of a TPO or because it is dead, dying or has become dangerous. The duty requires the landowner to plant another tree of an appropriate size and species at the same place as soon as he or she reasonably can. The duty transfers to the new owner where the land in question changes hands. Trees which are planted in accordance with the duty are automatically protected by the original TPO, even if they are of a different species.

2.59 In relation to trees in woodlands, the duty only arises where the trees are removed in contravention of the TPO. It can be complied with planting the same number of replacement trees on or near the land on which the original trees stood, or on the other land agreed between the LPA and the landowner, and in such places as the LPA designate.

2.60 The duty does not apply where the LPA, on an application by the landowner, dispense with it. In dealing with applications to dispense with the duty, the LPA should give their decision in writing, setting out their reasons.

Enforcing the duty

2.61 If it appears to the LPA that the duty has not been complied with they may, within 4 years from the date of the alleged failure to comply, require replacement trees to be planted by serving on the landowner a notice under section 207 of the 1990 Act ("a tree replacement notice"). In general terms, a tree replacement notice should tell the landowner what the LPA consider has given rise to the duty and what must be done to comply with it. It should specify the size and species of the replacement trees and a period within which the planting is to be carried out. It must also specify a period at the end of which the notice is to take effect; this period must be not less than 28 days beginning with the date of service of the notice.

2.62 The power to serve a tree replacement notice is discretionary. In deciding whether to exercise it (and in deciding how to deal with applications to dispense with the duty), the LPA will wish to consider the amenity issues, including the impact which the removal of trees has had on the local environment and its enjoyment by the puplic. They will also need to consider whether it would be reaonable in the circumstances to require their replacement by the landowner. They should also consider, in the case of woodlands, whether replacement would be in accordance with good forestry practice.

2.63 Failure to comply with a tree replacement notice is not a criminal offence. If a replacement tree is not planted within the specified period (which may be extended by the LPA) the LPA may enter the land, plant the tree and recover from the landowner any reasonable expenses incurred. Anyone who wilfully obstructs a person exercising this power is guilty of an offence and liable on summary conviction to a fine of up to level 3 on the standard scale (currently £1,000).

Conditions of consent requiring the replacement of trees

2.64 Under the terms of the model form of TPO the LPA may, in granting consent to fell a tree, include a condition requiring its replacement by one or more trees on the site or in the immediate vicinity. If it appears to the LPA that such a condition has not been complied with, they may enforce it also by serving a tree replacement notice under section 207.

2.65 The 1990 Act does not provide for trees planted pursuant to a replacement condition to be automatically protected by the TPO under which consent was given. Where the felled trees comprise all or part of a woodland, and the replacements are planted within the woodland area defined by the TPO, the Secretary of State considers that they are protected by the TPO. In other cases, a fresh TPO may be required to protect the replacements.

Enforcing the replacement of trees in conservation areas

2.66 A duty similar to that described above applies where trees in conservation areas are removed in contravention of the controls relating to those areas (see sections 211 and 212 of the Act) or because they are dead, dying or have become dangerous. That duty may also be enforced by the service of a tree replacement notice under section 207.

Appeals

2.67 A person may appeal to the Secretary of State against a tree replacement notice. Section 208 of the 1990 Act, as amended, provides five grounds of appeal:

(1) that the provisions of the duty under section 206 or, as the case may be, the condition of consent are not applicable or have been complied with;

(2) that in all the circumstances of the case the duty should be dispensed with;

(3) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;

(4) that planting in accordance with the notice is not required in the interests of amenity or would be contrary to good forestry practice;

(5) that the place at which the trees are required to be planted is unsuitable for that purpose.

2.68 An appeal must be made in writing **before the tree replacement notice takes effect. This is an absolute time-limit; the Secretary of State has no discretion to accept late appeals.** LPAs are advised, when they serve a tree replacement notice, to make it plain to the landowner that any appeal which is **sent** to the Secretary of State (not the Planning Inspectorate) must be posted in time to be received, in the ordinary course of post, before the date on which the notice is stated to take effect.

2.69 Both the appellant and the LPA have a right to appear before, and be heard by, a person appointed by the Secretary of State. In most cases, however, the Department will suggest that the appeal be dealt with by exchange of written representations, followed by a site visit.

2.70 As with planning enforcement notices, the Secretary of State has power, in amended section 208(7), to correct defects, errors or misdescriptions in a tree replacement notice or to vary its requirements, if he is satisfied that he can do so without causing injustice to either party. His power does not extend to the correction of a notice which is so fundamentally defective that correction would result in a substantially different notice. It follows that the notice should be drafted with care. A model form of tree replacement notice is at Appendix 4.

2.71 Once the Secretary of State has given a decision on the appeal, either party may seek leave to appeal to the High Court against the decision on a point of law. Rules of Court provide that the appeal must be made within 28 days of the date of the decision, although the Court may at their discretion allow a longer period.

Costs

2.72 Although the parties to an appeal are normally expected to meet their own expenses, an application for costs may be made by either party, whether the appeal has been dealt with by written representations or a hearing/local inquiry. However, costs are only awarded against a party if it is shown that they have behaved unreasonably in the appeal process, causing the other unnecessary expense.

Tree preservation orders: penalties

2.73 Anyone who, in contravention of a TPO:

(1) cuts down, uproots or wilfully destroys a tree, or

(2) wilfully damages, tops or lops a tree in a way that is likely to destroy it, is guilty of an offence under section 210(1) of the 1990 Act and liable, on summary conviction, to a fine of up to £20,000. The offence is also triable on indictment so that in serious cases a person may be committed for trial to the Crown Court and be liable on conviction to an unlimited fine. This is an absolute offence which can be committed without knowledge of the TPO's existence. A tree does not have to be obliterated in order to be "destroyed". The High Court's judgement in **Barnet London Borough Council v Eastern Electricity Board** [1973] 1 WLR 430 held that a tree could be said to have been "destroyed" if, as a result of that which is done to it, it ceases to have any use as an amenity, as something worth preserving.

2.74 In determining the amount of any fine, the Court is expressly required to have regard to any financial benefit which has accrued in consequence of the offence, or is likely to accrue, to the person convicted.

2.75 It is a lesser offence under section 210(4) of the 1990 Act to contravene the provisions of a TPO otherwise than as mentioned in paragraph 2.73 above. For example, anyone who lops a tree in contravention of a TPO but in a way that is unlikely to result in the tree's destruction is guilty of this offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale (currently £2,500).

2.76 Paragraphs 60 and 63 of WO Circular 64/78 are cancelled.

Enforcement of hazardous substances control

2.77 The Planning (Hazardous Substances) Act 1990 requires hazardous substances consent to be obtained for the presence on land of a hazardous substance in a controlled quantity. The provisions for enforcing against breaches of control generally follow the planning enforcement provisions, so far as appropriate. A contravention of hazardous substances control is itself an offence. Fuller advice on the hazardous substances enforcement provisions is contained in WO Circular 20/92.

Environmental assessment

2.78 The Town and Country Planning (Environmental Assessment and Unauthorised Development) Regulations 1995 (SI 1995/2258) require that an environmental statement (ES) shall be provided for allegedly unauthorised development which is within Schedule 1 to the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1988/1199) or within Schedule 2 and likely to have a significant effect on the environment by virtue of its nature, size or location. These requirements already apply to planning applications and appeals. When issuing an enforcement notice, the LPA should consider whether the unauthorised development requires environmental assessment. If it appears that environmental assessment is necessary, a "regulation 4" notice will be served specifying the description of the development. This also requires a person who gives notice of an appeal under section 174 of the 1990 Act to submit 4 copies of an ES. The LPA will send a copy of the "regulation 4" notice to the Secretary of State and other statutory bodies listed in regulation 4 of the Regulations. The recipient of a "regulation 4" notice may seek a further direction on the need for environmental assessment under regulation 5. If the Secretary of State confirms that an ES is required and the appellant fails to provide one within the prescribed timescale, the deemed application and ground (a) appeal, if any, will lapse.

2.79 Detailed guidance on the implementation of the Regulations is given in WO Circular 39/95: The Town and Country Planning (Environmental Assessment and Unauthorised Development) Regulations 1995. Guidance on preparing environmental statements is given in "Preparation of Environmental Statements for Planning Projects that Require Environmental Assessment: A Good Practice Guide" published by The Stationery Office, ISBN 0-11-753207-X

Interpretation of "substantially completed" in section 171B(1) of the 1990 Act

2.80 The term "substantially completed" in section 171B(1) of the 1990 Act put into statutory terms, for the avoidance of doubt, the Courts' interpretation of the provisions in section 172(4)(a), as originally enacted, as to the date from which the four-year period, within which enforcement action may be taken in respect of unauthorised operational development, starts. Judicial authority in the case of **Ewen Developments Ltd v Secretary of State for the Environment** [1980] JPL 404 established that in the case of a single operation, such as the building of a house, the four-year period does not begin until the whole operation is substantially complete. What is substantially complete must always be decided as a matter of fact and degree. It is not therefore possible to define precisely what is meant by the term "substantially completed". Arguably, in the case of a house, it is not substantially complete until all the external walls, roof-tiling, woodwork, guttering and glazing are finished; but it might be regarded as substantially complete if only some internal plastering or decorating, or external decorating work, remains to be done, particularly if use of the building for its intended purpose has started. The relevant circumstances must be considered in every case.

Interpretation of "use as a single dwellinghouse"

2.81 It is important to distinguish the term "use as a single dwellinghouse", in section 171B(2), from what might normally be regarded as *being* a single dwellinghouse. Experience has suggested that, on occasion, people may adapt, or use, unlikely or unusual buildings or structures as their home or dwellinghouse. However, the Courts have held that, although there is no definition of what is a dwellinghouse, it is possible for the reasonable person to identify one when he sees it. If no reasonable person would look at a particular structure used as a dwellinghouse and identify it as such, it is justifiable to conclude, as a matter of fact, that it is not a dwellinghouse. In those circumstances, while its *use* as a dwellinghouse might be immune from enforcement action, it is not a dwellinghouse as such and, accordingly, would never enjoy the benefits of "permitted development" rights under article 3 of, and Part 1 of Schedule 2 to, the GPDO. The Department considers that a flat may be used as a single dwellinghouse in certain circumstances, but not acquire GPDO "permitted development" rights as such, because article 1(1) of the GPDO specifically excludes them from the definition of a "dwellinghouse" for GPDO purposes. For the purposes of the 1990 Act, where section 336(1) defines "building" as including any part of a building, the view is taken that a flat can be *used* as a single dwellinghouse, whether or not it would otherwise be regarded as *being* a single dwellinghouse as such, (see **Doncaster MBC v Secretary of State for the Environment and Dunhill** [1993] JPL 565). It is considered that the criteria for determining use as a single dwellinghouse include both the physical condition of the premises and the manner of the use. Where a single, self-contained set of premises comprises a unit of occupation, which can be regarded as a separate "planning unit" from any other part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse; and are used as a dwelling, whether permanently or temporarily, by a single person or more than one person living together as, or like, a single family, those premises can properly be regarded as being in use as a single dwellinghouse for the purposes of the Act. This interpretation would exclude such uses as bed-sitting room accommodation, where the occupants share some communal facilities within a building, such as a bathroom or lavatory, and the "planning unit" is likely to be the whole building, in use for the purposes of multiple residential occupation, rather than each individual unit of accommodation.

Penalties for enforcement notice offences

2.82 Section 179 of the 1990 Act provides that if, at any time after the period for complying with an enforcement notice, any step required by the notice has not been taken, an offence is committed. An offence may be charged by reference to any day or longer period, and a person may be convicted of a second or subsequent offence by reference to any period of time. A person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding £20,000, or on conviction on indictment to an unlimited fine. In determining the amount of any fine, the Court is to have regard to any financial benefit which has accrued or appears likely to accrue in consequence of the offence. Accordingly, prosecuting authorities should always be ready to give any available details about the proceeds resulting, or likely to result, from the offence, so that the Court may take account of them.

Cautioning alleged offenders

2.83 When making an investigation of the facts prior to initiating any proceedings LPAs should have regard to the provisions of sections 66 and 67(9) of the Police and Criminal Evidence Act 1984 with regard to cautioning alleged offenders.

The LPA's "default" powers

2.84 Amendments, made by section 7 of the 1991 Act, to section 178 of the 1990 Act considerably extended the LPA's "default" powers to enter enforcement notice land and carry out the requirements of a notice themselves; and provided for a new offence of wilfully obstructing anyone who is exercising those powers on the LPA's behalf. As did amendments made by Schedule 3 to the 1991 Act in respect of the equivalent powers in section 42 of the Listed Buildings Act, the amended power enables the LPA to carry out *any* steps required by

an enforcement notice, including such steps to discontinue a use of land (which by virtue of regulation 2(1) of the Town and Country Planning (Minerals) Regulations 1995 (SI 1995/ 2863) includes the discontinuance of mining operations) and such steps for the purpose of making development comply with the terms of any planning permission which has been granted in respect of the land, or for the purpose of removing or alleviating any injury to amenity which has been caused by the development.

2.85 The previous reference, in section 178(1), to steps other than the discontinuance of a use of land, could inhibit LPAs' efforts to stop illegal uses of land. The amended provision does not mean that the LPA will themselves be able to stop the illegal use (because only the person who is actually carrying out the use is capable of stopping it entirely). But where, for example, a storage use is required to be discontinued, and whether or not the notice specifically requires the removal of stored items, it is now open to the LPA to remove those items as a step towards discontinuing the use and continue to remove such items which may appear on the land. Where, as an alternative to requiring an entire unauthorised building to be removed, a notice requires the building to be altered, in order to remove or alleviate an injury to amenity, or to make the building comply with the terms of a planning permission granted for the erection of a similar building on the land, the LPA may now carry out those works themselves. (Previously the LPA's default powers were limited to taking steps required by a notice in order to remedy the breach of planning control.)

2.86 These amendments were intended to remove any doubt about the scope of LPAs' default powers, and encourage and facilitate their use, when other methods, including prosecution for an offence, have failed to persuade the owner or occupier of land to carry out, to the LPA's satisfaction, any of the steps required by an enforcement notice. The LPA may recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so. Regulation 14(2) of the Town and Country Planning General Regulations 1992 (SI 1992/1492) provides that any such expenses, until recovered, become a charge on the land binding on successive owners. It is considered that such a charge is registerable as a local land charge under section 1(1)(a) of the Local Land Charges Act 1975; and, by virtue of section 7 of that Act, such a charge then confers upon the LPA powers of a mortgagee-in-possession, to order the sale of the land themselves, or to appoint a receiver in order to recover their costs from the proceeds, should that prove necessary. Recent research commissioned by the Department has suggested that most authorities have successfully recovered such expenses in full, as a simple common law debt, without the need to invoke these powers. Regulation 14(1) of the 1992 General Regulations provides the other powers, limitations and rights referred to in section 178(3) and (4).

2.87 Many LPAs have found that exercising their powers in section 178, in the event of a failure to comply with the requirements of an enforcement notice, provides a swifter and more cost-effective means of remedying a breach of planning control than initiating successive prosecutions under section 179 alone, which can prove time-consuming. LPAs with experience of operating these provisions have pointed to the occasional need to arrange for a police presence, to deter or deal with any breach of the peace on the part of aggrieved landowners or occupiers, and to ensure that their officers and contractors are not obstructed or assaulted whilst going about their lawful duties. Depending on the particular circumstances of each case, it may also be advisable to provide some appropriate form of protective clothing for officers and not to publicise in advance any proposal to exercise section 178 default powers. Suitable publicity **after the event** may well be a salutary warning of the LPA's determination to others who might be contemplating a breach of planning control.

2.88 Some LPAs have reported examples of intimidation directed at individual officers and members responsible for enforcing, or deciding to enforce, planning control. Such cases are rare. Where threats are made, or there is actual violence to individual officers, members, their families or their property, LPAs may consider exercising their powers under sections 111 or 137 of the Local Government Act 1972, as amended by section 36 of the Local Government and Housing Act 1989, to incur the expenditure necessary to compensate those officers or members who need to pursue private prosecutions or seek an injunction against the perpetrators, if it is not appropriate for the LPA to initiate such proceedings in their own name, in exercise of their powers in section 222 of the 1972 Act. It is the LPA's responsibility, in consultation with their legal advisers, to decide whether section 111, 137 or any other legislation would be appropriate in the circumstances of any particular case. Where an officer or member is sued,

section 265 of the Public Health Act 1875, as amended and extended, is intended to protect them from personal liability when acting in a bona fide capacity for the authority.

Fee payable for deemed planning application arising from an enforcement appeal

2.89 The provisions relating to enforcement appeal deemed application fees are dealt with in detail in Appendices 1 and 2 respectively of WO Circular 73/92. It should be noted that the specific sums referred to in paragraph 1 of that Appendix have been increased and are set out in the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) Regulations 1997 (SI 1997/37) currently in force, and will be subject to further periodic reviews of the Fees Regulations.

MODEL ENFORCEMENT NOTICE - OPERATIONAL DEVELOPMENT

IMPORTANT - THIS COMMUNCATION AFFECTS YOUR PROPERTY

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

ENFORCEMENT NOTICE

ISSUED BY: *[name of Council]*

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

Land at *[address of land]*, shown edged red on the attached plan.

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

Without planning permission, the erection of a brick-built, single-storey building, and the construction of a driveway leading to it, in the approximate position marked with a cross on the attached plan.

4. **REASONS FOR ISSUING THIS NOTICE**

It appears to the Council that the above breach of planning control has occurred within the last four years. The building in question was substantially completed less than four years ago. The building looks like, and appears to have been designed as, a dwellinghouse. The site is within the approved Green Belt where, with certain exceptions which do not apply in this case, there is a strong presumption against any development. The building appears as an intrusion in this otherwise mainly open, rural landscape. It is contrary to development plan policies and harmful to the visual amenities of the area. The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections to the development.

5. **WHAT YOU ARE REQUIRED TO DO**

(i) Remove the building and the driveway.

(ii) Remove from the land all building materials and rubble arising from compliance with requirement (i) above, and restore the land to its condition before the breach took place by levelling the ground and re-seeding it with grass.

6. **TIME FOR COMPLIANCE**

(i) 12 weeks after this notice takes effect.

(ii) 24 weeks after this notice takes effect.

7. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on *[specific date, not less than 28 clear days after date of issue]*, unless an appeal is made against it beforehand.

Dated: *[date of issue]*

Signed: *[Council's authorised officer]*

on behalf of *[Council's name and address]*

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 Secretary of State **before** the date specified in paragraph 7 of the notice. The enclosed booklet "Enforcement Notice Appeals - A Guide to Procedure" sets out your rights. You may use the enclosed appeal forms.

(a) One is for you to send to the Secretary of State if you decide to appeal, together with a copy of this enforcement notice.

(b) The second copy of the appeal form and the notice should be sent to the Council.

(c) The third copy is for your own records

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.

MODEL ENFORCEMENT NOTICE - MATERIAL CHANGE OF USE

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: *[name of Council]*

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

Land at *[address of land]*, shown edged red on the attached plan.

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

Without planning permission, change of use of the land from use for agriculture to a mixed use for agriculture and as a road haulage depot.

4. **REASONS FOR ISSUING THIS NOTICE**

It appears to the Council that the above breach of planning control has occurred within the last ten years. The unauthorised use as a road haulage depot is not an appropriate use of the land, which is within a rural area and forms part of the approved Green Belt in the development plan. The site is approached by narrow country lanes which are unsuitable for use by the type and quantity of traffic which the use attracts. 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**

Stop using any part of the land as a road haulage depot and remove from the land all vehicles and equipment brought on to the land for the purpose of that use.

(You may keep on the land any equipment which you use solely for the maintenance of farm vehicles and machinery used for the purposes of agriculture on that land).

6. **TIME FOR COMPLIANCE**

(i) 8 weeks after this notice takes effect.

7. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on *[specific date, not less than 28 clear days after date of issue]*, unless an appeal is made against it beforehand.

Dated: *[date of issue]*

Signed: *[Council's authorised officer]*

on behalf of *[Council's name and address]*

ANNEX

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 Secretary of State **before** the date specified in paragraph 7 of the notice. The enclosed booklet "Enforcement Notice Appeals - A Guide to Procedure" sets out your rights. You may use the enclosed appeal forms.

(a) One is for you to send to the Secretary of State if you decide to appeal, together with a copy of this enforcement notice.

(b) The second copy of the appeal form and the notice should be sent to the Council.

(c) The third copy is for your own records.

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.

MODEL ENFORCEMENT NOTICE - FAILURE TO COMPLY WITH A CONDITION

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: *[name of Council]*

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (b) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

Land at *[address of land]*, shown edged red on the attached plan.

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

On *[date of planning permission]* planning permission was granted for the erection of a building for use as a retail shop, subject to conditions. One of those conditions was that the premises should not be open for the sale of goods on Sundays or after 1900 hours on any other day. It appears to the Council that the condition has not been complied with, because the premises have been open for the sale of goods on Sundays and after 1900 hours on some other days.

4. **REASONS FOR ISSUING THIS NOTICE**

It appears to the Council that the above breach of planning control has occurred within the last ten years. The building adjoins a residential area. Its immediate surroundings also contain a number of residential flats above shops and other business premises. The sale of goods from the premises on Sundays and late in the evenings attracts large numbers of people to the area both on foot and in vehicles and is causing significant disturbance to nearby residents, at times when they might reasonably expect the area to be relatively peaceful. The Council do not consider that there should be any relaxation of the condition in question, which already permits reasonably long opening hours for the shop.

5. **WHAT YOU ARE REQUIRED TO DO**

Stop opening the shop for the sale of goods on Sundays and on other days after 1900 hours.

6. **TIME FOR COMPLIANCE**

7 days after this notice takes effect.

7. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on *[specific date, not less than 28 clear days after date of issue]*, unless an appeal is made against it beforehand.

Dated: *[date of issue]*

Signed: *[Council's authorised officer]*

on behalf of *[Council's name and address]*

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 Secretary of State **before** the date specified in paragraph 7 of the notice. The enclosed booklet "Enforcement Notice Appeals - A Guide to Procedure" sets out your rights. You may use the enclosed appeal forms.

(a) One is for you to send to the Secretary of State if you decide to appeal, together with a copy of this enforcement notice.

(b) The second copy of the appeal form and the notice should be sent to the Council.

(c) The third copy is for your own records.

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.

MODEL TREE REPLACEMENT NOTICE

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

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

TREE REPLACEMENT NOTICE

TREE PRESERVATION ORDER: *[title]*

ISSUED BY: *[name of Council]*

1. **THIS NOTICE** is served by the Council under section 207 of the Town and Country Planning Act 1990 ("the Act") because it appears to them that:-

[you have not complied with a duty to plant [a tree/trees]under section 206 of the Act.]

[you have not complied with a condition of consent granted under the above tree preservation order to plant [a replacement tree/replacement trees.]

[you have not complied with a duty to plant [a tree/trees] in a conservation area under section 213 of the Act.]

2. **THE LAND TO WHICH THE NOTICE RELATES**

Land at *[address of land]*, shown edged red on the attached plan.

3. **REASONS FOR SERVING THIS NOTICE**

[On or around *[date]*, a beech tree protected by the above tree preservation order was cut down on the grounds that it had become dangerous. Under section 206 of the Act the owner of the land is under a duty to plant another tree. It appears to the Council that this duty has not been complied with.]

[On *[date]*, the Council granted consent to fell an oak tree protected by the above tree preservation order subject to a condition to plant [a replacement tree or trees] *[give details of condition]*. It appears to the Council that this condition has not been complied with.]

[On or around *[date]*, an ash tree situated in the *[title of conservation area]* was removed in contravention of section 211 of the Act. Under section 213 of the Act the owner of the land is under a duty to plant another tree. It appears to the Council that this duty has not been complied with.]

[Then set out any relevant background leading up to the Council's decision to serve the notice (eg references to correspondence with the landowner).]

4. **WHAT YOU ARE REQUIRED TO DO**

You are required to plant *[number, species and size of tree/trees to be planted]* at the place(s) shown on the attached plan.

5. **TIME FOR COMPLIANCE**

X months from the date stated in paragraph 6 below

6. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on *[specific date, which must be not less than 28 clear days after date of service]*, unless an appeal is made against it beforehand.

Dated: *[date of notice]*

Signed: *[Council's authorised officer]*

on behalf of *[Council's name and address]*

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 Secretary of State **before** the date specified in paragraph 6 of the notice. You can appeal on any one or more of the following grounds:

(1) that the provisions of the duty to replace trees or, as the case may be, the conditions of consent requiring the replacement of trees, are not applicable or have been complied with;

(2) that in all the circumstances of the case the duty to replace trees should be dispensed with in relation to any tree;

(3) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;

(4) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;

(5) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.

You must also state the facts on which your appeal is based.

FAILURE TO COMPLY

If you do not comply with this notice, the Council may enter the land, plant the tree(s) and recover from you any reasonable expenses incurred.

ADVICE

If you have any questions about this notice or would like some advice on how to comply with it, please contact *[name, address and telephone number of appropriate Council officer].*

THE STOP NOTICE

The main statutory provisions

3.1 The provisions of section 183 of the Town and Country Planning Act 1990 ("the 1990 Act") enable the local planning authority (LPA) to serve a stop notice, in certain circumstances, when they serve a copy of an enforcement notice, or afterwards. Section 183 was substantially amended by section 9 of the Planning and Compensation Act 1991 ("the 1991 Act"). Because the power to serve a stop notice only derives from the issue of a planning enforcement notice, this Annex does not apply to listed building or conservation area control, hazardous substances control or control for protected trees.

The power to serve a stop notice

3.2 Where the LPA consider it expedient that any "relevant activity" should cease before the expiry of the compliance period specified in an enforcement notice, section 183(1) enables the LPA to serve a stop notice which prohibits the carrying out of that activity on the enforcement notice land, or any part of that land. A "relevant activity" is any activity required by the enforcement notice to cease, and any activity carried out as part of that activity or associated with it. A stop notice may not be served once the related enforcement notice has taken effect.

3.3 A stop notice may be served on any person who appears to have an interest in the land to which the notice relates, or who appears to be engaged in any activity prohibited by the notice. The LPA must annex to the stop notice a copy of the related enforcement notice.

Public notification of service of a stop notice

3.4 The LPA may publicise the fact that a stop notice has been served by displaying a "site notice", in accordance with section 184(6), on the land to which the stop notice relates. If a site notice is displayed, it extends the effect of the stop notice to any person contravening it.

3.5 A site notice, publicising a stop notice, must state:

(1) that a stop notice has been served;

(2) that any person contravening the stop notice may be prosecuted for an offence under section 187; and

(3) the date on which the stop notice takes effect and the LPA's requirements in the notice.

Scope of the prohibition in a stop notice

3.6 With the exceptions indicated in paragraph 3.7 below, a stop notice may prohibit any, or all, of the activities which comprise the alleged breach of planning control in the related enforcement notice. Thus the prohibition may be directed at -

(1) a use of land which is ancillary, or incidental, to the main use of the land specified in the enforcement notice as a breach of control; or

(2) a particular activity taking place only on part of the land specified in the enforcement notice; or

(3) an activity which takes place on the land intermittently or seasonally.

A stop notice may be used to prohibit the use of land as a site for a caravan occupied by any person as his or her own or main residence.

3.7 A stop notice may *not* prohibit:

(1) the use of any building as a dwellinghouse;

(2) the carrying out of any activity which is not "operational development", or the deposit of refuse or waste materials, if the activity has been carried out (whether continuously or not) for a period of more than four years ending with the service of the notice. (For this purpose, no account is to be taken of any period during which the activity was authorised by planning permission.)

Power to withdraw a stop notice

3.8 The LPA may withdraw a stop notice at any time (without prejudice to their power to serve another notice) by giving notification of the withdrawal to everyone who was served with the stop notice. If a site notice was displayed on the land specified in the stop notice, a notice of the withdrawal is to be displayed in place of the site notice.

Cessation of the effect of a stop notice

3.9 A stop notice ceases to have effect when -

(1) the related enforcement notice is withdrawn by the LPA, or is quashed;

(2) the period the LPA have allowed for compliance with the related enforcement notice expires (at that point, instead of being an offence to contravene the prohibition in the stop notice, it will become an offence not to comply with the requirements specified by the LPA in the enforcement notice);

(3) notification is first given of the LPA's decision to withdraw the stop notice.

3.10 When an enforcement notice is varied (for example, on appeal to the Secretary of State under section 174), so that the alleged breach of planning control no longer includes a particular activity which is prohibited in the related stop notice, the prohibition in the stop notice ceases to have effect in so far as it relates to that particular activity.

Penalties for contravention of a stop notice

3.11 Section 187(1), as amended, provides that, when a person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on them, they shall be guilty of an offence. The offence may be charged by reference to any day or longer period of time and a person may be convicted of a second, or subsequent offence by reference to any period of time following the preceding conviction for such an offence. A person guilty of this offence is liable, on summary conviction, to a fine not exceeding £20,000; and, on conviction on indictment, to an unlimited fine. In determining the amount of any fine to be imposed, the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, in consequence of the offence.

3.12 It is a defence for any person prosecuted for an offence under section 187 to prove that the stop notice was not served on them and that they did not know, and could not reasonably have been expected to know, of its existence. It is thus important for LPAs to observe the guidance in paragraphs 3.16 to 3.18 of this Annex.

Challenging the prohibition in a stop notice

3.13 There is no right of appeal to the Secretary of State against the prohibition in a stop notice. The merits of the LPA's decision to serve a stop notice cannot be examined in the course of an appeal to the Secretary of State, under section 174, against the related enforcement notice. The validity of a stop notice, and the propriety of the LPA's decision to issue a notice, may be challenged by seeking leave of the High Court to apply for judicial review, in accordance with the Rules of the Supreme Court; but probably not by way of defence to a prosecution brought by the LPA under section 187 if the notice is valid on its face, by analogy with the judgment of the Court of Appeal (Criminal Division) in **R v Wicks** [1995] 93 LGR 377.

The LPA's liability for compensation in consequence of a stop notice

3.14 No compensation is payable in respect of the prohibition in a stop notice of any activity which, *at any time when the notice is in force*, constitutes or contributes to a breach of planning control, by virtue of section 186(5) of the amended 1990 Act.

3.15 Section 186(5)(b) provides that, where a planning contravention notice, or a notice under section 330 of the 1990 Act or section 16 of the Local Government (Miscellaneous Provisions) Act 1976, has required information to be given to the LPA, no compensation is payable for any loss or damage the claimant has suffered which could have been avoided if they had provided that information, or had otherwise co-operated with the LPA when responding to the notice.

Administrative procedures for dealing with stop notices

3.16 Once the LPA have decided to serve a stop notice, it is essential to implement the decision speedily and effectively. There should always be a clear understanding (preferably stated in administrative instructions) about the respective responsibilities of the local authority's Planning Department and Legal Department for the necessary preparatory work, the formulation of the terms of the stop notice, the arrangements for serving it and how its practical effect will be assessed (including the need to bring a prosecution quickly if the notice is contravened). Since serving a stop notice is relatively infrequent for many LPAs, it will usually be best to maintain the essential knowledge and experience of stop notice procedures in a small group of planning and legal officers.

3.17 The service of a stop notice should always be recorded immediately in the enforcement and stop notice register which LPAs are required, by section 188, to maintain.

3.18 The procedures for service of notices, specified in section 329 of the 1990 Act, apply to the service of a stop notice. In particular, a stop notice should always be identifiable by the recipient as a communication of the first importance. If the notice is served by post, the envelope containing it should clearly state that it is an urgent and important communication; and it should be sent by recorded delivery service.

Use of powers to serve a stop notice

3.19 The effect of serving a stop notice will usually be to halt the breach of control, or the specified activity, almost immediately. LPAs should therefore ensure that a quick but thorough assessment of the likely consequences of serving a stop notice is available (preferably, when the decision is not delegated to officers, in the form of a report submitted by Planning or Enforcement Officers who are thoroughly familiar with the locality and the alleged breach of control) to the Committee or officer who will authorise service of the notice. The assessment should examine the foreseeable costs and benefits likely to result from a stop notice.

Cost/benefit assessment for stop notices

3.20 The costs arising from serving a stop notice will usually be confined to the firm, operator or landowner who is thereby prevented from carrying on the activity prohibited by the notice. There may occasionally be some costs to the local economy. The costs to a firm may vary from having to modify a production process, at little or no additional cost (at one extreme), to the complete cessation of a business (at the other), with consequent loss of jobs, failure to complete contracts, or bankruptcy. The effect of prohibiting a particular activity should always be carefully examined. For example, preventing storage in the open of raw materials or finished products may have an immediate and serious effect upon a production process relying on those raw materials, or on the availability of the storage area for the finished product. Even if the practical effect of the stop notice falls short of disrupting a production process, it may nevertheless add appreciably to a firm's costs, so that the finished product is priced out of its home market, or the firm can no longer compete effectively with other firms in a wider market. Since a stop notice can be directed at any activity specified in the enforcement notice, or any part of an activity, or any associated activity, the LPA should ensure that a stop notice's requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

3.21 Before deciding to serve a stop notice, the LPA's representative should discuss, whenever practicable, with the person carrying on the activity whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally acceptable way. If an acceptable alternative means of production or operation would require the grant of planning permission, in order to carry it on lawfully, the LPA should take the initiative in inviting a planning application. However, since the purpose of a stop notice is to compel the activities specified in it to cease, any delay should be minimised.

3.22 The benefits of serving a stop notice will usually be readily apparent as an improvement in amenity in the neighbourhood. The LPA should consider how many people are likely to benefit, and how adversely their amenities will be affected if a stop notice is not served (on the assumption that the enforcement notice will eventually take effect on expiry of the compliance period specified in it).

3.23 In the High Court's judgment, on 12 October 1994, in the case of **R v Elmbridge Borough Council ex parte Wendy Fair Markets Ltd** ([1995] JPEL, p. B36), the Court considered the need for a cost/benefit assessment in circumstances where a Planning Inspector's appeal decision to uphold an enforcement notice, preventing the continuance of a Sunday market on land in the Green Belt, had been suspended by the appellant's further appeal to the High Court (under section 289 of the 1990 Act). Among other things, the Court held **in this case** that it was not appropriate to carry out a very detailed cost/benefit assessment: it was sufficient that, as a matter of commonsense, the LPA had realised that the stop notice would effectively prevent the operators and traders from continuing with the Sunday market. On the other hand, the LPA had also taken into account the seriousness of the Green Belt objection. The Court concluded that the LPA were entitled not to carry out any more detailed cost/ benefit assessment than the simple exercise they had performed **in this case.**

3.24 How the LPA may be liable for compensation in consequence of a stop notice is explained in paragraphs 3.14 and 3.15 of this Annex.

Effective service of a stop notice

3.25 The validity of a stop notice cannot be challenged on the ground that it has not been served on someone who ought to be served with it. Section 183(6) enables the LPA to serve a stop notice on any person who appears to them to have an interest in the land, or to be engaged in any activity prohibited by the notice. Thus, for example, when an enforcement notice is directed at a breach of planning control involving operations to rebuild a derelict rural dwellinghouse, and the owner of the land cannot be contacted, the LPA may serve the stop notice on anyone who is actually engaged in carrying out the building works prohibited by the notice. Normal administrative practice should be to trace any owner or occupier of the land and arrange for the stop notice to be served on them also.

3.26 A stop notice is not invalid because a copy of the related enforcement notice was not served as required by section 172(2) and (3), if it is shown that the LPA took all such steps as were reasonably practicable to effect proper service.

3.27 The provisions for the public notification of the service or withdrawal of a stop notice are outlined in paragraphs 3.4 and 3.8 of this Annex.

Period in which a stop notice may be served

3.28 Section 183(3) provides that a stop notice may not be served where the related enforcement notice has taken effect. (Section 173(8) requires the LPA to specify the date on which the enforcement notice shall take effect.) However, if there is an enforcement appeal to the Secretary of State, section 175(4) suspends the effect of the enforcement notice until the appeal against it is finally determined or withdrawn. It follows from these provisions that, when there is an appeal against the related enforcement notice, the LPA may serve a stop notice at any time during the currency of the enforcement appeal, including any further appeal, under section 289, to the High Court, unless the enforcement notice was quashed by the Secretary of State on appeal.

Date on which stop notice takes effect

3.29 The LPA must specify in the stop notice the date when it is to take effect. Section 184(3) (as amended) specifies that the effective date must normally not be earlier than 3 days (or later than 28 days) after the date when the notice is served. But, when there are special reasons for specifying an earlier date, a stop notice may take effect before 3 days, or immediately. If the notice is to take effect earlier than three days, a statement of reasons must be served with it. For example, it may be considered essential to protect an area of special landscape value, or a conservation area, from operational development (such as buildings, roadways or other hard surfaces) which, if it continued, would be especially harmful.

Prosecution for an offence

3.30 When a site notice has been displayed for a stop notice, it is an immediate offence for anyone to contravene, or to cause or permit the contravention of, the prohibition in a stop notice, once the stop notice takes effect. When a site notice has not been displayed and the stop notice has been served on a person, it is an offence for that person to contravene, or to cause or permit the contravention of, the prohibition in the stop notice immediately after the stop notice has been served on them. Prosecution for an offence under section 187 is usually in the Magistrates' Court, but may take place in the Crown Court if the Magistrates decline jurisdiction because of the seriousness of the offence, or the defendant elects for jury trial.

3.31 Prosecuting authorities should always be ready to give details, if obtainable, about the proceeds resulting from the offence, so that the Court can take account of them in determining the amount of the fine.

Cautioning alleged offenders

3.32 When investigating the facts, prior to initiating any proceedings, LPAs should have regard to the provisions of sections 66 and 67(9) of the Police and Criminal Evidence Act 1984 with regard to cautioning alleged offenders.

Model stop notice

3.33 A model stop notice is appended to this Annex.

MODEL STOP NOTICE

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

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

STOP NOTICE

SERVED BY: *[name of Council]*

To: *[name of intended recipient of the notice]*

1. On *[date]*, the Council issued an enforcement notice (of which a copy is attached to this notice) alleging that there has been a breach of planning control on *[description of the land to which the notice relates]*.

2. **THIS NOTICE** is issued by the Council, in exercise of their power in section 183 of the 1990 Act, because they consider that it is expedient that the activity specified in this notice should cease before the expiry of the period allowed for compliance with the requirements of the enforcement notice [on the land described in paragraph 3 below]. The Council now prohibit the carrying out of the activity specified in this notice. Important additional information is given in the Annex to this notice.

3. **THE LAND TO WHICH THIS NOTICE RELATES**

Land at *[address of land, or description of relevant part of the land to which the enforcement notice relates]*, shown edged red on the attached plan.

4. **ACTIVITY TO WHICH THIS NOTICE RELATES**

[Specify the activity required by the enforcement notice to cease, and any activity carried out as part of that activity, or associated with it]

5. **WHAT YOU ARE REQUIRED TO DO**

Cease all the activity specified in this notice.

6. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on *[date]* when all the activity specified in this notice shall cease.

Dated: *[date of notice]*

Signed: *[Council's authorised officer]*

On behalf of *[Council's name and address]*

ANNEX

WARNING

THIS NOTICE TAKES EFFECT ON THE DATE SPECIFIED IN PARAGRAPH 6

THERE IS NO RIGHT OF APPEAL TO THE SECRETARY OF STATE FOR WALES AGAINST THIS NOTICE

It is an offence to contravene a stop notice after a site notice has been displayed or the stop notice has been served on you. (Section 187(1) of the 1990 Act). If you then fail to comply with the stop notice you will be at risk of **immediate prosecution** in the Magistrates' Court, for which the maximum penalty is £20,000 on summary conviction for a first offence and for any subsequent offence. The fine on conviction on indictment is unlimited. If you are in any doubt about what this notice requires you to do, you should get in touch **immediately** with *[Council's nominated officer to deal with enquiries, address and telephone number].*

If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.

ENFORCEMENT OF PLANNING CONDITIONS: THE BREACH OF CONDITION NOTICE

Introduction

4.1 Section 187A of the Town and Country Planning Act 1990 ("the 1990 Act") provides for enforcement of a planning condition by the breach of condition notice. This Annex explains how the notice is intended to operate as an alternative method of dealing with this type of breach of control; or, if appropriate, as well as an enforcement notice. It does not apply to breaches of listed building or conservation area control, hazardous substances control or control for protected trees.

The statutory provisions

4.2 The relevant statutory provisions for the breach of condition notice are:-

(1) section 187A of the 1990 Act (inserted by section 2 of the Planning and Compensation Act 1991 ("the 1991 Act"));

(2) sections 171A and 171B of the 1990 Act (inserted by section 4 of the 1991 Act);

(3) section 4(2) of the 1991 Act;

(4) section 180 of the 1990 Act (substituted by paragraph 26 of Schedule 7 to the 1991 Act); and

(5) section 188 of the 1990 Act (as amended by paragraph 30 of Schedule 7 to the 1991 Act).

4.3 There is no right of appeal to the Secretary of State against a breach of condition notice.

Where a breach of condition notice may be used

4.4 The breach of condition notice procedure is applicable where planning permission has been granted (including a grant of permission, on appeal, by the Secretary of State or a Planning Inspector) for carrying out any development of land subject to conditions.

4.5 By virtue of section 187A(13)(a) and (b) of the 1990 Act -

(1) the reference to conditions includes reference to "limitations" which are statutorily imposed by certain of the provisions for "permitted development" rights in article 3 of, and Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418); and

(2) the expression "carrying out any development" includes causing or permitting another person to carry out development.

4.6 The breach of condition notice is mainly intended as an alternative to an enforcement notice for remedying a breach of control arising from failure to comply with any planning condition or limitation. But it may also be served in addition to the issue of an enforcement notice, perhaps as an alternative to a stop notice, where the LPA consider it expedient to stop the breach quickly and before any appeal against the enforcement notice is determined, because, for example, it is causing serious environmental harm, or detriment to amenity or public safety. It is particularly apt for use where a valid planning condition has clearly been breached and the salutary experience of summary prosecution (or the threat of prosecution) seems likely to compel the person responsible to comply with the condition. If there is any legal doubt about the validity of a condition, use of the breach of condition notice procedure is inadvisable.

"Immunity" from breach of condition notice

4.7 Section 171B(3) provides that no enforcement action can be taken against (among other cases) a breach of a planning condition after the end of the period of ten years from the date on which the breach first occurred. In effect, there is a ten-year "immunity" rule applicable to the service of a breach of condition notice (except a condition relating to use as a single dwellinghouse where the period of "immunity" is four years). Thus, assuming the breach has been continuous, any breach of condition which first occurred more than ten calendar years before the date on which the LPA formally recognise its occurrence (eg by notifying their opinion that there has been a breach to the owner or occupier of the land) has perpetual immunity. (This assumes that no enforcement action had previously been taken against it.) An explanation of this and other exceptions to the ten-year rule, as it applies to breach of condition notices, is given in paragraphs 2.4 and 2.5 of Annex 2 to this Circular.

4.8 Additionally, section 180 of the 1990 Act provides that, where planning permission is subsequently granted so as to authorise any activity which is specified in a breach of condition notice as a contravention of a planning condition, or where a condition specified in the notice is discharged, the notice ceases to have effect in so far as it requires anyone to secure compliance with that condition. But section 180(3) also specifically provides that, when a breach of condition notice ceases to have effect, wholly or partly, in these circumstances, any person's liability for an offence of previously failing to comply, or not securing compliance, with the notice is not affected. In other words a person can be prosecuted for a contravention of a breach of condition notice occurring during any period prior to the date when the supervening planning permission is granted or the relevant condition is discharged.

Drafting a breach of condition notice

4.9 The purpose of the breach of condition notice is to require its recipient to secure compliance with the terms of a planning condition, or conditions, specified by the LPA in the notice. Thus one notice may be directed at the contravention of two or more planning conditions. But the offence provisions (section 187A(8) and (9)) relate to any failure to comply with the requirements of the notice after the end of the compliance period specified by the LPA. Accordingly, where one notice is to be directed at the contravention of two or more planning conditions and this would involve specifying more than one compliance period in the same notice, it may be more satisfactory to serve a breach of condition notice for each contravention, so that there is no doubt about which compliance period is applicable in each case.

4.10 Section 187A(5) provides that a breach of condition notice must specify the steps which the LPA consider ought to be taken, or the activities which they consider ought to cease, so as to secure compliance with the conditions specified in the notice. Thus a notice may be -

(1) mandatory (eg to require a landscaping scheme to be carried out and completed in accordance with the terms of a landscaping condition imposed on a grant of permission); or

(2) prohibitory (eg requiring a restaurant, or take-away food shop, to stop opening to customers after the closing time specified in a planning condition).

4.11 A model breach of condition notice is provided in the Appendix to this Annex.

Serving a breach of condition notice

4.12 Section 187A(2) provides that the person on whom a breach of condition notice may be served is -

(a) any person who is carrying out or has carried out the development; or

(b) any person having control of the land.

But section 187A(4) effectively limits the service of a breach of condition notice on any

person having control of the land to the case where the contravened condition (or conditions) regulates the use of the land. Thus, for example, where a developer has carried out residential development subject to a condition (among others) that screen walling or garden fencing be erected, and that condition has been contravened but the individual dwellinghouses have been occupied by owners who now control the land comprising the curtilage of each residence, the breach of condition notice cannot be used against them. Because a condition requiring the erection of walls or fences does not regulate the use of land, the breach of condition notice can only be used against the original developer. (This does not mean that enforcement action may only be taken against the person who carried out the development when this type of breach of condition occurs: provided the breach has not gained immunity from an enforcement action, an enforcement notice may still be issued in order to remedy the alleged breach.)

4.13 By virtue of section 187A(3), any person on whom the LPA serve a breach of condition notice is defined as "the person responsible". The main effect of this provision is that any recipient of a notice will be in breach of the notice if, after the compliance period, any condition specified in it has not been complied with and the steps specified have not been taken or the activities specified have not ceased (section 187A(8)); and that person will be guilty of an offence (section 187A(9)). These provisions make it essential for the LPA, at the outset, to consider and decide in each case who is properly to be regarded as the "person responsible" for an alleged breach of a planning condition. Normally, a breach of condition notice should have only one recipient.

The compliance period

4.14 The breach of condition notice must specify a compliance period within which the "person responsible" must comply, or secure compliance, with the condition to which the notice relates. The period allowed for compliance with the notice is -

(1) a period of not less than 28 days beginning with the date of service of the notice; or

(2) the initial period of 28 days or more, extended by whatever further period the LPA may allow by serving another notice on the person responsible.

LPAs will wish to ensure that the compliance period is commensurate with the requirements of the notice.

Withdrawal of the notice

4.15 Section 187A(6) provides that the LPA may withdraw a notice by serving notice of withdrawal on the "person responsible". But, by virtue of the "second bite" provisions in section 171B(4) (see Annex 2 paragraph 2.5), the LPA's withdrawal of a notice does not affect their power to serve on the person responsible a further breach of condition notice directed at the conditions specified in the earlier notice, or at any other conditions (provided the breach has not gained "immunity" from enforcement action in the meantime). Withdrawal of a notice may take place at any time, including after expiry of the compliance period.

Contravention of the notice

4.16 Section 187A(8)and (9) provide that if, following the end of the period allowed for compliance with the notice, the "person responsible" -

(1) has not ensured compliance with all of the conditions specified in the notice; and

(2) has not ensured that any specified steps have been taken, or any specified activities have ceased.

he or she is in breach of the notice and guilty of an offence (section 187A(9).

Prosecution of offences

4.17 Summary prosecution can be brought in the Magistrates' Court for the offence of contravening a breach of condition notice. The maximum penalty on conviction is a fine not exceeding "level 3" on the standard scale (currently £1,000). As this offence is triable summarily, the provisions of section 127(1) of the Magistrates' Courts Act 1980 apply. There is a six-month limitation period, running from the time when the offence was committed, within which an information must be laid in the Court. This period runs, not from the date on which the offence was *first* committed, but on a continuing basis, so that only so much of the offence as falls within the six-month period can be charged. If, for example, the breach of the notice occurred over a period of three months, and an information is laid five months after the last day on which that breach occurred, only the third (and last) month of the period of the breach will fall within the limitation period and thus be chargeable. An information should therefore always be laid as soon as possible. Each offence is, in effect, a single offence to be charged by reference to any day or longer period. A subsequent offence may be charged by reference to a later period.

4.18 Section 187A(10) provides that an offence may be charged by reference to any day or longer period of time; and a person may be convicted of a second, or subsequent, offence. These provisions enable further prosecutions to be brought where the person responsible has been prosecuted and fined but still fails to comply with the notice. The prosecution's case must always be proved on the criminal standard of proof, "beyond reasonable doubt".

4.19 It is a defence against prosecution for a person charged with an offence under section 187A(9) to prove -

(1) that he took all reasonable measures to secure compliance with the conditions specified in the notice; or

(2) where the notice was served on him as a person having control of the land, that he no longer had control of it when the notice was served on him, by virtue of section 187A(2)(b).

Challenging the validity of a notice

4.20 Although there is no right of appeal to the Secretary of State against a breach of condition notice, the validity of the notice, or the validity of the LPA's decision to serve it, may be challenged by application to the High Court for judicial review; but probably not by way of defence to a prosecution brought by a LPA if the notice is valid on its face, by analogy with the judgment of the Court of Appeal (Criminal Division) in **R v Wicks** [1995] 93 LGR 377. This emphasises the advisability of only using the breach of condition notice where the contravened planning condition is legally valid; satisfies the criteria for the imposition of conditions stated in WO Circular 35/95; and has clearly, on the available evidence, been breached. Failure to make certain that the condition in question is both valid and enforceable, before serving a breach of condition notice, may result in protracted litigation, thus negating this procedure's primary purpose of swiftly achieving compliance with planning conditions and limitations. Where the LPA foresee scope for argument about the interpretation, validity or enforceability of a condition, but nevertheless consider it expedient to take enforcement action, the issue of an enforcement notice may be the more appropriate procedure.

Entry in the enforcement notice and stop notice register

4.21 The provisions of section 188(1)(c) of the 1990 Act (as amended by paragraph 30 of Schedule 7 to the 1991 Act) require the LPA to enter details of each breach of condition notice they serve in a register (together with information about enforcement and stop notices). Article 26 of the Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419) specifies the details which are to be entered in the register in respect of a breach of condition notice.

4.22 A breach of condition notice is not a legal charge on the land and need not, therefore, be entered in the local Land Charges Register. In practice, the existence of the condition is already recorded in registering the grant of planning permission on which it was imposed. Because the notice is directed at an individual (the "person responsible"), it applies to that person rather than to the land, and cannot be enforced against any other person.

APPENDIX TO ANNEX 4

MODEL BREACH OF CONDITION NOTICE

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

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

BREACH OF CONDITION NOTICE

SERVED BY: *[name of Council]*

To: *[name[s] of person[s] responsible for the alleged breach of condition]*

1. **THIS NOTICE** is served by the Council, under section 187A of the above Act, because they consider that *[a condition][conditions]* imposed on a grant of planning permission, relating to the land described in paragraph 2 below, *[has][have]* not been complied with. The Council consider that you should be required to *[comply][secure compliance]* with the condition*[s]* specified in this notice. The Annex at the end of this notice contains important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

Land at *[address of land]*, shown edged red on the attached plan.

3. **THE RELEVANT PLANNING PERMISSION**

The relevant planning permission to which this notice relates is the permission granted by the Council on *[date of issue of permission]* for *[description of development]* Ref *[Council's reference number].*

4. **THE BREACH OF CONDITION**

The following condition*[s] [has][have]* not been complied with:

(1)

(2) *[State the terms of each condition which has not been complied with.]*

(3)

5. **WHAT YOU ARE REQUIRED TO DO**

As the person responsible for the breach*[es]* of condition*[s]* specified in paragraph 4 of this notice, you are required to *[comply][secure compliance]* with the stated condition*[s]* by taking the following steps:-

(1) *[State clearly the steps to be taken in*
(2) *order to secure compliance with the*
(3) *condition[s] in paragraph 4 above.]*

[and] [ceasing the following activities:-]

(1) *[State clearly the activities which must cease*
(2) *in order to secure compliance with the*
(3) *condition[s] in paragraph 4 above.]*

Period for compliance: 30 days beginning with the day on which this notice is served on you. *[Different periods may be specified for each requirement].*

Dated: *[date of notice]*

Signed: *[Council's authorised officer]*

On behalf of: *[Council's name and address]*

ANNEX

WARNING

THIS NOTICE TAKES EFFECT *IMMEDIATELY* IT IS SERVED ON YOU IN PERSON OR ON THE DAY YOU RECEIVED IT BY POST

THERE IS NO RIGHT OF APPEAL TO THE SECRETARY OF STATE FOR WALES AGAINST THIS NOTICE

It is an offence to contravene the requirements stated in paragraph 5 of this notice after the end of the compliance period. You will then be at risk of **immediate prosecution** in the Magistrates' Court, for which the maximum penalty is £1,000 for a first offence and for any subsequent offence. If you are in any doubt about what this notice requires you to do, you should get in touch **immediately** with *[Council's nominated officer to deal with enquiries, address and telephone number].*

If you do need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.

AN INJUNCTION TO RESTRAIN A BREACH OF PLANNING CONTROL

Scope of injunctive proceedings

5.1 Section 187B of the Town and Country Planning Act ("the 1990 Act") (inserted by section 3 of the Planning and Compensation Act 1991 ("the 1991 Act")) enables the LPA, where they consider it expedient for any actual or apprehended breach of planning control to be restrained, to apply to the High Court or County Court for an injunction. An application can be made *whether or not* the LPA have exercised, or propose to exercise, any of their other powers to enforce planning control.

5.2 Similarly, under section 214A of the 1990 Act the LPA may apply for an injunction to restrain an actual or apprehended offence under section 210 (work on trees in contravention of a tree preservation order) or section 211 (prohibited work on trees in conservation areas).

5.3 Paragraph 7 of Schedule 3 to the 1991 Act inserted section 44A into the Planning (Listed Buildings and Conservation Areas) Act 1990. This section corresponds to the provisions of section 187B for the purpose of enforcing listed building control. The advice in this Annex applies equally to injunctions sought under section 44A.

Injunctions under section 222 of the Local Government Act 1972

5.4 It is unlikely that a LPA will need to use section 222 of the Local Government Act 1972 now that section 187B is available; see also **City of London Corporation v Bovis** [1992] 3 AllER 697.

The operation of injunctive proceedings

5.5 It is for the LPA to decide whether to initiate injunctive proceedings. LPAs may find it helpful to consider whether -

(i) they have taken account of what appear to be the relevant considerations, including the personal circumstances of those concerned, in deciding that it is necessary or expedient to initiate injunctive proceedings;

(ii) there is clear evidence that a breach of planning, listed building, or tree control, has already occurred, or is likely to occur, on land in the LPA's area;

(iii) injunctive relief is a proportionate remedy in the circumstances of the particular case;

(iv) in the case of an injunction sought against a person whose identity is unknown, it is practicable to serve the Court's order on the person or persons to whom it will apply.

5.6 Most applications are initiated by Originating Summons in the Queen's Bench Division of the High Court. An injunction may be sought by the LPA in the absence of the person against whom it is sought ("*ex parte*"); or proceedings may take place in which the parties are represented ("*inter partes*").

5.7 To minimise the possibility of incurring wasted costs on abortive proceedings, the LPA will need to make their own best assessment (if necessary, by obtaining Counsel's opinion) of the likely outcome before deciding to initiate proceedings. In assessing the possible costs, the LPA will wish to bear in mind that, if an interlocutory (that is, interim) injunction is granted, the Court may require the authority to give an undertaking in damages which may come into play if the LPA is ultimately unsuccessful at trial (in which the LPA seek a permanent injunction). However, in the light of the House of Lords' approach in **Kirklees MBC v Wickes Building Supplies Limited** [1993] AC 227, it appears unlikely that the Court will require the LPA to give any such undertaking where the LPA is properly exercising its lawful enforcement functions.

5.8 In a judgment given on 7 February 1994, in the case of **Runnymede Borough Council v Harwood** [1994] 1 PLR 22, the Court of Appeal held that section 187B of the 1990 Act empowered the Court to restrain a breach of control by an interlocutory injunction. In granting an interlocutory injunction, the Court may decide to allow a period for compliance or, as in **Hambleton v Bird** [1995] EGCS 67, suspend the injunction (in that case to allow the respondent gipsies to make alternative arrangements).

5.9 In a separate judgment also given on 7 February 1994, in **Croydon London Borough Council v Gladden** [1994] 1 PLR 30, the Court of Appeal held that the power conferred by section 187B of the 1990 Act permitted the granting of a mandatory injunction and was not restricted to prohibitory injunctions (the Court granted a mandatory injunction in that case).

5.10 The decision whether to grant an injunction is always in the absolute discretion of the Court. In **Bovis** (cited in paragraph 5.4) the Court expressed the "essential foundation" for the exercise of discretion as whether it could be inferred that the respondent's unlawful operations would continue unless and until effectively restrained by the law and that nothing short of an injunction would be effective to restrain those operations. This "test" was endorsed in the **Hambleton** case cited in paragraph 5.8.

Persons whose identity is unknown

5.11 Section 187B(3) (which also applies to new section 214A, with corresponding provisions in section 44A of the Listed Buildings Act) effectively enables the Court to grant an injunction against a person whose identity is unknown. Nevertheless, LPAs will need to identify, to the best of their ability, the person against whom the injunction is sought. The following may be used in support of the authority's submission to the Court:-

(1) photographic evidence of the persons concerned;

(2) affidavit evidence sworn by the LPA's officers;

(3) reference to chattels on the land, known to belong to, or be used by, that person (eg a registered motor vehicle); or

(4) other relevant evidence (such as a name by which the person is commonly known, even though it is not their proper name).

When applying to the Court, the LPA will have to provide affidavit evidence of their inability to ascertain the identity of the person, within the time reasonably available, and the steps taken in attempting to do so.

RIGHTS OF ENTRY TO LAND FOR ENFORCEMENT PURPOSES

The statutory provisions

6.1 Sections 196A, 196B and 196C of the Town and Country Planning Act 1990 as amended ("the 1990 Act"), enable LPAs and Justices of the Peace to authorise named officers to enter land specifically for enforcement purposes. This right is limited to what is regarded as essential, in the particular circumstances, for effective enforcement of planning control. The provisions of sections 324 and 325 of the 1990 Act are no longer available for enforcement purposes.

6.2 Section 196A(1) specifies the purposes for which entry to land may be authorised. They are -

(a) to ascertain *whether there is, or has been*, any breach of planning control on the land, or on any other land;

(b) to determine *whether* any of the LPA's enforcement powers should be exercised in relation to the land, or any other land;

(c) to determine *how* any such power should be exercised; and

(d) to ascertain *whether there has been compliance* with any requirement arising from earlier enforcement action in relation to the land, or any other land.

The inclusion of the words "... or any other land" means that, if necessary, neighbouring land can be entered, whether or not it is in the same ownership, or is occupied by the person whose land is being investigated.

6.3 The provisions of section 196A state that there must be "... reasonable grounds for entering [the land] for the purpose in question". This is interpreted to mean that entering the land is the logical means of obtaining the information required by the LPA.

Entering the land

6.4 Section 196C(1) provides that, on entering any land in pursuance of the right of entry, an authorised person:-

(a) shall, if so required, produce evidence of authorisation and state the purpose of entry before entering the land;

(b) may be accompanied by such other persons as may be necessary.

Leaving the land

6.5 Section 196C(1)(c) provides that, on leaving the land, the authorised person shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as it was found.

Wilful obstruction of the right of entry

6.6 Section 196C(2) provides that any person who wilfully obstructs an authorised person acting in the exercise of a right of entry shall be guilty of an offence. The maximum summary penalty for this offence is at "level 3" on the standard scale of penalties, currently £1,000.

Damage to land or chattels in exercising right of entry

6.7 Section 196C(3) provides that if any damage is caused to land (which includes a building) or chattels (for example, machinery, equipment or livestock), compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry. A dispute about the amount of any compensation is to be referred to, and determined by, the Lands Tribunal, in accordance with the provisions of section 118 of the 1990 Act, as applied by section 196C(4) of the 1990 Act.

6.8 As public authorities, LPAs are expected to take every reasonable precaution to ensure that no damage is caused to land or chattels as a result of exercising the right of entry. As their investigations for enforcement purposes will normally be confined to a visual inspection, any consequential damage should be most exceptional.

Entry to agricultural land

6.9 LPAs are reminded that, in the interests of animal and plant health, special precautions are essential when the right of entry to agricultural land is exercised. The additional precautions which *must* be taken before, and when, entering agricultural land are stated in the Appendix to this Annex.

Disclosure of information obtained on entering land

6.10 Section 196C(5) provides that any person who enters any land, in exercise of a right of entry, and discloses to any person any information obtained while on the land, about any manufacturing process or trade secret, shall be guilty of an offence. The maximum summary penalty for this offence is currently £5,000. On conviction of this offence, on indictment in the Crown Court, the penalty is a term of imprisonment not exceeding two years or an unlimited fine, or both.

6.11 It is not an offence under section 196C(5) if the disclosure of information is made by an authorised person in the course of performing their duty in connection with the purpose for which they were authorised to enter the land.

Right of entry to a dwellinghouse

6.12 Entry to a building used as a dwellinghouse cannot be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier. In the case of an industrial or commercial building, (such as a factory or shop), where there is also residential accommodation (such as a caretaker's flat), the requirement to give 24 hours' advance notice applies only to the residential part of the building. However, this advance notice requirement does not apply to the outbuildings or garden land in the curtilage of a dwellinghouse, unless access to them can only be gained by going through the dwellinghouse.

Entry authorised by warrant issued by a Justice of the Peace

6.13 Section 196B(1) provides that, when there are reasonable grounds for entering land for enforcement purposes, if entry is refused, or refusal is reasonably apprehended, or the case is one of urgency, entry by warrant issued by a Justice of the Peace, is possible. Admission to the land shall be regarded as refused if no reply is received to a request for admission within a reasonable period (section 196B(2)). There are three restrictions on the use of a warrant:-

(1) it only authorises entry on one occasion;

(2) the entry must be within one month from the date of issue of the warrant; and

(3) the entry must be at a reasonable hour, unless the case is one of urgency.

Entry to listed buildings

6.14 Sections 88, 88A and 88B of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) effectively provide entry rights for listed building enforcement purposes which are equivalent to planning enforcement powers.

Entry to land for tree preservation enforcement purposes

6.15 Sections 214B, 214C and 214D contain broadly similar rights of entry in respect of protected trees, replacing the former provisions of sections 324 and 325 of the 1990 Act.

6.16 Section 214B(1) specifies the following three purposes for which entry on to land may be authorised by the LPA without a warrant:

(a) surveying the land in connection with making or confirming a tree preservation order;

(b) ascertaining whether an offence under sections 210 or 211 has been committed; or

(c) determining whether a tree replacement notice under section 207 should be served on the owner of the land,

if there are reasonable grounds for entering for that purpose. Entry must take place at a reasonable hour. Twenty-four hours' notice of the intended entry for these purposes does not have to be given to the occupier. But such notice is required if, in the course of exercising these powers, it is intended to enter a dwellinghouse.

6.17 The LPA's entry on to land without a warrant for other purposes related to protected trees, and their power to authorise others to enter in connection with the exercise of their functions (such as determining an application for consent under a tree preservation order, or executing works following non-complicance with a tree replacement notice) is within the general right provided under section 214B(3) of the Act. Twenty-four hours' notice for these purposes must always be given in relation to any occupied land.

6.18 Where entry is required under section 214B(1) (see paragraph 6.17 above) and the case is one of urgency or admission has been refused (or refusal is reasonably expected), entry may be authorised by warrant issued by a magistrate under section 214C(1). A warrant authorises entry on one occasion only within one month from the date of its issue. Furthermore, entry must take place at a reasonable hour, unless the case is one of urgency.

6.19 Supplementary provisions under section 214D include an offence for the wilful obstruction of anyone exercising right of entry, and a power to take tree and soil samples.

ENTRY TO AGRICULTURAL LAND

Animal health

1. When there is an outbreak of serious disease in animals (such as foot-and-mouth disease or anthrax), notices giving warning of the outbreak will be placed strategically by Diseases of Animals Inspectors on the edge of the farmland. This would warn any unexpected or casual visitors (such as a local authority Enforcement Officer) of the dangers and should effectively prevent them entering the land and thus being responsible for spreading the disease. However, there are other instances (such as during a TB/brucellosis outbreak) where there is no requirement to place notices warning of the dangers, but entry to the land could nevertheless cause the spread of disease. LPA officers should therefore contact the MAFF Divisional Veterinary Manager at the local Animal Health Office to check that there are no animal health movement restriction orders in force (or other animal health problems) on the farm they intend to visit.

Plant health

2. Similarly, where there exist pests and diseases seriously affecting plants, access to land may be strictly controlled under the Plant Health (Great Britain) Order 1993. With soil-borne diseases, there is a distinct risk that infested soil could be spread on footwear to an unaffected part of the farm or even to another location. LPA officers *should not* rely on a sign being present on such land and should instead make enquiries with the local MAFF or WOAD Divisional Office, so that a check can be made with the local Plant Health and Seeds Inspectorate that there is no plant health restriction in force on the land to be visited.

CONTROL OF DEVELOPMENT ON CROWN LAND

Introduction

7.1 The Planning and Compensation Act 1991 ("the 1991 Act") did not amend the provisions of sections 294 and 295 of the Town and Country Planning Act 1990 ("the 1990 Act") which apply to development on Crown Land, otherwise than by or on behalf of the Crown, at a time when no person is entitled to occupy it by virtue of a private interest. An example of such development is the stationing of a mobile snack bar or refreshment van on a trunk road lay-by.

"Special enforcement notice"

7.2 Where it appears that such development has taken place on or after 12 April 1984 (the date these provisions came into effect by virtue of the Town and Country Planning Act 1984), the LPA are empowered by the provisions of section 294(3) of the 1990 Act to issue a "special enforcement notice", if they consider it expedient to do so, having regard to the provisions of the development plan and to any other material considerations. Section 294(4) requires the consent of the appropriate authority (defined in section 293) before issuing the notice. Government Departments and other Crown bodies do not unreasonably withhold their consent where the land is being occupied without their written permission.

What the notice must specify

7.3 Section 294(5) requires the notice to specify the matters alleged to constitute development and the steps required by the LPA to be taken for restoring the land to its previous condition, or for discontinuing any use instituted by the development. Section 294(6) requires the notice to specify the date on which it is to take effect and the period within which the required steps are to be taken. Different periods may be specified for the taking of different steps (section 294(7)).

Service of the notice

7.4 A copy of the notice must be served on the person alleged to have carried out the development (unless, after reasonable enquiry, the LPA are unable to identify or trace him or her), on any person occupying the land when the notice is issued, and on the Crown body. The copies have to be served not later than 28 days after the notice is issued and not later than 28 days before it takes effect (section 295(1) and (2)).

Right of appeal against the notice

7.5 Section 295(3) gives the person alleged to have carried out the development and any person occupying the land - whether or not they have been served with a copy of the notice (section 295(4)) - the right to appeal to the Secretary of State. An appeal can only be made on the grounds that the matters alleged in the notice have not taken place, or do not constitute development to which section 294 applies. For example, an appellant might argue that the development took place before 12 April 1984; that the land is not Crown land; that there is a private interest in the land; or that the matters alleged in the notice did not involve development of the land. The planning merits of the development are irrelevant in such an appeal.

Procedures

7.6 Section 295(5) provides that the provisions contained in, or having effect under, sections 174(3) to (5), 175(1) to (4) and 176(1) to (4) shall apply to special enforcement notices and appeals against them; and subsection (6) enables the Secretary of State, by Regulations, to apply other provisions of the 1990 Act. These Regulations are the Town and Country Planning (Special Enforcement Notices) Regulations 1992 (SI 1992/1562).

7.7 In view of the limited grounds of appeal against a special enforcement notice, the Secretary of State does not intend to apply formally to special enforcement notices and appeals the relevant provisions in the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1991 (SI 1991/2804) and the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992 (SI 1992/1903), which relate to ordinary enforcement notices issued under section 172 of the 1990 Act and enforcement appeals. Instead, the Department will process appeals in accordance with those provisions, so far as practicable, as though they applied to special enforcement notices, and will expect LPAs and appellants to respond accordingly. In particular, LPAs are requested to enclose appeal forms and "Notes for Appellants" with every copy of a special enforcement notice they serve.

7.8 A model special enforcement notice and the text of "Notes for Appellants" are provided in Appendix 1 to this Annex. Copies of the Notes and appeal forms are obtainable, if required, from the Planning Inspectorate, Crown Buildings, Cathays Park, Cardiff CF1 3NQ, telephone 01222 825670 or facsimile 01222 825150.

7.9 A flow chart, indicating possible enforcement routes for LPAs to consider in respect of development on Crown Land, is contained in Appendix 2 to this Annex.

MODEL SPECIAL ENFORCEMENT NOTICE

TOWN AND COUNTRY PLANNING ACT 1990

SPECIAL ENFORCEMENT NOTICE

ISSUED BY: *[name of Council]*

To: *[Name of person alleged to have carried out the development]*
[Name[s] of person[s] occupying the land when the notice is issued]
[Name of appropriate authority]

1. **THIS NOTICE** is issued by the Council in exercise of their powers in section 294 of the above Act [with the consent of the appropriate authority] because it appears to them that development of Crown land has been carried out, within paragraph (2) of section 294 of the Act, at the land described in paragraph 2 below. They consider that it is expedient to issue this notice (a "special enforcement notice"), having regard to the provisions of the development plan and to any other material considerations. The Annex at the end of the notice contains important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

Land at *[address of land]*, shown edged red on the attached plan.

3. **THE MATTERS ALLEGED TO CONSTITUTE DEVELOPMENT OF THE LAND**

Development, consisting of *[describe development which has taken place]*, otherwise than by or on behalf of the Crown, at a time after 11 April 1984 when no person is entitled to occupy the land by virtue of a private interest (including a licence in writing).

4. **REASONS FOR ISSUING THE NOTICE**

[Reasons why the Council consider it expedient to issue the special enforcement notice]

5. **WHAT YOU ARE REQUIRED TO DO**

[Specify the steps required to [restore the land to its condition before the development took place] [discontinue any use of the land which has been instituted by the development]]

Time for compliance: *[Specify number of days/months after the date on which the notice takes effect]*

6. **WHEN THIS NOTICE TAKES EFFECT (SPECIFIED DATE)**

This notice takes effect, subject to the provisions of section 175(4), as applied by section 295(5) of the Act, on *[specific date, not less than 28 clear days after date of service]*, unless an appeal is made against it beforehand.

Dated: *[Date of issue]*

Signed: *[Council's authorised officer]*

On behalf of *[Council's name and address]*

MODEL NOTES FOR APPELLANTS

Your attention is drawn to the fact that any person who:-

(a) carried out the development alleged in this notice, or

(b) was occupying the land on the date on which this notice was issued,

(whether or not they have been served with a copy of this special enforcement notice) may, at any time before the date specified in this notice as the date on which it is to take effect, appeal against the notice to the Secretary of State for Wales on the ground that the matters alleged in the notice:-

(a) have not taken place, or

(b) do not constitute development to which section 294 applies.

This is the only available ground of appeal. Although the special enforcement notice may contain a statement of the local planning authority's reasons why they consider it expedient to issue the notice, which will be reasons related to the "planning merits" of the development (such as detriment to amenity, traffic flow or highway safety) this is merely informative. Issues of planning merit or financial hardship are not relevant in any appeal against the notice and will not be taken into account by the Secretary of State.

The only relevant issues in any appeal are:

(1) whether the land is in fact Crown Land which no person is entitled to occupy by virtue of a private interest (including a licence in writing from the appropriate authority);

(2) whether the matters alleged in the notice have, in fact, occurred;

(3) whether, if the matters have occurred, they did so before 12 April 1984; and

(4) whether the matters constitute development of the land.

The terms "Crown land", "private interest" and "the appropriate authority" are defined in section 293 of the Act.

"Development" is defined in section 55.

IT IS MOST IMPORTANT, if you wish to appeal against the notice on the ground available, that you ensure your appeal is received by the Department, or is posted in time to be received in the ordinary course of post, **BEFORE** the date specified in the notice as the date on which it is to take effect. The Secretary of State has no discretion whatever to accept an appeal submitted on or after the specified date.

The best way to appeal is to complete the appeal forms which should have been enclosed by the local planning authority when they served a copy of the notice on you. If you have not got, and cannot quickly obtain, a form, you should appeal by way of a letter, stating your full name and address, the name and address of the local planning authority involved, and giving a brief description of the land. When you have completed your appeal form, or if you are appealing by letter, send it by first-class post to:-

The Planning Inspectorate
Crown Buildings
Cathays Park
Cardiff CF1 3NQ
Fax: 01222 825150
Mark the envelope "Special enforcement notice appeal".

The full text of sections 294 and 295 of the Town and Country Planning Act 1990 is reproduced below. Copies of the Act are available from The Stationery Office Bookshops. Alternatively, you may be able to see it at your local Council offices or public library.

294. -

(1) No enforcement notice shall be issued under section 172 in respect of development carried out by or on behalf of the Crown after 1st July 1948 on land which was Crown land at the time when the development was carried out.

(2) The following provisions of this section apply to development of Crown land carried out otherwise than by or on behalf of the Crown at a time when no person is entitled to occupy it by virtue of a private interest.

(3) Where -

(a) it appears to a local planning authority that development to which this subsection applies has taken place in their area, and

(b) they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations,

they may issue a notice under this section (a "special enforcement notice").

(4) No special enforcement notice shall be issued except with the consent of the appropriate authority.

(5) A special enforcement notice shall specify -

(a) the matters alleged to constitute development to which this section applies; and

(b) the steps which the authority issuing the notice require to be taken for restoring the land to its condition before the development took place or for discontinuing any use of the land which has been instituted by the development.

(6) A special enforcement notice shall also specify -

(a) the date on which it is to take effect ("the specified date"), and

(b) the period within which any such steps as are mentioned in subsection (5)(b) are to be taken.

(7) A special enforcement notice may specify different periods for the taking of different steps.

295. -

(1) Not later than 28 days after the date of the issue of a special enforcement notice and not later than 28 days before the specified date, the local planning authority who issued it shall serve a copy of it -

(a) on the person who carried out the development alleged in the notice;

(b) on any person who is occupying the land when the notice is issued; and

(c) on the appropriate authority.

(2) The local planning authority need not serve a copy of the notice on the person mentioned in subsection (1)(a) if they are unable after reasonable enquiry to identify or trace him.

(3) Any such person as mentioned in subsection (1)(a) or (b) may appeal against the notice to the Secretary of State on the ground that the matters alleged in the notice:-

(a) have not taken place, or

(b) do not constitute development to which section 294 applies.

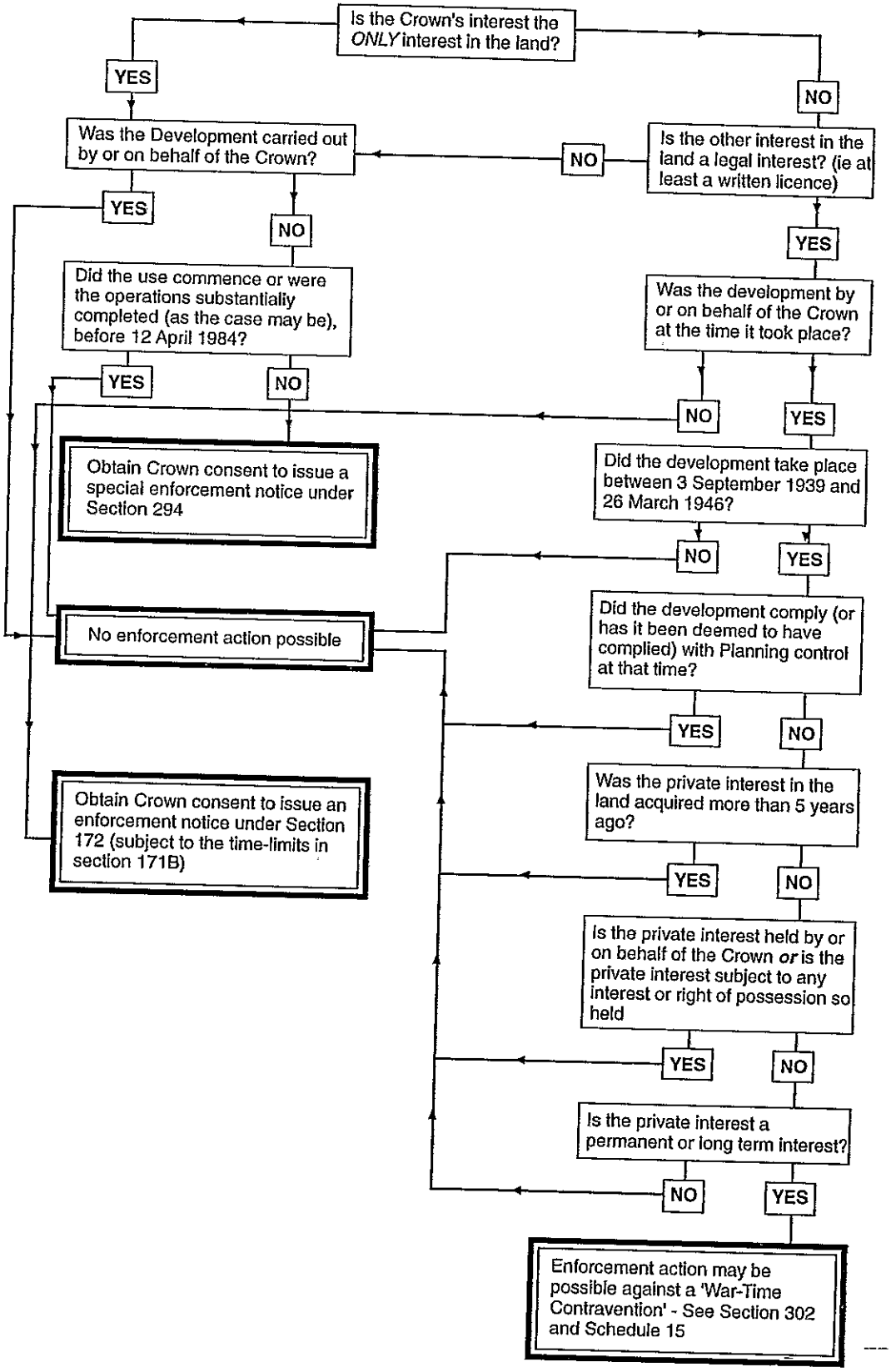
(4) A person may appeal against a special enforcement notice under subsection (3) whether or not he was served with a copy of it.

(5) The provisions contained in or having effect under sections 174(3) to (5), 175(1) to (4) and 176(1) to (4) shall apply to special enforcement notices issued by local planning authorities and to appeals against them under subsection (3) as they apply to enforcement notices and to appeals under section 174.

(6) The Secretary of State may by regulations apply to special enforcement notices and to appeals under subsection (3) such other provisions of this Act (with such modifications as he thinks fit) as he thinks necessary and expedient.

The Secretary of State has made regulations under section 295(6) (formerly section 3(8) of the Town and Country Planning Act 1984) entitled the Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562. These Regulations also apply, with necessary modifications, to sections 173(10), 173A, 175(5), 179, 180, 181, 183, 184, 186, 187, 188, 285(1) and (2), 289 and 322 of the 1990 Act, as amended by the Planning and Compensation Act 1991, to special enforcement notices and appeals against such notices.

Crown Land - possible enforcement routes under the Town and Country Planning Act 1990



ANNEX 8

LAWFULNESS AND THE LAWFUL DEVELOPMENT CERTIFICATE

Introduction

8.1 In this Annex "the 1990 Act" (except where it is qualified by "as originally enacted") means the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1991 Act").

8.2 Sections 191 and 192 of the 1990 Act provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:-

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of **existing** operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of **proposed** operations on, or use of land.

A LDC has no function in determining whether consent may be required under other legislation such as the Planning (Listed Buildings and Conservation Areas) Act 1990.

Lawfulness for planning purposes

8.3 By virtue of section 191(2), *uses and operations* are "lawful" if no enforcement action may be taken against them **and** they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), *a failure to comply with any condition or limitation subject to which planning permission has been granted* is "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force. Development or other activity on land is lawful for planning purposes if it is within one of the following categories **and** does not involve a failure to comply with a condition or limitation subject to which planning permission has been granted:-

(1) it is not within the definition of "development" in section 55(1) and (1A) of the 1990 Act. (This might be because it is so insignificant that it can be disregarded (a "de minimis" operation, use or activity); or because it involves a change of use which is not, as a matter of fact and degree, materially different, for planning purposes, from a previous lawful use of land.); or

(2) it is specifically excluded from the definition of development by section 55(2) (for example, a use of land for the purpose of "agriculture"); or

(3) it is within the definition of "development" in section 55, but is exempted from the need for planning permission by the provisions of section 57; or

(4) it benefits from an extant grant of planning permission under Part III of the 1990 Act (or the equivalent Parts of preceding Acts); or

(5) it benefits from a general planning permission granted by the Town and Country Planning (General Permitted Development Order) 1995 (SI 1995/418), or by a simplified planning zone or enterprise zone scheme; or

(6) it benefits from deemed planning permission, whether under section 90 or by virtue of compliance with the requirements of an effective enforcement notice; or

(7) it took place before 1 July 1948 (the "appointed day" for the Town and Country Planning Act 1947); or

(8) it is development by or on behalf of the Crown; or

(9) the time for taking enforcement action has expired.

"Taking enforcement action" is defined in section 171A of the 1990 Act. It is the issue of an enforcement notice or the service of a breach of condition notice. The section also defines a "breach of planning control" (against which it is possible to take enforcement action) as the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.

8.4 A breach of planning control becomes "immune" from planning enforcement action if no such action has been taken within certain time-limits. By virtue of section 191(2) and (3) of the 1990 Act, a breach of planning control which has obtained immunity by the passage of time also becomes "lawful" for planning purposes, as explained in paragraph 8.3 above.

8.5 As explained in paragraphs 2.4 and 2.5 of Annex 2 to this Circular, section 171B of the 1990 Act specifies the time-limits for taking enforcement action.

8.6 Guidance on interpretation of the terms "substantially completed" and "use as a single dwellinghouse", where they are used in relation to the time-limits, is given in paragraphs 2.80 and 2.81 of Annex 2 to this Circular.

8.7 The combined effect of these provisions is that if the development or activity was, on or after 27 July 1992, immune from enforcement action it also became lawful for planning purposes. This applies whether or not a LDC has been issued under sections 191 or 192 of the 1990 Act. There is no compulsion to apply for a LDC, though obtaining a LDC or grant of planning permission is a prerequisite to an application for any of the licences referred to in paragraph 8.24 below.

Application for a LDC

8.8 Article 24(1) to (4) of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419,("the GDPO"), specifies the contents of an application and how it should be made. Applications must be submitted to the LPA in writing. Although no application form is prescribed in the GDPO, model application forms, which LPAs may like to use, are appended to this Annex.

8.9 There are two kinds of application:

(1) subsection (1) of section 191 provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes; and

(2) subsection (1) of section 192 provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

The application fee

8.10 A statutorily prescribed fee is payable to the LPA in respect of most LDC applications. The enabling primary legislation is section 303 of the 1990 Act. The fee level is set by the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (SI 1989/193) as amended by SI 1992/1817, SI 1993/3170 and SI 1997/37. There is no discretion on the amount charged, although there are some concessions. Further information is in Appendix 2 of the Annex to WO Circular 73/92. An interim concession (one-half of the relevant fee) for an application in respect of an existing use supported by an "established use certificate" has now been withdrawn.

Determination of applications - general

8.11 It is important to keep in mind the purpose of the provisions. They enable owners and others to ascertain whether *specific* uses, operations or other activities are or would be lawful. But they do not enable anyone to ask the general question, "what is or would be lawful?" For this reason, the applicant must precisely describe what is being applied for - as required by section 191(1) or 192(1) of the 1990 Act and Article 24(1) of the GDPO.

It is insufficient for the applicant merely to specify one of the "use classes" in the Schedule to the Town and Country Planning (Use Classes) Order 1987 ("the UCO"). Occasionally a vendor of property may make a section 192 application and seek to describe the proposed activity in this way. For example, a building may be used as offices (other than Class A2) and the application describes the proposal as "use as offices within Class B1". Invariably the real reason for the application proves, on initial examination by the LPA, to be the need to establish whether the existing use is lawful: and it becomes clear that the application should have been made under section 191. If the application was nevertheless accompanied by the information required by Article 24(1) in respect of a section 191 application, it can be determined as such, although the applicant should of course be first informed that the LPA are proposing to treat the application in this way. Once satisfied that the application is valid, what the LPA must address when reaching their determination is whether, on the facts of the case and relevant Planning Law, the specified matter is or would be lawful.

The onus of proof in an application

8.12 The onus of proof in a LDC application is firmly on the applicant. While the LPA should always co-operate with an applicant seeking information they may hold about the planning status of land, by making records readily available, they need not go to great lengths to show that the use, operations, or failure to comply with a condition, specified in the application, is, or is not, lawful. While LPAs are statutorily required to maintain the planning register, this is not a complete record of the planning status of all land in their area. In many cases, the applicant for a certificate will be best placed to produce information about the present, and any previous, activities taking place on the land, including a copy of any planning permission he may hold. Some information, especially about the history of any unauthorised activity on the land, will be peculiarly within the applicant's knowledge. The fact that a LDC may be refused because the onus of proof is not discharged by the applicant does not preclude the submission of a further application if better evidence is subsequently available. A refusal to issue a LDC is therefore not necessarily conclusive that something is not lawful: it may merely mean that, so far, insufficient evidence has been presented to satisfy the LPA that the use, operation or activity is lawful. For this reason, it is pointless for third parties to pursue objections to activities by making LDC applications

Application for a LDC in respect of existing operations, uses or activities (section 191)

8.13 Section 191(1) of the 1990 Act enables anyone to apply to the LPA for a decision whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.

8.14 Subsection (4) of section 191 provides that if, on an application under the section, the LPA are provided with information satisfying them of the lawfulness, at the time of the application, of the use, operations or other matter described in the application, or that description as modified by the LPA or a description substituted by them (see paragraph 8.35 below), they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

The relevant test of the submitted evidence

8.15 In appeals to the Secretary of State which raise "legal issues" (for example, enforcement appeals on grounds (b) to (e) in section 174(2)), where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see - **F W Gabbitas v Secretary of State for the Environment and Newham LBC** [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on

the balance of probability". The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

The content of a LDC under section 191

8.16 Subsection (5) of section 191 provides for certain matters a LDC must contain. The LDC is particularly valuable because its effect is similar to a grant of planning permission. It is therefore vital that the certificate indicates precisely the area of land to which it relates (normally by means of an attached, scaled site-plan); precise details of what use, operations or failure to comply with a condition are found to be lawful, why, and when. For example, if a certificate is for a use of land - unless the use falls within one of the "use classes" specified in the UCO current at the time, or the certificate is granted on the basis that a specific grant of planning permission confers lawfulness on the use - it is important for it to state the limits of the use at a particular date. These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference, specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies, or changes in some way to the point where a "material" change of use takes place, the LPA may then take enforcement action against that subsequent breach of planning control (which a less precise certificate might well preclude). A LDC must therefore be precisely drafted in all respects. (See also 8.11 about the need for applications to be specific.)

8.17 By virtue of section 191(5)(b), a LDC must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a "use class" of the UCO. But where within a "use class", a LDC must also specify the relevant "class". In all cases the description must be more than simply a title or label, if future interpretational problems are to be avoided. The LDC should therefore state the characteristics of the matter so as to define it unambiguously. This is particularly important for uses which do not fall within any "use class" (that is, a "sui generis" use). So for example a LDC for a caravan site might typically include the number and type or size of caravan *found to be lawful at the application date* and, where the use is seasonal, the calendar dates on which the use then took place.

8.18 Paragraph 8.16 above explains, in principle, why so much detail may need to be provided, first by the applicant when applying for the LDC, and then in the certificate itself. Some further illustration may be helpful to LPAs and prospective applicants.

8.19 One obvious example requiring such detail would be the case of an unauthorised building substantially completed more than four years ago and in respect of which a LDC is sought. The application, and any LDC, should identify the location and form of that building (which may be on a site with a number of similar buildings) with sufficient precision to ensure that it cannot be confused with **any** other building on the site, either at the application date or in future. This minimises the possibility of its being confused with any new building which might subsequently replace it in the same position on the site. Identification will usually best be in the form of a scaled plan or plans and whatever additional descriptive material is necessary to describe the building's siting, design and appearance, including accurate drawings of the building's elevations.

8.20 Equally, a LDC for a vehicle park, used in the past only for parking motor cars, should specify that limitation (assuming the LDC derives from ten years' unauthorised use rather than from a planning permission). Then, if the land is subsequently used for parking articulated lorries or coaches, which might have such an impact on amenity of the surrounding area, in planning terms, that a "material" change in the character of the use occurs, the LPA would be able to control it.

8.21 It is generally accepted that any "sui generis" use which is not in a "use class" in the UCO, such as a builder's yard or many haulage depots, can be "materially" different in planning terms from another use which nevertheless falls within the same general description. In other words, there can be a "material" change of use requiring planning permission between, for

example, one builder's yard use, or a particular use as a haulage depot, and another. A change of ownership or occupation of land does not, in itself, constitute a material change of use. However, where a builder's yard has only in the past been used by a small jobbing builder for his office, and as a base for one or two vehicles and storing building materials, unless that detail and level of use are specified in the certificate (or by condition or limitation in a permission on which the LDC is based), the LPA will lack effective control in future over any significant intensification of the use (perhaps by a building contractor who introduces the storage of heavy plant and machinery, the mixing of concrete and the manufacture of joinery items on to the land). Such an intensification, though arguably constituting a "material" change of use from the former use, could not be controlled if the site benefited from a LDC which stated that it was lawfully "a builder's yard", without further qualification.

8.22 Where a LDC is granted for one use on a "planning unit" which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use if it extends to the whole of the land comprising the planning unit, to the exclusion of the other uses formerly taking place on some of the land (see **Wipperman v Barking LBC** [1965] 17 P&CR 225).

The effect of a LDC under section 191

8.23 Subsection (6) of section 191 provides that the lawfulness of any matter for which a certificate is in force under this section shall be conclusively presumed because, once a LDC is issued, it is important that nobody should be able to "look behind" it to question whether what appears on its face is valid. **The statement in a LDC of what is lawful relates only to the state of affairs on the land at the date of the certificate application.** As explained above, if, after a certificate has been issued, development is carried out on the land in breach of planning control, the LPA should be able to take whatever enforcement action may be expedient.

8.24 Section 191(7) provides that, in certain cases, the grant of a LDC is equivalent to a grant of planning permission for obtaining a licence required by licensing régimes enacted in other legislation. Currently these cases are an application for:-

(1) a caravan site licence under section 3 of the Caravan Sites and Control of Development Act 1960; and

(2) a waste management licence issued by the Environment Agency under section 36 of the Environmental Protection Act 1990.

Application for a LDC in respect of proposed operations, uses or activities (section 192)

8.25 The purpose of subsection (1) of section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose.

8.26 Subsection (2) of section 192 is the counterpart, for proposals, to section 191(4) described in paragraph 8.14 above. It provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application. The burden of proof is firmly on the applicant. He will have to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission he wishes to make to satisfy the LPA that a LDC should be granted for the proposal. Where a proposed change of use is involved, it will be necessary to describe the present, or last, use of the land; and, where the lawfulness of that use is being relied upon to pave the way to implementing the proposed use, provide sufficient information to satisfy the LPA of the lawfulness of the existing use (having regard to the criteria in paragraph 8.16 above for deciding what is lawful).

8.27 In making their decision on an application under section 192, the LPA will ask themselves the hypothetical question - "If this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?". In doing so, they will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land.

A LDC granted under section 192

8.28 Subsection (3) of section 192 is the counterpart, for proposed uses or operations, of section 191(5). It provides that a LDC granted under section 192 shall specify the land to which it relates; describe the use or operations in question (where appropriate, identifying a use by reference to the relevant "use class"); give the reason why carrying out the proposal would be lawful; and specify the date of the application. Although this certificate would not be the equivalent, in law, of a grant of planning permission for proposed development, it will indicate that, unless any relevant factor has changed since the application date specified in the certificate, it would be lawful to proceed with the proposal. It is therefore vital to ensure that the terms of the certificate are precise and there is no room for doubt about what is lawful at a particular date.

The effect of a LDC granted under section 192

8.29 Subsection (4) of section 192 provides that the lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

8.30 Obvious examples of such a change would be a direction under article 4 of the GPDO taking away the particular "permitted development" right, in Schedule 2 to the GPDO, on which the proposal would have relied for its lawfulness; or revocation of the planning permission on which the proposal relies; or a statutory amendment to the "permitted development" rights in the GPDO itself. However, provided the circumstances and the statutory provisions remain unchanged between the application date specified in the LDC and the date the proposed use is instituted or the operations are begun, the change of use remains lawful, or the operations are lawful, and may lawfully be completed, as the case may be.

The effect of an existing "established use" certificate, issued under section 194 or 195 of the Act as originally enacted, and conversion to a LDC

8.31 There is no compulsion to convert an existing "established use" certificate (EUC) into a LDC. An EUC is a potentially less valuable document than a LDC. Nevertheless, it retains its former value, as described in section 192(4) of the 1990 Act as originally enacted. In brief, it is conclusive as respects any matters stated in it for the purpose of an appeal against any enforcement notice which is issued after the date specified in the certificate. It is not conclusive of anything which may have occurred on the land since the date specified in the certificate. Thus, where there has been a further material change of use, or abandonment of the "established use", since that date, the use described in the EUC may no longer be "immune" from enforcement action, or now lawful. For this reason, while they do not need to "look behind" any EUC submitted in support of an application to "convert" an EUC into a LDC (and in most cases this should considerably reduce the LPA's administrative costs in considering such applications), the LPA will need to satisfy themselves that the "established use" cited in the certificate has continued to subsist on the land without any "material" change before issuing a LDC for the same use. Moreover, as with any LDC application, it may be necessary, and perfectly proper, for the LPA to describe the use more precisely in the LDC than in the EUC which preceded it.

8.32 For these reasons, while the effect and value of an existing EUC remain unchanged, EUCs have no effect "for the purposes of section 191" of the 1990 Act, as amended. An application to "convert" an EUC to a LDC must be made like any other LDC application.

Supplementary provisions: applications under sections 191 and 192

8.33 As indicated in the preceding paragraphs, article 24 of the GDPO, provides for the way in which LDC applications are to be made and dealt with, and the matters to be contained in applications and certificates. Section 193 of the 1990 Act specifies these arrangements and contains supplementary provisions, as well as the enabling power for the GDPO.

8.34 The GDPO provides for the LPA to be able to direct the applicant to provide information necessary to process and determine the application. There is no requirement for a LDC application, under either section 191 or section 192, to be accompanied by a certificate under sections 66 or 67 of the 1990 Act. This is because the matters to be determined in both cases are solely matters of evidential fact and Planning Law, with the burden of proof on the applicant. Anyone, other than the applicant, with an interest in the land, or the neighbours of a site, may have evidence which is relevant to the application. If that evidence supports the application, it is up to the applicant to produce it, if he is able to do so, in support of his case. If it might tend to disprove the case, the applicant risks prosecution, and revocation of any LDC granted, if he withholds it (see paragraphs 8.38 and 8.40 below). Nevertheless, if the LPA consider that a person with a legal interest in the land or a neighbour may be able to disprove a claim made in an application, it is open to them to canvass that evidence, if they wish, before determining the application. To minimise bureaucratic procedure in deciding a LDC application, there is no statutory requirement to consult community councils. Although it may be reasonable for the LPA to seek evidence from these sources if there is good reason to believe they possess relevant information about a specific LDC application, they should not be routinely consulted in other cases. However, any views on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant. (As explained in paragraphs 8.15 and 8.45, planning merits are not considered at any stage in the LDC application or appeal process: there is no "deemed application for planning permission" if a LDC is not granted on appeal.)

8.35 Subsection (4) of section 193 provides for a LDC to be issued in respect of all or part of the land specified in the application and, where the application specifies two or more matters, in respect of all, or some one, or more of them; and to be in such form as may be prescribed by a development order. This is intended, along with the LPA's power under section 191(4) to issue a certificate of a different description from that applied for, to give the LPA a reasonable degree of flexibility in cases where it would be helpful to the applicant to receive a certificate in terms which may differ slightly from the terms of his application, as an alternative to refusing a certificate altogether. For example, a lesser area of land may be included. The GDPO contains a prescribed form of LDC for use under both sections 191 and 192. The prescribed form explains its effect. Where necessary, the LPA should include on the form, for each type of certificate, the degree of descriptive detail mentioned in paragraph 8.17 above. Where appropriate, this could be supplemented by including a cross-reference to the terms of the application and accompanying plans or drawings, for example by issuing a certificate in respect of a use of land "as more particularly described in" or "in accordance with" the terms of the submitted application. Alternatively, the description in the LDC might be more detailed than in the application.

8.36 Subsection (5) of section 193 provides that a LDC granted under section 191 or 192 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, unless that matter is described in the certificate. This means that, in any case where a LDC is granted on the basis that there is an extant planning permission for the development, the fact that the LDC certifies that development to be lawful, does not mean that it can lawfully take place without complying in future with any conditions or limitations imposed on that grant of permission, except to any extent specifically described in the LDC. Unspecified existing or future breaches will not be covered by the LDC. For example, if the planning permission was subject to a number of conditions, a LDC granted in respect of a breach of one of them could not be regarded as legitimising breaches of any of the others. Moreover, it is possible to breach some individual conditions in different ways. It is the *matter* constituting the failure to comply with the condition, rather than the condition itself, which the LDC should, where appropriate, describe. If a condition prohibiting open storage on a site has been breached for more than ten years, for example by storing materials in the open on a particular part of the site, the LDC should describe the extent of the breach which has become lawful. Such a certificate would not then cover a future breach of the condition involving open storage on a different part of the site from that described in the LDC.

Entry in the planning register

8.37 By virtue of subsection (6) of section 193, provision has been made in article 25 of the GDPO for LDC applications and decisions to be entered in the planning register, in accordance with section 69 of the 1990 Act.

Revocation of certificates

8.38 Subsections (7) and (8) of section 193 provide that a LPA may revoke a LDC granted under section 191 or 192 if, on the application, a statement was made, or document used, which was false in a material particular; or any material information was withheld; and that the development order may provide for regulating the manner in which a LDC may be revoked and the notice to be given of such revocation.

8.39 These powers are available for use where it becomes clear that a LDC has been erroneously based on a false statement, or that relevant information was withheld from the LPA when they considered the application. As it is clearly a serious matter for the applicant to have a LDC revoked, article 24(12) to (14) of the GDPO provides a statutory procedure which LPAs should follow in giving notice of revocation and carrying out the revocation. No compensation is payable in the event of revocation. The decision whether to revoke a LDC is entirely for the LPA, even when the LDC has been granted by the Secretary of State. If they propose to revoke a certificate, they must give notice of their proposal, thus providing an opportunity for the recipients to make representations before the LPA make their decision. Although the circumstances in which a LDC may be revoked are statutorily limited, by section 193(7), to those explained in paragraph 8.38 above, revocation does not necessarily depend on the commission of an offence, as described in paragraph 8.40 below, because the offence provisions also require evidence that somebody has acted knowingly, recklessly or with intent to deceive. Although there is no right of appeal to the Secretary of State against the LPA's decision to revoke a LDC, the validity of the decision may be challenged by application to the High Court for judicial review in accordance with the provisions of Order 53 of the Rules of the Supreme Court. Moreover, there is nothing to prevent a further LDC application being made, following revocation of an earlier LDC. If a LPA behave "unreasonably" in revoking a certificate and refusing to grant a fresh LDC upon re-application, they may well be at risk of a successful application for costs against them in the event of a subsequent LDC appeal to the Secretary of State, under section 195 (see paragraphs 8.42 to 8.48 below).

Offences

8.40 Section 194 provides that if any person, for the purpose of procuring a particular decision on an application (whether by the applicant or another) for a LDC under section 191 or 192, knowingly or recklessly makes a statement which is false or misleading in a material particular; or, with intent to deceive, uses any document which is false or misleading in a material particular, or withholds any material information, that person is guilty of an offence which is "triable either way". On summary conviction in the Magistrates' Court, the penalty is a fine not exceeding the statutory maximum (currently £5,000). On conviction on indictment in the Crown Court, the convicted person is liable to imprisonment for a term not exceeding two years, or to an unlimited fine, or both.

Cautioning alleged offenders

8.41 When investigating the facts prior to initiating any proceedings, LPAs should have regard to the provisions of sections 66 and 67(9) of the Police and Criminal Evidence Act 1984 with regard to cautioning alleged offenders.

Right of appeal to Secretary of State

8.42 Sections 195 and 196 of the 1990 Act provide a right of appeal to the Secretary of State, following an unsuccessful application under section 191 or 192. Only the applicant may appeal.

8.43 An appeal may be made against the LPA's refusal, partial refusal or deemed refusal to issue a LDC. By virtue of substituted section 195(4), a partial refusal of an application includes a modification or substitution of the description in the application (see section 191(4) described in paragraph 8.14 above).

8.44 Appeal forms are available, on request, from the Planning Inspectorate at the address given in the WO booklet entitled "Lawful Development Certificates - a user's guide" which contains specific guidance on making applications to the LPA and appeals to the Secretary of State. The booklet is available from LPA offices.

8.45 The LDC appeal provisions contain no "deemed application" for planning permission or power for the Secretary of State to grant planning permission in respect of any matter for which a LDC is not granted. This means that the LDC procedures involve no consideration of the planning merits of the matter in question. It is nevertheless open to applicants to apply for planning permission in the normal way, without prejudice to their application for a LDC, and to appeal to the Secretary of State against any adverse decision, or failure to give a decision within the time-limit, at the same time as they submit any LDC appeal under amended section 195. In the event that the LPA consider, on receiving an application, that planning permission is not required, they should return the planning application fee (though not any LDC application fee), explaining to the applicant that no fee was properly payable. However, although a refund of fees paid for an application found to be invalid may be made at any stage, the Fees Regulations do not provide for the refund of correct fees paid for valid applications for planning permission once these are accepted (and an application for planning permission would not be invalidated by the issue of a LDC).

8.46 LDC appeals received after 24 March 1997 are included among the classes of appeal for determination by persons appointed by the Secretary of State, instead of by the Secretary of State himself (SI 1997/420).

8.47 In any LDC appeal where evidence as to the facts is at issue or in dispute, the Secretary of State will normally direct that a local inquiry be held. This is so that evidence can be taken on oath, if necessary, and witnesses cross-examined about the precise nature and extent of the previous, existing or proposed uses of land, and, where relevant, its planning history. However, where the appeal simply involves the interpretation of agreed facts and Planning Law or relevant judicial authority, the written representations procedure will normally suffice. And, since planning merits are not at issue unless a contemporaneous planning appeal for the same matter is being considered simultaneously, it is often unnecessary to arrange for an officer of the Department to inspect the site before the Secretary of State determines the appeal.

8.48 The Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992 apply to local inquiries into LDC appeals.

The expense involved in making a LDC appeal

8.49 The parties to a LDC appeal are normally expected to meet their own expenses. Unlike litigation, costs do not normally "follow the event" of the appeal and are only awarded, on an application, against a party who behaved "unreasonably" in the appeal process. WO Circular 23/93 gives comprehensive guidance on the policy and procedures for awarding costs to parties in an appeal. As with enforcement notice appeals, by virtue of section 196(8) of the 1990 Act (inserted by paragraph 4 of Schedule 4 to the Planning (Consequential Provisions) Act 1990), an award of costs may be made in a LDC appeal whether the appeal has proceeded by written representations or by local inquiry.

Appeal to the High Court

8.50 The Secretary of State's decision on a LDC appeal may be challenged under section 288 of the 1990 Act, by way of a further appeal, on a point of law, to the High Court.

Secretary of State's power under section 177(1)(c) to issue a LDC under section 191

8.51 Section 177(1) of the 1990 Act gives the Secretary of State certain discretionary powers on the determination of an enforcement notice appeal under section 174. Section 177(1)(c), enables him to determine whether, on the date the appeal was made, any existing use of the land was lawful, any operations which had been carried out were lawful, or any matter constituting a failure to comply with a condition or limitation subject to which planning permission was granted was lawful; and, if so, to issue a certificate under section 191. This discretionary power can be exercised where the enforcement notice appeal succeeds on grounds (c) or (d) in section 174(2) of the 1990 Act, as amended. However, a fee is payable to the LPA for a LDC application, and regulation 10(12) of the 1989 Fees Regulations, as amended by the 1992 Amendment Regulations, provides that the "deemed application" fee shall not be refunded where a LDC is granted under section 177(1)(c).

8.52 Nevertheless, this power is discretionary and is only exercised in exceptional circumstances. It will not be exercised where the appellant specifically requests that his "deemed application" fee be refunded in the event of his appeal succeeding on any of grounds (b) to (e) in section 174(2). Appellants who have paid the "deemed application fee" both to the Secretary of State and to the LPA, in respect of such an application arising on an appeal against an enforcement notice, may prefer to have both fees refunded in these circumstances, and then pay a single fee to the LPA for a subsequent LDC application. Or, they may decide that, once their enforcement appeal has succeeded, they do not need a LDC. Neither will the power be exercised in respect of an existing use which is outside the scope of the matters stated in the enforcement notice to be in breach of planning control.

8.53 Thus a LDC will not be issued, under section 177(1)(c), unless the appellant has specifically so requested, in the event of his appeal succeeding on grounds (c) or (d) in section 174(2), before the date on which the appeal is determined. Even then, the Secretary of State or Planning Inspector may still decline to exercise this discretionary power. The LDC procedure is intended to be administered primarily by LPAs. They are usually best placed to identify all the relevant details about a use, operation or activity which may need to be specified in a LDC, as explained in paragraphs 8.16 to 8.22 above. These details, including suitable plans to attach to the certificate, may not be readily available to the Secretary of State or a Planning Inspector, even at the decision stage of an enforcement notice appeal. In most circumstances where an enforcement appeal succeeds on grounds (c) or (d) in section 174(2), the notice will be quashed, the "deemed application fee" refunded by the Secretary of State (and, where applicable, by the LPA) and the appellant advised that it is open to him to apply to the LPA for a LDC under section 191.

The form of a LDC and model application forms

8.54 The form in which a LDC, under section 191 or 192, should be granted is prescribed in Schedule 6 to the GDPO. LDC applications must be made in writing, but model application forms, which LPAs may like to use, are appended to this Annex.

Appendix 1 to Annex 8

For the Council's use only
Application No .....
Date received .....

..... Council

Town and Country Planning Act 1990: Section 191
(as amended by section 10 of the Planning and Compensation Act 1991)

Town and Country Planning (General Development Procedure) Order 1995

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR AN *EXISTING* USE OR OPERATION OR ACTIVITY IN BREACH OF A PLANNING CONDITION

---

1. Applicant (in block capitals)

Name .....
Address .....
.....
.....
Post Code .....

Tel.No: .....

---

2. Agent (if any)

Name .....
Address .....
.....
.....
Post Code .....

Tel.No: .....

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3. (1) Nature of applicant's interest in the land, eg owner, lessee, occupier.

(2) If you do not have an interest:-

(a) give name(s) and address(es) of anyone you know who has an interest in the land;

(b) state the nature of their interest (if known);

(c) state whether they have been informed about this application.
YES/NO

---

4. Address or exact location of the land to which this application relates:

Describe here and enclose [ ] copies of an OS-based plan showing the boundary of the land edged in red.

---

5. This application is for:

☐ an existing use;

☐ an existing operation;

☐ an existing use,operation or activity in breach of a condition;

being a use, operation or activity subsisting on the date of this application.
(Tick whichever box is applicable)

---

6. Full description of the existing use, operation or activity to which the application relates:

---

7. If there is more than one subsisting use of, or operation or activity on, the land at the date of this application, describe fully each of them and, where appropriate, show to which part of the land each use, operation or activity relates.

---

8. If the application relates to an existing use which you consider to be within one of the "Use Classes" in the Schedule to the current Town and Country Planning (Use Classes) Order, state which one: —

---

9. When was the use or activity begun, or the operation substantially completed?

10. Under what grounds is the certificate sought? *(Delete those which are not applicable)*

(1) The use began more than ten years before the date of this application; or

(2) The use, operation or activity in breach of condition began more than ten years before the date of this application; or

(3) The use began within the last ten years, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last ten years; or

(4) The operations were substantially completed more than four years before the date of this application; or

(5) The use as a single dwellinghouse began more than four years before the date of this application.

(6) Other - specify (this might include claims that the change of use or operation was not development, or that it benefited from planning permission granted under the Act or by the General Development Order).

11. If the certificate is sought for a use, operation or activity in breach of a condition or limitation, specify the condition or limitation which has not been complied with, and attach a copy of the relevant planning permission:

12. Give any additional information you consider necessary to substantiate your claim.

(Continue on a separate sheet if necessary)

13. List here all the documents, drawings or plans which accompany this application.

I/We hereby apply for a lawful use or development certificate under section 191 of the 1990 Act in respect of the existing use, operations or activity described in this application and the documents, drawings and plans which accompany it.
I/We enclose the appropriate fee of £.....

Signed:

On behalf of: *[insert name of applicant if signed by an agent]*

Dated:

Warning: Section 194 of the 1990 Act provides that it is an offence to furnish false or misleading information or to withhold material information with intent to deceive. Section 193(7) enables the Council to revoke, at any time, a certificate they may have issued as a result of such false or misleading information

For the Council's use only
Application No .....
Date received .....

..... Council

Town and Country Planning Act 1990: Section 192
(as amended by section 10 of the Planning and Compensation Act 1991)

Town and Country Planning (General Development Procedure) Order 1995

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR A *PROPOSED* USE OR OPERATION OR ACTIVITY IN BREACH OF A PLANNING CONDITION

---

1. Applicant (in block capitals)

Name .....
Address .....
.....
.....
Post Code .....

Tel.No: .....

---

2. Agent (if any)

Name .....
Address .....
.....
.....
Post Code .....

Tel.No: .....

---

3. (1) Nature of applicant's interest in the land, eg owner, lessee, occupier.

(2) If you do not have an interest:-

(a) give name(s) and address(es) of anyone you know who has an interest in the land;

(b) state the nature of their interest (if known);

(c) state whether they have been informed about this application.

YES/NO

---

4. Address or exact location of the land to which this application relates:

Describe here and enclose [ ] copies of an OS-based plan showing the boundary of the land edged in red.

---

5. Has the proposal been started?

YES/NO

---

6. If the proposal consists of, or includes, carrying out building or other operations give a detailed description of all* such operations and attach such plans or drawings as are necessary to show their precise nature.

(In the case of a proposed building the plans should indicate its precise siting and exact dimensions).

* includes the need to describe any proposal to alter or create a new access, lay out any new street, construct any associated hardstandings, means of enclosure or means of draining the land/buildings.

---

7. If the proposal relates to a change of use of the land or building(s):

(1) give a full description of the scale and nature of the proposed use, including the processes to be carried on, any machinery to be installed, and the hours the proposed use will be carried on;

(2) fully describe the existing use or the last known use, with the date when this use ceased.

---

8. Briefly explain why you consider the existing, or last, use of the land is lawful, or why you consider that any existing buildings which it is proposed to alter or extend are lawful. (You can use section 12 of this application to state your case more fully). Specify the supporting documentary evidence (such as a planning permission) which accompanies this application.

---

9. If you consider the existing, or last, use is within a "use class" in the Town and Country Planning (Use Classes) Order 1987, state which one.

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10. If you consider the proposed use is within a "use class" in the Town and Country Planning (Use Classes) Order 1987, state which one.

---

11. Is the proposed operation or use temporary or permanent? If temporary, give details.

---

12. State why you consider that a Lawful Development Certificate should be granted for this proposal.

(Continue on a separate sheet if necessary)

I/We hereby apply for a lawful use or development certificate under section 192 of the 1990 Act in respect of the proposed use, operations or activity described in this application and the documents, drawings and plans which accompany it.
I/We enclose the appropriate fee of £.....

Signed:

On behalf of: *[insert name of applicant if signed by an agent]*

Dated:

Warning: Section 194 of the 1990 Act provides that it is an offence to furnish false or misleading information or to withhold material information with intent to deceive. Section 193(7) enables the Council to revoke, at any time, a certificate they may have issued as a result of such false or misleading information.

THE TOWN AND COUNTRY PLANNING (ENFORCEMENT) (INQUIRIES PROCEDURE) RULES 1992

Scope of the Rules

9.1 The Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992 (SI 1992/1903) ("the Enforcement Rules") replaced the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1981 (SI 1981/1743). The Enforcement Rules apply, whether the appeal is to be decided by the Secretary of State or by an Inspector appointed by him, to local inquiries held into -

(1) enforcement notice appeals under section 174 of the Town and Country Planning Act 1990 ("the 1990 Act");

(2) appeals under section 195 of the 1990 Act against refusal to grant a certificate of lawful use or development, or the deemed refusal of a certificate application made under section 191 or 192 of the 1990 Act (as amended); and

(3) listed building enforcement notice appeals under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), including Conservation Area consent enforcement appeals.

Objectives

9.2 The Enforcement Rules are intended to improve the efficiency and effectiveness of the local inquiry process, without reducing participants' ability to make relevant representations in accordance with the requirements of natural justice. As with the Town and Country Planning (Inquiries Procedure) Rules 1992 (SI 1992/2038) ("the Planning Rules"), the aim is to make the best possible use of the period before the inquiry opens, to exchange information so that as much as possible of each party's case can be properly considered by the other participants in advance of the inquiry's opening. This will enable the inquiry Inspector to concentrate on the essential issues, thus minimising the time spent at an inquiry.

Appointment of assessor and pre-inquiry meeting

9.3 The 1992 Rules provide for notifying the appointment of an assessor (rule 10) and for the Inspector to hold a pre-inquiry meeting (rule 6), although these provisions may not often be apt for enforcement appeal inquiries. Rule 7 enables the Inspector (or the Secretary of State in a non-transferred appeal) to serve a statement on the parties to an appeal as to the matters about which he or she particularly wishes to be informed.

Time-limits for the appeal process

9.4 The time-limits imposed by the 1992 Rules generally start to run from the "relevant date" - that is, the date when the Secretary of State notifies the appeal parties of his *intention* to cause an inquiry to be held, as occurs in the Planning Rules. There are some differences in the respective time-tables which reflect the particular circumstances of enforcement and other related appeals. Nevertheless, the intention is to process planning and enforcement appeals together when they relate to the same land. The enforcement appeal will be "in the lead" when it is linked administratively to others.

Statement and proofs of evidence

9.5 The local planning authority are required by rule 8 to produce their statement of case before the appellant (who will have produced a statement of facts with his appeal). Where, under rule 14, evidence is to be given by reading a proof of evidence *which relates to a deemed application* for planning permission under section 177(5) of the 1990 Act, a copy of the proof and a summary (if the proof exceeds 1,500 words) have to be sent to the Inspector 3 weeks before the inquiry timetable arranged under rule 9. The summary should be as concise as possible. Where a proof and summary are required, only the summary may be read at the inquiry, unless the Inspector permits or requires otherwise. But cross-examination would take place on the proof in its entirety.

Inspector's findings of fact

9.6 Because the decision on an appeal against a refusal, or deemed refusal, of a certificate of lawful use or development is based entirely on the application of Planning Law to evidential fact (the planning merits of the use or development being immaterial), rule 17 specifically requires the Inspector to include "findings of fact" in his or her inquiry report. This does not require findings of fact to be stated separately in the report, although they will usually be. If the Secretary of State proposes to disagree with the Inspector's recommendation because he differs from the Inspector on any material fact, or takes account of any new evidence, this rule requires him to give those entitled to appear at the inquiry, and who appeared at it, three weeks to make written representations on those matters, or request the re-opening of the inquiry. Similar arrangements apply, under rule 18, to a transferred appeal.

Provisions for cases "remitted" to the Secretary of State by the Court

9.7 Paragraph 2.48 of Annex 2 to this Circular explains sections 288 and 289 of the 1990 Act. Following a successful appeal to the Court, a case is remitted to the Secretary of State for re-hearing and determination. Rule 21 provides that the Secretary of State shall send to the appeal parties a statement of the matters on which further written representations are invited before the appeal is further considered by him. The period for submitting such representations, or requesting a re-opening of the inquiry, is three weeks. If the Secretary of State considers that the inquiry should be re-opened, paragraphs (3) to (8) of rule 11 will apply.

"Linked" enforcement and planning appeals

9.8 Under rule 22, the Secretary of State may extend the period allowed or required by any other rule. As paragraph 9.4 above explains, in cases where a section 78 and a section 174 appeal relate to the same land, they will be "linked" administratively. In such cases the Enforcement Inquiries Procedure Rules time-limits will apply to the procedure to be followed, by virtue of the Secretary of State's invoking the equivalent provisions of the Planning Rules to rule 22. The other requirements of the Planning Rules (such as the submission of proofs of evidence) will continue to apply to the planning appeal.

Arranging the inquiry

9.9 The arrangements for fixing an inquiry date under these Rules will follow the normal planning appeal arrangements. Each principal party to an appeal will be generally permitted only one refusal of a date offered for the inquiry before the Department will proceed to fix a date, time and place for it. Normally the period allowed for negotiating a date will be one month, starting from when the first offer of an inquiry date is made. If one or both parties refuse the first date offered, and it is clear that they are not prepared to negotiate an acceptable date between them, the Department may proceed to fix the date of the inquiry before the negotiation period has expired. Once a date has been fixed, it will only be changed for exceptional reasons.

Cylchlythyr 24/97
(Y Swyddfa Gymreig)

Cylchlythyr oddi wrth

Y Swyddfa Gymreig
Parc Cathays, Caerdydd CF1 3NQ

31 Rhagfyr 1997

GORFODI RHEOLAETH GYNLLUNIO : DARPARIAETHAU DEDDFWRIAETHOL A GOFYNION GWEITHDREFNOL

1. Mae'r Cylchlythyr hwn yn cyfuno ac yn diweddaru'r canllawiau cynharach, yng Nghylchlythyron 76/91 ac 8/92 y Swyddfa Gymreig ar sut i ddefnyddio'r darpariaethau diwygiedig ar orfodaeth gynllunio yn Rhan VII o Ddeddf Cynllunio Gwlad a Thref 1990. Er bod y canllawiau'n adlewyrchu barn bwyllog y Swyddfa ar hyn o bryd, dylid cadw mewn cof mai mater i'r Llysoedd yn y pen draw yw dehongli'r gyfraith.

2. Ceir cyngor manwl ar y gweithdrefnau yn Atodiadau'r Cylchlythyr fel a ganlyn:

Atodiad 1: yr hysbysiad torri rheolau cynllunio;
Atodiad 2: hysbysiadau gorfodi ac apelau;
Atodiad 3 : yr hysbysiad stop;
Atodiad 4: gorfodi amodau cynllunio: yr hysbysiad torri amod (HTA);
Atodiad 5 : gwaharddeb i atal torri rheolau cynllunio;
Atodiad 6: hawliau mynediad i dir at ddibenion gorfodi;
Atodiad 7: rheoli datblygu ar dir y Goron;
Atodiad 8: cyfreithlondeb a'r dystysgrif datblygu cyfreithlon (TDC);
Atodiad 9: Rheolau Cynllunio Gwlad a Thref (Gorfodi) (Gweithdrefn Ymchwiliadau) 1992.

Lle bo'n briodol, mae'r Atodiadau hyn yn cyfeirio at y darpariaethau cyfatebol ynglŷn â gorfodi rheolaeth adeiladau rhestredig ac ardaloedd cadwraeth, rheolaeth cynllunio mwynau, rheolau sylweddau peryglus a rheolaeth coed sydd wedi'u diogelu.

Deddfwriaeth israddol

3. Mae Rheoliadau Cynllunio Gwlad a Thref (Hysbysiadau Gorfodi ac Apelau) 1991 (OS 1991/2804) yn ail-ddeddfu, gyda rhai diwygiadau (yn OS 1992/1904), y Rheoliadau blaenorol (OS 1981/1742) mewn perthynas â'r holl hysbysiadau gorfodi a roir gan awdurdodau cynllunio lleol (ACLl) a'r holl apelau gorfodi a gyflwynir i'r Ysgrifennydd Gwladol.

Mae copïau pellach o'r cylchlythyr hwn ar gael oddi wrth:

Llyfrfa Oriel The Stationery Office,
Heol Tŷ'r Brodyr, Caerdydd CF1 4AA
01222 395548 Ffacs 01222 384347

ISBN 0 7504 2270X

£12.00 net

ISBN 0-7504-2270-X

9 780750 422703 01200

4. Cafodd Rheolau Cynllunio Gwlad a Thref (Gorfodi) (Gweithdrefn Ymchwiliadau) 1981 (OS 1981/1743) eu diddymu a'u disodli gan Reolau Cynllunio Gwlad a Thref (Gorfodi) (Gweithdrefn Ymchwiliadau) 1992 (OS 1992/1903). Mae Rheolau 1992 yn gymwys i ymchwiliadau i apelau ynghylch gorfodaeth gynllunio, gorfodaeth adeiladau rhestredig a hysbysiadau gorfodaeth ardaloedd cadwraeth, ac i ymchwiliadau apelau tystysgrifau datblygu cyfreithlon.

5. Mae'r darpariaethau yng Ngorchymyn Datblygu Cyffredinol Cynllunio Gwlad a Thref 1988 ar "ddatblygu a ganiateir" a'r Gorchmynion a'u diwygiodd wedyn wedi'u cydgyfnerthu yn y canlynol yn eu tro, Gorchymyn Cynllunio Gwlad a Thref (Datblygu Cyffredinol a Ganiateir) 1995 (OS 1995/418) ("y GPDO") a Gorchymyn Cynllunio Gwlad a Thref (Gweithdrefn Ddatblygu Gyffredinol) 1995 (OS 1995/419) ("y GPDO"). Esbonnir y prif newidiadau a gyflwynwyd gan y Gorchmynion yng Nghylchlythyr 29/95 y Swyddfa Gymreig.

6. Mae Rheoliadau Cynllunio Gwlad a Thref (Ffioedd am Geisiadau a Cheisiadau Tybiedig) 1989 (OS 1989/193) wedi'u diwygio gan OS 1990/2473, OS 1991/2735, OS 1992/1817, OS 1992/3052 ac OS 1993/3170. Mae diwygiad 1991 yn darparu (yn rheoliad 4) ar gyfer talu ffi am gais cynllunio tybiedig i'r ACLl (yn ogystal ag i'r Ysgrifennydd Gwladol) o 2 Ionawr 1992 ymlaen ym mhob apêl orfodi yn erbyn hysbysiad a roddwyd ar neu ar ôl y dyddiad hwnnw. Mae Rheoliadau Diwygio 1992 yn gymwys i geisiadau am TDC, gan gynnwys ceisiadau am "drosi" tystysgrif "defnydd sefydledig" yn TDC, ac yn darparu i'r ffi am yr apêl yn erbyn hysbysiad gorfodi "cais tybiedig" gael ei chadw lle bydd yr Ysgrifennydd Gwladol neu Arolygydd Cynllunio yn rhoi TDC, yn eithriadol felly, wrth ymarfer y pŵer yn adran 177(1)(c) o Ddeddf Cynllunio Gwlad a Thref 1990 ("Deddf 1990").

7. Mae Rheoliadau Cynllunio Gwlad a Thref (Hysbysiadau Gorfodi Arbennig) 1992 (OS 1992/1562) wedi disodli ac wedi diweddaru Rheoliadau 1984 (OS 1984/1016).

8. Mae Rheoliadau Cynllunio Gwlad a Thref (Ceisiadau Tir y Goron) 1992 (OS 1992/2683) wedi'u diddymu gan Reoliadau Cynllunio Gwlad a Thref (Ceisiadau Tir y Goron) 1995 (OS 1995/1139), o 3 Mehefin 1995 ymlaen. Mae Rheoliadau 1995 yn diwygio erthygl 24 o'r GPDO drwy fewnddodi paragraff 2A newydd. Mae Rheoliad 3 o Reoliadau 1995 yn gofyn am hysbysiad gwaredu lle bo tystysgrif wedi'i rhoi o dan adran 192(2) o Ddeddf 1990.

9. Daeth Rheoliadau Cynllunio Gwlad a Thref (Asesu Amgylcheddol a Datblygu Diawdurdod) 1995 (OS 1995/2258) i rym ar 2 Hydref 1995. Mae'r Rheoliadau'n bod sicrhau y weithdrefn apelau gorfodi yn cydymffurfio â gofynion y Gyfeireb EIA. Gall fod mathau penodol o ddatblygu sy'n destun apêl yn erbyn camau gorfodi yn gofyn am ddarparu datganiad amgylcheddol ers cyflwyno Rheoliadau Cynllunio Gwlad a Thref (Asesu Effeithiau Amgylcheddol) 1988 (OS 1988/1199).

Canllawiau Cynllunio (Cymru): Polisi Cynllunio Nodyn Cyngor Technegol (Cymru) 9: Gorfodi Rheolaeth Gynllunio

10. Mae Canllawiau Cynllunio (Cymru) (ISBN 0-7504-1839-7 pris £10.00) a TAN (Cymru) 9 (ISBN 0-7504-2264-5, pris £2.50) yn cynnig canllawiau polisi ar orfodi rheolaeth gynllunio a gellir eu cael oddi wrth Siopau Llyfrau Gwasg Ei Mawrhydi. Disgwylir i ACLl roi sylw i'r canllawiau hyn wrth benderfynu a yw'n hwylus cymryd camau gorfodi i adfer toriad o'r rheolau cynllunio, lle bu ymdrechion cynharach i wneud hynny drwy negodi'n anffurfiol yn aflwyddiannus.

Apelau gorfodi: ffurflenni apelio a llyfrynnau esboniadol diwygiedig

11. Mae ffurflen apelio swyddogol y Swyddfa Gymreig ynghylch gorfodi a'r llyfryn esboniadol i apelwyr ("Enforcement Notice Appeals - a Guide to Procedure") wedi'u diwygio i gymryd y darpariaethau diwygiedig i ystyriaeth. Ailargreffir y llyfryn o bryd i'w gilydd, gyda diwygiadau priodol yn y testun. Mae copïau o'r ffurflen apelio a'r llyfryn ar gael oddi wrth yr Arolygwyr Cynllunio, Adeiladau'r Goron, Parc Cathays, Caerdydd CF1 3NQ (ffôn 01222 825670 neu ffacs 01222 825150).

Apelau tystysgrifau datblygu cyfreithlon (TDC)

12. Mae'r Adran wedi cynhyrchu ffurflen swyddogol ar gyfer apelau TDC a llyfryn "Lawful Development Certificates - a user's guide". Gall darpar-apelwyr gael ffurflenni cais TDC a chopïau o'r llyfryn oddi wrth yr Arolygwyr Cynllunio, Adeilad y Goron, Parc Cathays, Caerdydd CF1 3NQ (ffôn 01222 825670 neu ffacs 01222 825150).

Goblygiadau ar gyfer cyllid a gweithlu

13. Gan fod y Cylchlythyr hwn yn cydgyfnerthu ac yn diweddaru canllawiau cynharach, nid yw'n golygu dim newid yn ymrwymiadau'r awdurdodau lleol o ran na chyllid na gweithlu.

Dileu Cylchlythyron

14. Mae Cylchlythyron 164/77, 76/91 a 38/92 y Swyddfa Gymreig wedi'u dileu. Mae Cylchlythyr ar wahân wedi'i gyhoeddi gan Adran yr Amgylchedd, Trafnidiaeth a'r Rhanbarthau.

MS K. POWELL
Pennaeth yr Adran Gynllunio

Y Prif Weithredydd
Cynghorau Sir a Chynghorau Bwrdeistref Sirol

Swyddog y Parc Cenedlaethol
Parc Cenedlaethol Bannau Brycheiniog
Parc Cenedlaethol Arfordir Sir Benfro
Parc Cenedlaethol Eryri

SG: PAA 08-02-010

CYNNWYS ATODIADAU CYLCHLYTHYR 24/97

Hysbysiad torri rheolau cynllunio

Hysbysiadau gorfodi ac apelau

Yr hysbysiad stop

Atodiad 3 paragraffau

Gorfodi amodau cynllunio: yr hysbysiad torri amod (HTA)

Atodiad 4 paragraffau

Rheolau Cynllunio Gwlad a Thref (Gorfodi) (Gweithdrefn Ymchwiliadau) 1992

Atodiad 9 paragraffau

HYSBYSIAD TORRI RHEOLAU CYNLLUNIO

Cyflwyniad

1.1 Mae adrannau 171C a 171D o Ddeddf Cynllunio Gwlad a Thref 1990 ("Deddf 1990") yn darparu, yn eu tro -

(1) i'r awdurdod cynllunio lleol (ACLl) fynnu gwybodaeth am weithgareddau ar dir drwy gyflwyno "hysbysiad torri rheolau cynllunio"; a

(2) ar gyfer cosbau am beidio â chydymffurfio â hysbysiad torri rheolau cynllunio.

1.2 Bwriedir i'r darpariaethau hyn gydategu, at ddibenion gorfodi cynllunio, bŵer mwy cyfyngedig yr ACLl yn adran 330 o Ddeddf 1990 ac adran 16 o Ddeddf Llywodraeth Leol (Darpariaethau Amrywiol) 1976, i fynnu gwybodaeth am Buddiannau mewn tir. Mae'n dal yn bosibl i'r ACLl ddefnyddio'r fersiynau cynharach i fynnu gwybodaeth, os yw'n well ganddynt. Gellir defnyddio'r pwerau hyn i sicrhau gwybodaeth hefyd pan fydd yr ACLl yn meddwl am wneud gorchymyn terfynu, o dan adran 102 o Ddeddf 1990. Nid yw'r hysbysiad torri rheolau cynllunio ar gael i'w ddefnyddio mewn perthynas ag achosion amheus o dorri rheolau adeiladau rhestredig neu ardaloedd cadwraeth, rheolau sylweddau peryglus neu reolau coed gwarchodedig.

Gweithdrefn ddewisol

1.3 Mae adran 171C(7) o Ddeddf 1990 yn darparu nad yw "cyflwyno hysbysiad torri rheolau cynllunio yn effeithio ar unrhyw bŵer arall y gellir ei ymarfer mewn perthynas ag unrhyw doriad o'r rheolau cynllunio". Mae hyn yn pwysleisio'r ffaith mai dewisol hollol yw cyflwyno hysbysiad torri rheolau cynllunio. Nid oes angen i'r ACLl gyflwyno hysbysiad torri rheolau cynllunio cyn ystyried a yw'n fanteisiol rhoi hysbysiad gorfodi, neu gymryd unrhyw gamau gorfodi priodol eraill. *Nid* yw cyflwyno hysbysiad torri rheolau cynllunio yn gyfystyr â "chymryd camau gorfodi" fel y'i diffinnir yn adran 171A(2) o Ddeddf 1990. Nid oes angen rhoi'r cyfle, a ddarperir gan adran 171C(4), i'r sawl sy'n derbyn hysbysiad gorfodi cyflwyno cynrychioliadau personol cyn i'r ACLl benderfynu a ddylid rhoi hysbysiad gorfodi. Lle bo gan yr ACLl wybodaeth eisoes sydd yn eu barn hwy yn ddigonol am y gweithgareddau sy'n digwydd ar dir yn groes i reolau cynllunio, a hwythau o'r farn ei bod yn fanteisiol dechrau unrhyw achos gorfodi, ni ddylai eu penderfyniad ar orfodi fod yn agored i'w herio ar y sail ei bod yn afresymol bwrw ymlaen â'r achos gorfodi heb gyflwyno hysbysiad torri rheolau cynllunio yn gyntaf ac ystyried ymateb y derbynnydd iddo. Ac ni ddylai penderfyniad yr ACLl ar orfodi, o'i gymryd yn rhesymol o dan yr amgylchiadau, beri perygl ychwaith o ddyfarniad costau apêl yn erbyn yr awdurdod am eu bod wedi penderfynu peidio â chyflwyno hysbysiad torri rheolau cynllunio.

1.4 Dim ond pan fo'n ymddangos i'r ACLl y gall y rheolau cynllunio fod wedi'u torri y gellir rhoi hysbysiad torri rheolau cynllunio - **R v Teignbridge District Council ex parte Teignmouth Quay Co Ltd** [1995] JPL 828.

1.5 Nid oes gofyniad i gofnodi hysbysiad torri rheolau cynllunio yng nghofrestr yr ACLl o hysbysiadau gorfodi, hysbysiadau stop a hysbysiadau torri amodau. Nid yw'r hysbysiad yn arwystl cyfreithiol ar y tir.

Derbynnydd yr hysbysiad

1.6 Mae adran 171C(1) yn darparu bod rhaid i'r sawl sy'n derbyn hysbysiad torri rheolau cynllunio fod yn un o'r canlynol -

(1) unrhyw un sy'n berchennog neu'n ddeiliad ar y tir y mae'r hysbysiad yn cyfeirio ato, neu sydd ag unrhyw ddiddordeb arall ynddo; neu

(2) unrhyw un sy'n cynnal gweithrediadau ar y tir, neu'n ei ddefnyddio at unrhyw ddiben.

1.7 Wrth gyflwyno hysbysiadau torri rheolau cynllunio i bersonau sydd â diddordeb yn y tir, dylai'r ACLl geisio sicrhau, cyn belled ag y bo'n ymarferol, y cyflwynir yr hysbysiad

perthnasol i unrhyw forgeiseion sy'n hysbys. Mewn achosion lle bo perchennog y tir yn forgeisiwr sydd wedi diffyg-dalu, mae'n bosibl na fydd modd dod o hyd iddo neu iddi, a bydd angen hysbysu'r morgeisai sydd â meddiant o'r sefyllfa.

Yr hyn y gall yr hysbysiad ei fynnu oddi wrth y derbynnydd

1.8 Gall yr ACLl ei gwneud yn ofynnol i'r sawl sy'n derbyn hysbysiad torri rheolau cynllunio rhoi unrhyw wybodaeth y mae arnynt ei heisiau at ddibenion gorfodi ynghylch gweithgareddau ar y tir. Mae adran 171C(2) yn disgrifio'r wybodaeth fel gwybodaeth sy'n gysylltiedig â'r canlynol -

(a) any operations being carried out on the land, any use of the land and any other activities being caried out on the land; and

(b) any matter relating to the conditions or limitations subject to which any planning permission in respect of the land has been granted."

Yn y cyfnod rhagarweiniol hwn o sicrhau gwybodaeth, nid oes angen i'r ACLl ddatgan eu barn ar yr "uned gynllunio", nac a yw'r gweithgaredd y mae'r hysbysiad yn gysylltiedig ag ef yn israddol neu'n atodol i ryw brif ddefnydd ar y tir.

1.9 Heb ragfarnu swm a sylwedd adran 171C(2), mae adran 171C(3) yn pennu'n fanylach y wybodaeth y gall hysbysiad torri rheolau cynllunio mynnu bod y derbynnydd yn ei rhoi i'r ACLl, cyn belled ag y gall. Pennir y materion hyn fel a ganlyn -

" (a) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;

(b) to state when any use, operations or activities began;

(c) to give the name and address of any person known to him to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;

(d) to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operation;

(e) to state the nature of his interest (if any) in the land and the name and address of any other person known to him to have an interest in the land."

Y cyfle i gyflwyno cynrychioliadau mewn ymateb i'r hysbysiad

1.10 Mae adran 171C(4) hefyd yn galluogi'r ACLl i roi cyfle i dderbynnydd yr hysbysiad roi ymateb cadarnhaol i'r materion sydd o dan sylw yn yr hysbysiad, ac i gyflwyno unrhyw gynrychioliadau a ddymuna am yr hysbysiad. Diben y darpariaethau hyn yw hwyluso trafod, rhwng yr ACLl a derbynnydd yr hysbysiad, ar sut y gellir adfer unrhyw doriad o'r rheolau a amheuir. Bwriedir yn benodol i'r darpariaethau gael eu defnyddio o dan amgylchiadau lle bo'r ACLl o'r farn y gellid osgoi camau gorfodi ffurfiol pe bai derbynnydd yr hysbysiad yn cytuno i wneud cais am ganiatâd cynllunio amodol i reoleiddio'r gweithgareddau sydd ar y gweill ar y tir; neu i roi'r gorau i unrhyw weithrediadau neu weithgareddau; neu i wneud unrhyw waith adfer. Bwriedir i'r cyfle i gyflwyno cynrychioliadau yn bersonol, mewn lle ac ar amser penodedig, gael ei ddefnyddio'n arbennig lle bo'r ACLl o'r farn y byddai'n fuddiol trafod wyneb-yn-wyneb â derbynnydd yr hysbysiad. Gellid gofyn i rywun sydd wedi methu â chydweithredu yn niffyg unrhyw ofyniad i negodi ddod i drafod y broblem.

1.11 Gall yr ACLl fod o'r farn na fyddai trafod wyneb-yn-wyneb â derbynnydd yr hysbysiad yn ateb unrhyw ddiben buddiol. Os felly, byddai yna gyfiawnhad i'r ACLl ddefnyddio'r hysbysiad at y diben cyfyngedig o sicrhau gwybodaeth berthnasol y mae

arnynt ei hangen i benderfynu a ddylid dechrau achos gorfodi ffurfiol. Nid oes dim i atal derbynnydd hysbysiad torri rheolau cynllunio rhag ceisio trafod amheuaeth bod y rheolau cynllunio wedi'u torri gyda swyddogion rheoli datblygu o'r ACLl.

Canlyniadau methu ag ymateb i hysbysiad

1.12 Mae adran 171C(5) yn darparu bod rhaid i hysbysiad torri rheolau cynllunio hysbysu'r derbynnydd am ganlyniadau tebygol methu ag ymateb i'r hysbysiad (sef, yn benodol, y gall yr ACLl ddwyn achos gorfodi ffurfiol). Rhaid cyfeirio hefyd at effaith darpariaethau adran 186(5)(b) o Ddeddf 1990 (sef na fydd iawndal ariannol yn daladwy, o ganlyniad i hysbysiad stop, i hawlydd y bu'n ofynnol iddo ddarparu gwybodaeth o dan adran 171C, mewn perthynas ag unrhyw golled neu niwed y gellid bod wedi'u hosgoi pe bai'r hawlydd wedi rhoi'r wybodaeth neu wedi cydweithredu wrth ymateb i'r hysbysiad). Y peth gorau yw cynnwys y rhybudd hwn fel rhan o destun hysbysiad torri rheolau cynllunio, fel yn yr hysbysiad enghreifftiol sydd ynghlwm wrth yr Atodiad hwn.

1.13 Nid yw'n rhesymol disgwyl i rywun y cyflwynir hysbysiad torri rheolau cynllunio iddynt roi gwybodaeth sydd ddim ganddynt ac na fyddai'n rhesymol iddynt ei darganfod. Bydd unrhyw wybodaeth ffeithiol a roddir wrth ateb hysbysiad yn rhan o'r wybodaeth berthnasol y bydd rhaid i'r ACLl edrych arni wrth benderfynu a yw'r rheolau cynllunio wedi'u torri; ac, os felly, pa gamau a fyddai'n briodol i ymdrin â hynny. Gall y wybodaeth ategu penderfyniad bod achos gorfodi yn briodol; neu gall ddatgelu defnydd neu weithgaredd gwahanol i'r hyn a amheuwyd; neu gall ddangos nad yw'r rheolau yn cael eu torri ar y tir. Os yw'r ymateb i'r hysbysiad yn creu amheuaeth ynghylch defnydd y tir, neu unrhyw weithgaredd sy'n digwydd arno, fel arfer bydd rhaid archwilio'r safle i ddatrys yr amheuaeth ac i sicrhau bod yna seiliau cadarn ar gyfer unrhyw benderfyniad gorfodi dilynol.

Methu â chydymffurfio â hysbysiad torri rheolau cynllunio

1.14 Mae adran 171D yn darparu bod peidio â chydymffurfio ag unrhyw ofyniad mewn hysbysiad, ar ôl 21 diwrnod, yn drosedd. Y gosb uchaf, ar gollfarniad diannod, am y drosedd hon yw "lefel 3" ar y raddfa safonol, sef £1,000 ar hyn o bryd, fel a ddarperir gan Ddeddf Cyfiawnder Troseddol 1991. Mae'r un gosb ar gael pan fethir yn barhaus â rhoi'r wybodaeth angenrheidiol. Mae'n amddiffyniad i unrhyw un a gyhuddir o'r drosedd hon brofi bod ganddo neu ganddi esgus rhesymol dros fethu â chydymffurfio â gofyniad yr hysbysiad.

Datganiadau ffug neu gamarweiniol

1.15 Mae'n drosedd hefyd os bydd unrhyw un yn gwneud unrhyw ddatganiad sy'n honni cydymffurfio â gofyniad mewn hysbysiad torri rheolau cynllunio sy'n fwriadol ffug neu'n gamarweiniol mewn manylyn perthnasol; neu os bydd yn gwneud datganiad o'r fath sy'n ffug neu'n gamarweiniol mewn manylyn perthnasol yn ddi-hid. Y gosb ddiannod uchaf am y drosedd hon yw "lefel 5" ar y raddfa safonol, sef £5,000 ar hyn o bryd, fel a ddarperir gan Ddeddf Cyfiawnder Troseddol 1991.

Rhybuddio troseddwyr honedig

1.16 Wrth ymchwilio i'r ffeithiau, cyn cychwyn unrhyw achos, dylai'r ACLl roi sylw i ddarpariaethau adrannau 66 a 67(9) o Ddeddf yr Heddlu a Thystiolaeth Droseddol 1984 o ran rybuddio troseddwyr honedig.

Hysbysiad enghreifftiol

1.17 Ceir enghraifft o hysbysiad torri rheolau cynllunio ynghlwm wrth yr Atodiad hwn.

HYSBYSIAD TORRI RHEOLAU CYNLLUNIO ENGHREIFFTIOL

PWYSIG - MAE'R OHEBIAETH HON YN EFFEITHIO AR EICH EIDDO

DEDDF CYNLLUNIO GWLAD A THREF 1990
(fel y'i diwygiwyd gan Ddeddf Cynllunio ac Iawndal 1991)

HYSBYSIAD TORRI RHEOLAU CYNLLUNIO

CYFLWYNWYD GAN: *[Enw'r Cyngor]*

I: *[Enw[au] y rhai y tybir mai hwy yw perchennog/perchnogion neu ddeiliad/deiliaid y tir neu berson[au] sydd ag unrhyw fuddiant arall ynddo]*
[Enw[au] person[au] y tybir eu bod yn gyfrifol am doriad posibl o'r rheolau cynllunio]

1. **CYFLWYNIR** yr hysbysiad hwn gan y Cyngor am ei bod yn ymddangos iddynt y gall y rheolau cynllunio fod wedi'u torri, o fewn adran 171A(1) o'r Ddeddf uchod, ar y tir a ddisgrifir isod. Fe'i cyflwynir i chi fel person y mae'n ymddangos mai chi yw perchennog neu ddeiliad y tir neu fod gennych fuddiant arall ynddo, neu sy'n gwneud gweithrediadau yn y tir, arno, drosto neu odano neu'n ei ddefnyddio at unrhyw ddiben. Mae'r Cyngor, drwy ymarfer eu pwerau o dan adran 171C(2) a (3), yn mynnu eich bod chi, cyn belled ag y gallwch, yn rhoi gwybodaeth benodol am fuddiant yn y tir a gweithgareddau arno.

2. **Y TIR Y MAE'R HYSBYSIAD YN CYFEIRIO ATO**

Tir yn *[cyfeiriad neu ddisgrifiad y tir] [a ddangosir ag ymylon coch ar y plan amgaeedig]*

3. **Y MATERION Y MAE'N YMDDANGOS EU BOD YN TORRI'R RHEOLAU CYNLLUNIO**

[Heb ganiatâd cynllunio]

[Noder manylion y toriad o'r rheolau cynllunio a amheuir]

[Methu â chydymffurfio ag amod neu gyfyngiad]

4. **YR HYN Y MAE'N OFYNNOL I CHI EI WNEUD**

Darparu yn ysgrifenedig, y wybodaeth ganlynol:-

(1) *[Noder manylion y wybodaeth angenrheidiol, gan roi sylw i delerau adran 171C(2) a (3)]*

(2)

(3)

Erbyn pryd y mae'n rhaid darparu'r wybodaeth: *o fewn un diwrnod ar hugain*, gan ddechrau â'r diwrnod pryd y cyflwynir yr hysbysiad hwn i chi):

5. **CYFLE I GYFLWYNO CYNRYCHIOLIADAU MEWN YMATEB I'R HYSBYSIAD**

Os hoffech gynnig gwneud cais am ganiatâd cynllunio, neu ymatal rhag gwneud unrhyw weithrediadau neu weithgareddau, neu wneud gwaith adfer; neu gyflwyno unrhyw gynrychioliadau am yr hysbysiad hwn, bydd y Cyngor, neu gynrychiolwyr y Cyngor yn eu hystyried ar *[dyddiad ac amser]* yn *[cyfeiriad lle gellir gwrando'r person y cyflwynir yr hysbysiad iddynt]* lle gallwch wneud unrhyw gynnig o'r fath neu gyflwyno unrhyw gynrychioliadau o'r fath yn bersonol ar yr adeg honno ac yn y lle hwnnw.

6. RHYBUDD

Mae'n drosedd methu, heb esgus rhesymol, â chydymffurfio ag unrhyw ofynion yn yr hysbysiad hwn o fewn un diwrnod ar hugain gan ddechrau â'r diwrnod pryd y cafodd ei gyflwyno i chi. Y gosb uchaf os cewch eich collfarnu am y drosedd hon yw dirwy o £1,000. Bydd parhau i fethu â chydymffurfio yn sgil eich collfarnu yn gyfystyr â throsedd pellach. Mae'n drosedd hefyd rhoi gwybodaeth yn fwriadol neu'n ddi-hid, mewn ymateb i'r hysbysiad hwn, sy'n ffug neu'n gamarweiniol mewn manylyn perthnasol. Y gosb uchaf os cewch eich collfarnu am y drosedd hon yw dirwy o £5,000.

7. GWYBODAETH YCHWANEGOL

Os methwch ag ymateb i'r hysbysiad hwn, gall y Cyngor gymryd camau pellach mewn perthynas â'r amheuaeth bod y rheolau cynllunio wedi'u torri. Yn benodol, gallant roi hysbysiad gorfodi, o dan adran 172 o Ddeddf 1990, yn ei gwneud yn ofynnol i'r toriad, neu unrhyw niwed i amwynder a achoswyd ganddo, gael ei adfer. *[Ychwaneger unrhyw "ganlyniadau tebygol" eraill, yn unol ag adran 171C(5)(a), os yw'n briodol.]* Os bydd y Cyngor yn cyflwyno hysbysiad stop, o dan adran 183 o Ddeddf 1990, pe buasai gennych hawl fel arall (o dan adran 186) i gael iawndal am golled neu ddifrod y gellid eu priodoli i'r hysbysiad hwnnw, mae adran 186(5)(b) o'r Ddeddf yn darparu na fydd iawndal o'r fath yn daladwy mewn perthynas ag unrhyw golled neu ddifrod y gellid bod wedi'u hosgoi pe buasech wedi rhoi'r wybodaeth sy'n angenrheidiol yn yr hysbysiad hwn i'r Cyngor, neu pe buasech wedi cydweithredu fel arall â'r Cyngor wrth ymateb iddo.

Dyddiad: *[dyddiad yr hysbysiad]*

Llofnod: *[Swyddog awdurdodedig y Cyngor]*

Ar ran: *[Enw a chyfeiriad y Cyngor]*

HYSBYSIADAU GORFODI AC APELAU

Cyflwyniad

2.1 Mae'r Atodiad hwn yn cynnig canllawiau ar weithdrefnau hysbysiadau ac apelau gorfodi. Ceir cyngor polisi ar orfodaeth gynllunio yn Canllawiau Cynllunio (Cymru): Polisi Cynllunio a TAN (Cymru) 9. Ceir y canllawiau diweddaraf ar apelau at yr Ysgrifennydd Gwladol yn erbyn hysbysiad gorfodi yn llyfryn y Swyddfa Gymreig ac Adran yr Amgylchedd o dan y teitl Enforcement Notice Appeals - A Guide to Procedure". Mae'r llyfryn ar gael oddi wrth swyddfa'r awdurdod cynllunio lleol (ACLl). Fel yr estoniwyd ym mharagraff 2 o brif destun y Cylchlythyr hwn, mae prif destun yr Atodiad hwn yn ymwneud â hystysiadau ac apelau gorfodi cynllunio yn unig. Mae paragraffau 2.56 i 2.77 o'r Atodiad hwn yn cyfeirio'n benodol at y darpariaethau cymaradwy ar gyfer gorfodi rheolau adeiladau rhestredig ac ardaloedd cadwraeth, rheolau cynllunio mwynau, rheolau coed gwarchodedig a rheolau sylweddau peryglus.

Penderfynu a ddylid rhoi hysbysiad gorfodi

2.2 Dewisol yw'r pŵer (yn yr adran 172 ddiwygiedig o Ddeddf Cynllunio Gwlad a Thref 1990 ("Deddf 1990") i roi hysbysiad gorfodi. Mae hysbysiad yn mynnu bod camau adferol yn cael eu cymryd o fewn terfyn amser penodedig. Dim ond lle bo'r ACLl yn fodlon bod rheolau cynllunio wedi'u torri a *hefyd* ei bod yn fanteisiol rhoi hysbysiad, o roi sylw i ddarpariaethau'r cynllun datblygu ac unrhyw ystyriaethau perthnasol eraill y dylid ei ddefnyddio.

2.3 Bwriedir i ddarpariaethau'r adran 173(3) ddiwygiedig ddileu unrhyw amheuaeth y gellir cyfeirio hysbysiad gorfodi at ran yn unig o doriad rheolau i fynnu ei gywiro. Wrth benderfynu ar union ofynion yr hysbysiad a'r cyfnod cydymffurfio priodol, dylai'r ACLl edrych bob amser ar y canlyniadau a fwriedir *a hefyd* ar y canlyniad ymarferol tebygol. Mewn achosion o "dan-orfodi", sy'n cynnwys dymchwel strwythur yn rhannol, dylai'r ACLl ystyried a fyddai unrhyw hawliau "datblygu a ganiateir" o dan Orchymyn Cynllunio Gwlad a Thref (Datblygu Cyffredinol a Ganiateir) 1995 ("y GPDO") yn galluogi'r strwythur i gael ei amnewid wedyn, o bosibl mewn ffordd lai dderbyniol.

Terfynau amser ar roi hysbysiad gorfodi

2.4 Ceir terfynau amser ynglŷn â chamau gorfodi mewn perthynas â phob toriad o'r rheolau cynllunio. Pennir y terfynau fel a ganlyn yn Adran 171B o Ddeddf 1990:-

(1) yn achos datblygiad gweithrediadol - **pedair blynedd** o'r dyddiad pan gafodd y gweithrediadau eu "cwblhau'n sylweddol". *Mae hyn yn gymwys i bob achos o dorri'r rheolau cynllunio sy'n gyfystyr â chyflawni pob math o "ddatblygiad gweithrediadol" heb ganiatâd cynllunio, sef gwneud gwaith adeiladu, peiriannu, mwyngloddio neu waith arall mewn tir, arno, drosto neu odano;*

(2) yn achos toriadau rheolau cynllunio sy'n gyfystyr â newid defnydd unrhyw adeilad (sydd, at ddibenion Deddf 1990, yn cynnwys rhan o adeilad) i'w "ddefnyddio fel un tŷ annedd" - **pedair blynedd** o ddyddiad y toriad. *Mae'r terfyn amser hwn yn gymwys naill ai lle mae'r newid i ddefnydd fel un tŷ annedd yn cynnwys datblygiad heb ganiatâd cynllunio, neu lle bo'n cynnwys methiant â chydymffurfio ag amod neu gyfyngiad y rhoddwyd y caniatâd cynllunio yn ddarostyngedig iddo;*

(3) yn achos unrhyw enghraifft arall o dorri'r rheolau cynllunio (hy heblaw'r rhai y cyfeiriwyd atynt eisoes yn is-baragraffau (1) a (2) uchod) - **deng mlynedd** o ddyddiad y toriad. *Yn ymarferol, mae'r terfyn amser hwn o ddeng mlynedd yn gymwys felly i doriadau o'r rheolau cynllunio sy'n cynnwys unrhyw newid sylweddol yn nefnydd y tir (heblaw newid i ddefnydd fel un tŷ annedd) ac i unrhyw doriad o amod neu gyfyngiad (gan gynnwys un lle torrir amod meddiannaeth a orfodwyd ar y caniatâd i godi tŷ annedd, ond heb gynnwys toriad lle defnyddir adeilad fel un tŷ annedd).*

Sut mae'r terfynau amser yn gweithio yn ymarferol

2.5 Nid yw'r terfynau amser a nodwyd ym mharagraff 2.4 uchod yn atal camau gorfodi ar ôl y dyddiadau perthnasol o dan ddau amgylchiad:

(1) mae adran 171B(4)(a) yn darparu ar gyfer cyflwyno hysbysiad torri amod, os oes hysbysiad gorfodi eisoes mewn grym mewn perthynas â'r toriad, gan alluogi'r ACLl felly i gryfhau effaith yr hysbysiad gorfodi;

(2) mae adran 171B(4)(b) yn darparu ar gyfer cymryd camau gorfodi "pellach" mewn perthynas ag unrhyw achos o dorri'r rheolau cynllunio o fewn y pedair blynedd ar ôl y camau gorfodi blaenorol (neu gamau honedig) mewn perthynas â'r un toriad. Mae hyn yn ymdrin yn bennaf â'r sefyllfa lle cymerwyd camau cynharach i orfodi o fewn y terfyn amser perthnasol, ond wedi profi'n ddiffygiol wedyn fel bod modd rhoi neu gyflwyno hysbysiad pellach, fel y bo'n wir, er bod y terfyn amser arferol ar gyfer camau o'r fath wedi dod i ben ers hynny.

Drafftio hysbysiad gorfodi

2.6 Bwriadwyd i ddarpariaethau'r adrannau 172 a 173 diwygiedig leihau'r tebygrwydd y byddai diffyg technegol wrth ddrafftio'r hysbysiad yn arwain at ei ddiddymu ar apêl, neu ddyfarnu ei fod yn ddi-rym. Er hynny dylai pob hysbysiad gael ei ddrafftio â'r gofal pennaf. Ni ellir defnyddio pŵer yr Ysgrifennydd Gwladol, yn adran 176(1)(a), i gywiro, ar apêl, unrhyw *gam-ddisgrifiad* yn yr hysbysiad gorfodi, ond lle na fyddai'n achosi anghyfiawnder i'r apelydd neu'r ACLl; nid yw'n cynnwys cywiro hysbysiadau sydd mor sylfaenol ddiffygiol y byddai eu cywiro yn arwain at hysbysiad sylweddol gwahanol. I helpu ACLl i leihau diffygion drafftio technegol mewn hysbysiadau, ychwanegwyd enghreifftiau o hysbysiadau at yr Atodiad hwn. Bwriedir i'r enghreifftiau ddarparu ar gyfer y mwyafrif o sefyllfaoedd gorfodi; ond rhaid i delerau pob hysbysiad gyfateb yn hollol â'r toriad penodol o'r rheolau ei bwriedir ei gywiro.

2.7 Mae adran 171A o Ddeddf 1990 yn diffinio toriad o'r rheolau cynllunio fel -

(1) cyflawni datblygiad heb y caniatâd cynllunio angenrheidiol; neu

(2) methu â chydymffurfio ag unrhyw amod neu gyfyngiad y rhoddwyd y caniatâd cynllunio yn ddarostyngedig iddo.

Mae unrhyw doriad o'r cyfyngiadau ar hawliau "datblygu a ganiateir" neu amodau sy'n gysylltiedig â hwy, o dan y GPDO, yn gyfystyr â thoriad o'r rheolau cynllunio y gellir cymryd camau gorfodi yn ei erbyn.

2.8 Ym mharagraffau 2.52 i 2.54 o'r Atodiad hwn tynnir sylw at anhawster penodol a danlinellwyd gan awdurdod barnwrol diweddar, a all godi wrth geisio cymryd camau gorfodi mewn perthynas ag unrhyw fethiant i gydymffurfio ag amod y rhoddwyd caniatâd cynllunio yn ddarostyngedig iddo i wneud gwaith adeiladu, peiriannu, mwyngloddio neu weithrediadau eraill ar dir.

Datgan yn glir pa reol sydd wedi'i thorri

2.9 Rhaid i hysbysiad gorfodi galluogi pob person sy'n cael copi ohono i wybod -

(1) beth yn hollol, ym marn yr ACLl, yw'r rheol a dorrwyd; a

(2) pa gamau y mae'r ACLl yn gofyn iddynt gael eu cymryd neu ba weithgareddau y gofynnir iddynt beidio, er mwyn adfer y toriad.

Rhaid pennu hefyd beth yw'r toriad, p'un ai cyflawni datblygiad heb ganiatâd cynllunio, neu fethu â chydymffurfio ag unrhyw amod neu gyfyngiad. Nid yw geiriad gor-gymleth na thermau cyfreithlyd yn gwella hysbysiadau gorfodi: gwell defnyddio Cymraeg neu Saesneg croyw bob amser. Gallai erlyniad o dan adran 179 o Ddeddf 1990 fethu yn y pen draw pe bai'r Llys yn dyfarnu bod telerau'r hysbysiad yn annealladwy i'r lleygwr.

"Tan-orfodi" a chaniatâd cynllunio tybiedig

2.10 Mae adran 173(11), fel y'i diwygiwyd, yn cyfateb yn sylweddol â'r adran 173(8) flaenorol yn Neddf 1990, ac eithrio, ar ôl cydymffurfio'n llawn â gofynion yr hysbysiad gorfodi, fod y darpariaethau'n gymwys i unrhyw ddibenion neu weithgareddau sy'n parhau ar y tir ac i unrhyw adeiladau neu weithfeydd sy'n aros. Ymdrinnir â'r sefyllfa lle cafwyd "tan-orfodi", drwy ddarparu bod rhaid ymdrin â chaniatâd cynllunio fel pe bai wedi'i roi ar gyfer y datblygiad neu'r gweithgaredd, fel pe bai yn ei gyflwr presennol am fod y perchennog neu'r deiliad wedi cydymffurfio â gofynion yr hysbysiad gorfodi. Gan fod yr adran yn gymwys i'r holl ddibenion neu weithgareddau sy'n parhau ar y tir ar ôl cydymffurfio â'r hysbysiad gorfodi, dylai'r ACLl sicrhau eu bod yn enwi'r holl reolau cynllunio perthnasol sydd wedi'u torri ac sy'n cynnwys defnyddio'r tir cyn rhoi'r hysbysiad gorfodi. Lle ceir defnydd cymysg ar y tir, mae'n bwysig i'r hysbysiad honni newid defnydd i'r defnydd cymysg hwnnw, gan bennu'r holl elfennau sy'n gydrannau yn honiad yr hysbysiad. Dylai'r cais tybiedig am ganiatâd cynllunio o dan adran 177(5), yn codi o unrhyw apêl yn erbyn yr hysbysiad, y bydd angen i'r Ysgrifennydd Gwladol neu'r Arolygydd Cynllunio ei hystyried, gyfeirio mewn gwirionedd at y defnydd cymysg yn ei gyfanrwydd, ac nid yn unig at yr elfennau hynny ar y defnydd a nodwyd gan yr ACLl fel rhai sy'n torri'r rheolau cynllunio ac sy'n dod o dan ofynion yr hysbysiad. Y rheswm am hyn yw na fydd rhagoriaethau cynllunio defnydd penodol ar y tir yr un fath, lle nad yw'r defnydd hwnnw ond yn un o nifer o ddibenion sydd ar y gweill, â rhagoriaethau cynllunio y defnydd hwnnw os dyna unig ddiben y tir. Er enghraifft, pe bai'r dibenion eraill yn dod i ben a phe bai'r unig ddefnydd a fyddai ar ôl yn meddiannu'r "uned gynllunio" gyfan, gan gau eraill allan, mae'n ddigon posibl y byddai'r newid hwnnw, fel mater o ffaith a gradd, yn newid "sylweddol" o ddefnydd ar yr uned gynllunio, y byddai ystyriaethau cynllunio gwahanol yn gymwys iddo (**Wipperman v Barking LBC** (1965) 17 P&CR 225). Gan hynny, os na fydd yr ACLl yn pennu'r holl ddibenion sy'n digwydd ar uned gynllunio mewn achos defnydd cymysg, bydd penderfyniad yr Ysgrifennydd Gwladol neu'r Arolygydd ar yr apêl yn cywiro'r hysbysiad, i adlewyrchu'r sefyllfa wirioneddol ar y tir fel yr oedd adeg rhoi'r hysbysiad, cyn ymdrin ag unrhyw "gais cynllunio tybiedig" ar y sail honno. O dan yr amgylchiadau hyn, os yw'r ACLl wedi methu ag enwi unrhyw ddibenion ar y tir nad ydynt o bosibl yn gyfreithlon eto, ac y byddai gwrthwynebiadau cynllunio iddynt pe baent yn dod yn gyfreithlon, gallai adran 173(11) olygu bod caniatâd cynllunio tybiedig yn cael ei roi ar gyfer y dibenion hynny pe baent wedi'u pennu yn yr honiad ond pe na bai'n ofynnol iddynt ddod i ben.

2.11 Os daw i'r amlwg, yn ystod apêl orfodi, fod yr ACLl drwy ryw amryfusedd wedi hepgor unrhyw gydran o ddefnydd cymysg o'r honiad yn eu hysbysiad, byddant hwy a'r apelydd yn cael cyfle i gyflwyno cynrychioliadau ar rinweddau cynllunio yr holl ddefnydd cymysg cyn i'r Ysgrifennydd Gwladol neu'r Arolygydd gywiro'r hysbysiad yn y dull a grybwyllwyd ym mharagraff 2.10 uchod. Nid yw fel rheol yn bosibl ymestyn y gofynion mewn hysbysiad gorfodi heb achosi anghyfiawnder i'r apelydd neu "ddeiliaid perthnasol" eraill a ddiffinnir yn adran 174(6). O dan yr amgylchiadau hynny hwyrach y bydd yr ACLl am dynnu'r hysbysiad yn ei ôl a rhoi un arall, yn hytrach na bod hysbysiad wedi'i gywiro yn cael ei gadarnhau a bod darpariaethau adran 173(11) yn gymwys i elfennau anghyfreithiol blaenorol defnydd cymysg, nad oeddent o bosibl yn gwybod amdanynt. (Dylai darpariaethau "ail gyfle" adran 171B(4)(b) o Ddeddf 1990 sicrhau bod yr ACLl yn dal i fod "mewn pryd" i roi hysbysiad gorfodi pellach o dan yr amgylchiadau hyn.)

2.12 Mewn achosion lle mae'r honiad fel y'i drafftiwyd gan yr ACLl yn pennu'n gywir yr holl elfennau ar y defnydd cymysg, bydd angen i ACLl sicrhau bod gofynion yr hysbysiad hefyd yn adlewyrchu eu bwriadau ar gyfer y tir yn llawn, ar ôl cydymffurfio â'r hysbysiad ac ar ôl i adran 173(11) ddod i rym.

2.13 Nid yw adran 173(11) yn pennu unrhyw weithdrefn ar gyfer "tybio bod caniatâd cynllunio wedi'i roi". Mae'r Swyddfa'n awgrymu nad oes angen i'r ACLl ond hysbysu derbynnydd copi o'r hysbysiad gorfodi fod caniatâd wedi'i roi ar yr adeg y cydymffurfiwyd yn llawn, ym marn yr ACLl, â gofynion yr hysbysiad gorfodi. Dylai'r penderfyniad tybiedig i roi caniatâd cynllunio cael ei nodi hefyd yn y gofrestr o hysbysiadau gorfodi a hysbysiadau stop.

Effaith cydymffurfio â hysbysiad gorfodi

2.14 Nid yw cydymffurfio â hysbysiad gorfodi yn gollwng yr hysbysiad. Mae'n dal mewn grym mewn perthynas â'r tir oni bai ei fod yn cael ei dynnu'n ôl. O dan yr amgylchiadau hyn, os newidiodd y tir ddwylo wedi hynny, gallai darpar-brynwyr geisio rhyw sicrwydd pellach, yn ogystal â'u harsylwadau a'u dehongliadau eu hunain o ofynion yr hysbysiadau gorfodi, y cydymffurfiwyd yn llawn â'r hysbysiad. Hwyrach y byddai angen yr eglurhad hwn er mwyn bodloni benthycwyr posibl er mwyn i'r benthyciad gael ei sicrhau, neu i fodloni prynwyr na fyddent yn agored i gael eu herlyn.

2.15 Os ceisir sicrwydd o'r fath, gan y perchennog neu'r deiliad presennol neu ddarpar-berchennog neu ddarpar-ddeiliad tir ac os gellir ei roi, credir ei bod yn rhesymol i'r ACLl gadarnhau yn ysgrifenedig y buwyd yn cydymffurfio, â'r hysbysiad gorfodi o dan sylw, ar ddyddiad penodol, neu fod hynny'n parhau i ddigwydd. Os oes angen sicrwydd mwy ffurfiol, bydd yn agored i'r ceisydd wneud cais am "dystysgrif datblygu cyfreithlon" a thalu'r ffi briodol am wneud cais.

2.16 Mae'n bosibl hefyd y rhoddid sicrwydd ysgrifenedig tebyg o dan amgylchiadau adran 173(12), lle mae "adeilad amnewid" wedi'i adeiladu ac yn cydymffurfio'n llawn â gofynion hysbysiad gorfodi.

Datganiad o'r rhesymau dros roi'r hysbysiad gorfodi

2.17 Mae'n hanfodol bod unrhyw un y cyflwynir copi o hysbysiad gorfodi iddynt yn deall, o'r cychwyn cyntaf, y rhesymau paham y rhoes yr ACLl yr hysbysiad. O'r herwydd, mae rheoliad 3 o Reoliadau Cynllunio Gwlad a Thref (Hysbysiadau Gorfodi ac Apelau) 1991 (OS 1991/2804) ("Rheoliadau 1991") yn ei gwneud yn ofynnol i bob hysbysiad gorfodi a roddir gan ACLl bennu'r rhesymau pam yr oeddent o'r farn ei bod yn "fanteisiol" rhoi'r hysbysiad. Dylid cynnwys y datganiad o'r rhesymau felly yn nhestun yr hysbysiad gorfodi ac, yng ngoleuni'r cyngor a gynhwysir ym mharagraffau 2.30 i 2.33 isod, dylid egluro ai i gywiro niwed i amwynder yn **unig** y mae'r rhesymau hyn yno.

Enwi'r safle

2.18 Mae Rheoliad 3 o Reoliadau 1991 yn ei gwneud yn ofynnol hefyd fod yr hysbysiad gorfodi yn pennu union ffiniau'r tir y mae'n ymwneud ag ef. Y ffordd orau o wneud hyn bob tro yw drwy gyfrwng plan (a gorau oll os yw hynny ar sylfaen yr Arolwg Ordnans â graddfa heb fod yn llai na 1/2500) ynghlwm wrth yr hysbysiad gorfodi, ac *union* ffin y tir wedi'i dynodi arno yn glir ag amlinelliad mewn lliw addas. Os nad yw hyn yn ddigonol i nodi'r ffin yn union, dylai'r plan gael ei gydategu â disgrifiad ysgrifenedig byr, neu luniad wedi'i dirfesur yn gywir ar raddfa fwy.

Amgylchiadau personol

2.19 Rhaid i amgylchiadau personol, gan gynnwys materion megis iechyd, anghenion tai a lles, personau yr amheuir eu bod yn gweithredu yn groes i'r rheolau cynllunio cael eu cymryd i ystyriaeth wrth benderfynu a ddylid cymryd camau gorfodi (gweler **R v Kerrier DC ex parte Uzell** [1996] 71 P&CR 566).

Rhoi'r hysbysiad gorfodi a chyflwyno copïau

2.20 Mae'r cysyniad o "roi" hysbysiad gorfodi, yn hytrach na'i gyflwyno, yn deillio o Ddeddf Llywodraeth Leol a Chynllunio (Diwygio) 1981. Dehonglir y gofyniad i "roi" hysbysiad fel petai'n golygu y dylai'r ACLl baratoi dogfen sydd wedi'i hawdurdodu'n briodol a'i chadw yn eu cofnodion. Caiff copïau o'r hysbysiad hwnnw eu cyflwyno wedyn i bersonau sydd â buddiant, fel a ddisgrifir ym mharagraff 2.22 o'r Atodiad hwn.

2.21 Mae'n bwysig bod manylion pob hysbysiad gorfodi a roddir yn cael eu cofnodi, cyn gynted â phosibl, yn unol ag Erthygl 26 o'r Gorchymyn Cynllunio Gwlad a Thref (Gweithdrefn Ddatblygu Gyffredinol) 1995 (OS 1995/419) (y "GPDO"), yn y gofrestr o hysbysiadau gorfodi a hysbysiadau stop y mae'n ofynnol i ACLl ei chadw (o dan adran188 o Ddeddf 1990). Mae adran 179(7)(b) o Ddeddf 1990 yn darparu amddiffyniad i bersonau a gyhuddir o drosedd o

dan yr adran honno os gallant ddangos nad oedd yr hysbysiad wedi'i gynnwys yn y gofrestr, na chafodd copi ei gyflwyno iddynt ac nad oeddent yn gwybod am ei fodolaeth.

2.22 Mae adran 172 o Ddeddf 1990 yn ei gwneud yn ofynnol bod copi o hysbysiad gorfodi'n cael ei gyflwyno -

(1) i berchennog ac i ddeiliaid y tir y mae'r hysbysiad yn ymwneud ag ef; a

(2) i unrhyw berson arall sydd â buddiant yn y tir, sef buddiant y mae'r hysbysiad yn effeithio'n sylweddol arno, ym marn yr ACLl.

Rhaid i'r hysbysiad gael ei gyflwyno heb fod yn fwy nag wyth diwrnod ar hugain ar ôl dyddiad ei roi a heb fod yn llai nag wyth diwrnod ar hugain cyn y dyddiad a bennir ynddo. (Y dyddiad gweithredol yw'r dyddiad y mae'r cyfnod cydymffurfio'n dechrau rhedeg.) Wrth gyflwyno hysbysiadau gorfodi, dylai'r ACLl sicrhau bod copi'n cael ei gyflwyno i unrhyw forgeiseion y gwyddys amdanynt. Mewn achosion lle bo perchennog y tir yn forgeisiwr sy'n diffyg dalu hwyrach na fydd modd dod o hyd iddo/iddi, a bydd angen sicrhau bod y morgeisiai mewn meddiant yn cael gwybod am y sefyllfa. Yn unol ag adran 173A(3) o Ddeddf 1990, dylid hysbysu morgeisiai hefyd am dynnu hysbysiad yn ôl neu am hepgor neu lacio unrhyw ofyniad.

2.23 Ynghlwm wrth bob copi o hysbysiad gorfodi a gyflwynir gan ACLl, o dan adran 172, mae Rheoliad 4 o Reoliadau 1991, fel y'u diwygiwyd gan OS 1992/1904, yn ei gwneud yn ofynnol cael nodyn esboniadol sy'n cynnwys copi, neu grynodeb o adrannau 171A, 171B a 172 i 177 o Ddeddf 1990 yn esbonio -

(1) bod yna hawl i apelio at yr Ysgrifennydd Gwladol yn erbyn yr hysbysiad;

(2) bod rhaid i unrhyw apêl gael ei gwneud yn ysgrifenedig cyn y dyddiad a bennir yn yr hysbysiad fel y dyddiad y daw i rym; a

(3) y seiliau y gellir gwneud apêl arnynt.

Mae Rheoliad 4 hefyd yn ei gwneud yn ofynnol i'r ACLl esbonio bod rhaid i apêl gael ei hategu ar yr un pryd (neu o fewn y terfyn amser o bedwar diwrnod ar ddeg y gall yr Ysgrifennydd Gwladol ei orfodi o dan y rheoliad hwn) gan ddatganiad o'r rhesymau dros yr apêl a'r ffeithiau y mae wedi'i seilio arnynt. Dylai ACLl benderfynu sut i gyflawni'r gofyniad hwn yn y rheoliad. Mae rheoliad 13 o Reoliadau Cyffredinol Cynllunio Gwlad a Thref 1992 (OS 1992/1492) yn ei gwneud yn ofynnol bod hysbysiadau ac amlenni'n cael eu marcio â'r geiriau:

"Pwysig - Mae'r ohebiaeth hon yn effeithio ar eich eiddo".

2.24 Y peth gorau fel rheol yw amgáu tri chopi o bob hysbysiad gorfodi a chopi o lyfryn esboniadol y Swyddfa Gymreig ("Apelau Hysbysiadau Gorfodi - Arweiniad i'r Weithdrefn") a thri chopi o'r ffurflen apelio swyddogol. Bydd hyn yn sicrhau bod gan bob darpar-apelydd yr un wybodaeth a'i fod yn gwybod y weithdrefn ar gyfer cyflwyno apêl. *(Nid yw'r llyfryn esboniadol a'r ffurflen apêl yn briodol ar gyfer hysbysiadau gorfodi adeiladau rhestredig ac ardaloedd cadwraeth, nad yw rheoliad 4 yn gymwys iddynt).*

Pŵer yr Ysgrifennydd Gwladol i ofyn am wybodaeth a diddymu hysbysiad

2.25 Gofynnir i ACLl anfon tri chopi o bob hysbysiad gorfodi a roddir ganddynt, er mwyn i ddarpar-apelydd gyflwyno un gydag unrhyw apêl i'r Ysgrifennydd Gwladol. Os nad yw'r weithdrefn hon yn gweithio'n foddhaol, rhaid i'r Swyddfa allu cael gafael ar gopi o'r hysbysiad yn gyflym. Mae Rheoliad 6 o Reoliadau 1991 yn ei gwneud yn ofynnol i'r ACLl anfon copi o'r hysbysiad at yr Ysgrifennydd Gwladol, cyn pen 14 diwrnod ar ôl y dyddiad y mae'n eu hysbysu bod apêl yn cael ei gwneud, ynghyd â rhestr o enwau a chyfeiriadau pobl y cyflwynwyd copi iddynt. Os bydd yr ACLl yn methu â pharchu'r gofyniad hwn, mae gan yr Ysgrifennydd Gwladol bŵer i ddiddymu'r hysbysiad yn rhinwedd adran 176(3). Dylai fod yn eithriadol iawn diddymu hysbysiad o dan yr amgylchiadau hyn. Os yw'n ymddangos ei bod yn briodol diddymu hysbysiad, bydd y Swyddfa'n rhoi saith diwrnod o rybudd terfynol i'r ACLl o'r

bwriad i'w ddiddymu gan archwilio unrhyw gynrychioliadau oddi wrth yr ACLl, yn ystod y cyfnod hwnnw, fod yna amgylchiadau lliniarol sy'n peri nad yw'n briodol diddymu yr hysbysiad. Mae unrhyw benderfyniad i ddiddymu hysbysiad yn agored i her yn yr Uchel Lys, ac nid yw'n atal yr ACLl rhag rhoi hysbysiad arall, o fewn unrhyw derfyn amser perthnasol.

Tynnu hysbysiad gorfodi yn ôl

2.26 Mae adran 173A yn galluogi'r ACLl i dynnu hysbysiad gorfodi a gyhoeddir ganddynt yn ôl, neu i hepgor neu lacio unrhyw un o'i ofynion, ac i ymestyn unrhyw gyfnod a bennwyd ar gyfer cydymffurfio ag ef. Gellir defnyddio'r pŵer hwn p'un a yw'r hysbysiad gorfodi wedi dod i rym neu beidio. Pan gaiff ei ddefnyddio, mae'n ofynnol i'r ACLl hysbysu ar unwaith unrhyw un y mae neu y byddai copi o'r hysbysiad gorfodi wedi'i gyflwyno iddynt. Nid yw tynnu hysbysiad gorfodi yn ôl yn atal yr ACLl rhag rhoi hysbysiad pellach ynglŷn â'r un safle neu'r un toriad, os yw fel arall yn agored iddynt wneud hynny.

Hawl i apelio at yr Ysgrifennydd Gwladol yn erbyn hysbysiad gorfodi

2.27 Mae adran 174(1) yn darparu hawl apelio i unrhyw un sydd â buddiant yn y tir y mae'r hysbysiad gorfodi yn cyfeirio ato, neu sy'n "ddeiliad perthnasol", p'un a oes copi o'r hysbysiad wedi'i gyflwyno iddynt neu beidio. Ystyr "buddiant" yw buddiant cyfreithiol neu ecwitïol, megis perchnogaeth, neu roi tenantiaeth neu brydles, neu sicrhau morgais neu fenthyciad arall ar y tir. Diffinnir "deiliad perthnasol" yn adran 174(6). Mae unrhyw un sy'n meddiannu'r tir gyda chaniatâd llafar neu ysgrifenedig y perchennog yn ddeiliad perthnasol.

2.28 Mae'r seiliau dros apelio yn adran 174(2) o Ddeddf 1990 fel a ganlyn -

"(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 occured) 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."

Atebolrwydd i dalu'r ffi am gais cynllunio tybiedig

2.29 Ar apêl o dan sail (a), os oes unrhyw ffi yn daladwy am gais cynllunio tybiedig o dan Reoliadau a wneir yn rhinwedd adran 303, ac os bydd yr Ysgrifennydd Gwladol yn rhoi hysbysiad ysgrifenedig o'r cyfnod y mae rhaid i'r ffi gael ei thalu ynddo, yna os nad yw'r apelydd yn talu'r ffi o fewn y cyfnod hwnnw mae adran 177(5A) yn darparu y bydd yr apêl ar sail (a) *a'r* cais tybiedig yn methu. Mae'r ffi yn daladwy i'r Ysgrifennydd Gwladol a'r ACLl mewn cyfrannau cyfartal, o fewn pa derfyn amser bynnag a bennir yn ysgrifenedig (gweler paragraff 2.74 o'r Atodiad hwn). Rhoddir terfyn amser rhesymol ar gyfer y taliadau. Os caiff yr asesiad o'r swm sy'n ddyledus ei herio, neu os gwneir cais rhesymol am fwy o amser i dalu o fewn y terfyn amser cychwynnol, caiff y Swyddfa ymestyn y cyfnod ar gyfer talu, yn ysgrifenedig. Os digwydd hynny, hysbysir yr ACLl yn unol â hynny.

Datgan gofynion yr ACLl mewn hysbysiad gorfodi

2.30 Mae rhai apelwyr sydd heb dalu'r ffi cais tybiedig yn lle hynny wedi ceisio cyflwyno dadleuon ar rinweddau cynllunio eu hapêl yng nghyd-destun apêl ar sail (f) yn adran 174(2). Ym marn y Swyddfa, rhaid i ddarpariaethau adran 174(2) gael eu dehongli yn unol â chynllun mwy y Rhan hon o Deddf 1990. Yn benodol, mae angen dehongli y seiliau dros apêl mewn perthynas â darpariaethau is-adrannau (1) i (4) o adran 173 o'r Ddeddf. Drwy'r geiriau "yn gyfan gwbl neu'n rhannol", mae is-adran (3) yn egluro y gall yr ACLl "dan-orfodi", wrth bennu'r camau y mynnant iddynt gael eu cymryd, neu'r gweithgareddau y mynnant iddynt ddod i ben, er mwyn sicrhau'r amcanion a bennir yn is-adran (4). Mae is-adran (4) yn galluogi'r ACLl i bennu'r naill neu'r llall o ddau gategori gwahanol o ofyniad adferol mewn hysbysiad gorfodi sef:

(a) peri bod unrhyw ddatblygiad yn cydymffurfio â thelerau ... unrhyw ganiatâd cynllunio sydd wedi'i roi mewn perthynas â'r tir, drwy roi'r gorau i unrhyw ddefnydd ar y tir neu drwy adfer y tir i'w gyflwr cyn i'r toriad ddigwydd; **neu**

(b) cywiro unrhyw niwed i amwynder a achoswyd gan y toriad.

Felly rhaid yn gyntaf i'r ACLl ddewis pa lwybr i'w gymryd wrth bennu eu gofynion. Os bydd yr ACLl yn dilyn patrwm yr hysbysiadau gorfodi enghreifftiol yn Ychwanegiadau 1-3 o'r Atodiad hwn, dylai fod yn glir, trwy ystyried yr hyn a ddywedir ym mharagraffau 3, 4 a 5 o'r hysbysiad, wedi'u darllen yn eu crynswth, a ddylai'r gofynion adferol ddilyn o baragraff (a) **neu** baragraff (b) o adran 173(4). Er hynny, mae'n dal yn bosibl bod hysbysiad sy'n "tan-orfodi" yn gwneud hynny at ddibenion heblaw adfer niwed i amwynder yn unig. Yn yr un modd, gall hysbysiad y mae ei ofynion yn dilyn o baragraff (a) ac sy'n ei gwneud yn ofynnol i'r datblygiad gydymffurfio'n llwyr â thelerau caniatâd cynllunio, neu ddileu adeilad yn llwyr, neu roi'r gorau yn llwyr i ddefnydd, fod wedi'i roi yn unig i adfer niwed i amwynder a achoswyd gan y bwriad ac nid am unrhyw reswm arall. Mae'n berthnasol hefyd felly fod rheoliad 3(a) o Reoliadau 1991 yn ei gwneud yn ofynnol i hysbysiad gorfodi pennu'r rhesymau pam yr oedd yr ACLl yn credu ei bod yn fanteisiol rhoi'r hysbysiad.

2.31 Rhaid i'r ACLl lunio eu gofynion adferol er mwyn cyfateb yn glir **naill ai** â diben (a) **neu** ddiben (b) yn adran 173(4). Mae'n dilyn o ddehongli'r darpariaethau hyn mai'r unig fath o hysbysiad gorfodi sy'n agored i apêl ar ail elfen sail (f) ("neu fel y bo'n wir, i adfer unrhyw niwed i amwynder a achoswyd gan doriad o'r fath;") yw hysbysiad lle bo **rhesymau** yr ACLl dros ei roi (paragraff 4 o'r hysbysiad enghreifftiol) yn datgan mai adfer rhyw niwed i amwynder a achoswyd gan y toriad yw ei **unig** ddiben.

2.32 Mae geiriad sail (f) yn bwysig hefyd yn hyn o beth. Mae'r sail sylfaenol bron yn debyg i sail (g) o adran 174(2) o Ddeddf 1990, fel y'i deddfwyd yn wreiddiol. Ond mae sail (f) bellach wedi'i geirio er mwyn gwahanu'r ddwy ddadl y gellir eu defnyddio o dan yr elfen hon yn fwy arwyddocaol drwy gyfrwng y geiriau "neu, fel y bo'n wir,". O archwilio'r hysbysiad gorfodi, dylai ddod i'r amlwg beth yn union y ceisiai'r ACLl ei gyflawni drwy eu hysbysiad. Os yw'n ymddangos y gall y toriad fod yn groes i'r cynllun datblygu, neu os yw'n achosi perygl i draffig, neu os ceir unrhyw wrthwynebiadau iddo heblaw ar sail niwed i amwynder yn unig, a bod yr ACLl yn gofyn am ei derfynu'n llwyr, ni fernir bod honno'n sefyllfa lle "y bo'n wir" mai'r cyfan y mae ei angen yw adfer unrhyw niwed i amwynder a achoswyd. Mewn achos o'r fath bernir na ellir dehongli'r Deddf yn synhwyrol fel petai'n caniatáu **unrhyw** apêl a gyflwynir o dan ail bennawd sail (f) lle nad yw'r cais tybiedig wedi'i ystyried a lle nad yw gwrthwynebiadau heblaw ar sail niwed i amwynder wedi'u datrys yn foddhaol. Yr unig apêl a ddylai fod ar gael i'w chyflwyno yn yr achos hwnnw yw bod y gofynion, mewn gwirionedd, yn fwy na'r hyn sy'n angenrheidiol i adfer y toriad.

2.33 Fel arall, os yw'n glir mai'r **unig** reswm dros roi hysbysiad, neu'r unig wrthwynebiad i'r toriad, yw ar sail amwynderau, ac os nad oes unrhyw wrthwynebiadau eraill wedi'u codi ar seiliau polisi neu draffig neu seilwaith, yna, ac yna yn unig, y cymerir unrhyw apêl a gyflwynir o dan ail bennawd sail (f) i ystyriaeth lle nad yw'r cais tybiedig wedi'i ystyried. Câi ystyriaeth ar sail (f) o dan yr amgylchiadau hyn ei chyfyngu i faterion amwynder yn unig, heb fod angen mynd i'r afael â pholisi cynllunio neu unrhyw fater arall o rinweddau cynllunio.

Pwyntiau ychwanegol ynghylch gofynion

2.34 Yn achos **Kaur v SSE and Greenwich LBC** (1990) JPL 814, bamwyd y byddai gofyniad i roi hysbysiad gorfodi yn darpaau ar gyfer cyflwyno cynllun adfer a'i gymeradwyo ar ôl hynny yn dod â mesur annerbyniol o ansicrwydd. Er y gellir dilysu gofyniad o'r fath drwy ddarpau bod penderfyniad ar gynllun o'r fath yn cāel ei wneud yn anstatudol yn niffyg cytundeb (gweler **Murfitt v Secretary of State for the Environment and East Cambridgeshire DC** (1980) JPL 598), ni ddylid galw ar yr Ysgrifennyddd Gwladol fel cymrodeddwr cynllun o'r fath mewn hysbysiad gorfodi ACLl, nad oedd hwyrach, yn absenoldeb unrhyw apêl yn erbyn yr hysbysiad hwneus, wedi ymwneud o'r blaen ag ef. Anogir ACLI felly i osgoi gofynion o'r fath mewn hysbysiadau gorfodi ond yn hynach i nodi, lle fynnag y fo'n bosibl, y camau penodol y maent yn ei gwneud yn ofynnol i'w cymryd er mwyn cywiro achos o dorri rheol gynllunio. Os yw hynny'n anymarferol, o bosibl am fod union gyflwr y tir cyn i'r rheol gael ei thorri yn rhan neilltuol o wybodaeth y datblygwr, byddai dewis arall yn ei gwneud yn ofynnol i adfer y tir i'w gyflwr cyn i'r rheol gynllunio cael ei thorri, gan ei gadael i'r datblygwr gydymffurfio yn unol â'i wybodaeth o'r cyflwr hwnnw.

2.35 Ar y llaw arall, dylai ACLI wylio rhag gorfodi gofynion gorfanwl mewn hysbysiadau gorfodi, megis pennu union gymysgedd yr hadau gwellt i'w defnyddio ar gyfer ailhadu tir er mwyn ei ddychwelyd i'w gyflwr blaenorol, gan y gall gofynion o'r fath fod yn ormodol.

Terfynau amser ar gyfer apelio

2.36 Mae adran 174(3) yn darparu bod rhaid gwneud apêl -

(a) drwy roi hysbysiad ysgrifenedig o'r apêl i'r Ysgrifennydd Gwladol cyn y dyddiad a bennir yn yr hysbysiad gorfodi fel y dyddiad y daw i rym; neu

(b) drwy anfon y cyfryw hysbysiad iddo mewn llythyr wedi'i gyfeirio'n briodol, wedi'i dalu ymlaen llaw ac wedi'i bostio iddo ar y cyfryw adeg fel y câi ddosbarthu iddo cyn y dyddiad hwnnw, yn nhrefn arferol y post.

Gan mai apêl yw'r unig ffordd fel arfer i dderbynnydd hysbysiad gorfodi herio camau'r ACLl wrth roi'r hysbysiad, mae'n holl-bwysig fod darpar-apelydd yn cael gwybod am y terfyn amser absoliwt hwn, nad oes gan yr Ysgrifennydd Gwladol ddisgresiwn i'w amrywio, ar gyfer gwneud apêl ddilys. Mae'r llyfryn esboniadol yn pwysleisio'r terfynau amser llym a ddefnyddir ynglŷn ag apelau gorfodi a'i bod yn ddoeth peidio ag aros tan ddiwedd cyfnod yr apêl cyn cyflwyno'r apêl.

Cynnal apelau gorfodi: gweithdrefnau

2.37 Lle gwneir apêl yn erbyn yr hysbysiad gorfodi, mae gan yr apelydd a'r ACLl hawl i ymddangos gerbron person a benodir gan yr Ysgrifennydd Gwladol a chael eu gwrando ganddo. Lle defnyddir yr hawl hon, caiff ymchwiliad lleol cyhoeddus ei gynnal fel arfer. Lle bo'r seiliau dros apelio yn awgrymu anghydfod ynghylch ffeithiau perthnasol, rhwng yr ACLl a'r apelydd, ee o dan seiliau (c) a (d) o adran 174(2), fel rheol rhaid cynnal ymchwiliad. Os felly, bydd Rheolau Cynllunio Gwlad a Thref (Gorfodi) (Gweithdrefn Ymchwiliadau) 1992 (OS 1992/1903) yn gymwys. Lle bo'r anghydfod yn ymwneud â rhagoriaethau cynllunio'r datblygiad yn unig, neu â gofynion yr hysbysiad neu â'r cyfnod ar gyfer cydymffurfio, a lle cafwyd cais am gael gwrandawiad, gall fod yn briodol bwrw ymlaen drwy gyfrwng gwrandawiad anffurfiol yn hytrach nag ymchwiliad cyhoeddus. Mae gweithdrefnau llai ffurfiol y gwrandawiad yn golygu ei bod yn amhriodol mewn unrhyw achos lle ceir anghydfod ynghylch ffeithiau'r dystiolaeth, neu ar y mwyafrif o seiliau cyfreithiol yn adran 174(2).

2.38 Mewn achosion addas, bydd y Swyddfa'n awgrymu trafod yr apêl drwy'r weithdrefn cynrychioliadau ysgrifenedig. Os aiff apêl rhagddi ar ŷ sâil hon, bydd yn amlwg yn angenrheidiol i Arolygydd Cynllunio archwilio'r safle. Lle bo rhaid cael mynediad i dir ar gyfer hyn, fel arfer trefnir bod yr Arolygydd yn mynd yng nghwmni un o gynrychiolwyr yr apelydd a'r ACLl.

Cynnal apelau gorfodi: gofynion sy'n gymwys i apelwyr

2.39 Mae Rheoliad 5 o Reoliadau 1991 yn ei gwneud yn ofynnol i unrhyw berson sy'n hysbysu'r Ysgrifennydd Gwladol eu bod yn apelio yn erbyn hysbysiad gorfodi, hysbysiad gorfodi adeilad rhestredig neu hysbysiad gorfodi ardal gadwraeth, ac nad yw'n anfon gyda'r hysbysiad ddatganiad ysgrifenedig yn pennu ar ba sail y maent yn apelio, a chan ddatgan yn fyr y ffeithiau i ategu pŏb ūn o'r seiliau hynny, wneud hynny o fewn pedwar diwrnod ar ddeg ar ôl i'r Ysgrifennydd Gwladol ei hysbysu i'r perwyl hwnnw. Mae Adran 174(5) yn galluogi'r Ysgrifennydd Gwladol i benderfynu ar yr apêl heb ystyried unrhyw sail dros apelio y mae'r apelydd yn methu â darparu'r wybodaeth angenrheidiol ar ei chyfer o fewn yr amser penodedig.

2.40 Dylai darpar-apelwyr (a'u hasiantau) ystyried yn ofalus iawn ddatganiad yr ACLl o resymau dros roi'r hysbysiad gorfodi pan fônt yn ystyried apêl. Mewn unrhyw apêl ddilynol, dylai eu dadleuon roi sylw i'r toriad honedig o reolau cynllunio a datganiad yr ACLl. Os bydd yr ACLl yn datgan eu bod yn fodlon rhoi caniatâd cynllunio amodol ar gyfer y datblygiad honedig anghyfreithlon, dylai'r darpar-apelydd ystyried a ddylid gwneud y cais cynllunio priodol, yn hytrach nag apelio. Dylid trafod hyn ar fyrder gyda'r ACLl er mwyn darganfod a fyddent yn fodlon tynnu'r hysbysiad yn ôl pe rhoid y caniatâd hwnnw. Os byddai'r caniatâd amodol arfaethedig yn annerbyniol, dylai'r apêl ddatgan unrhyw amodau diwygiedig a fyddai'n ei wneud yn dderbyniol.

2.41 Os caiff apêl orfodi ei gohirio am fod yr apelydd yn methu â darparu digon o wybodaeth, ac os anwybyddir ceisiadau'r Swyddfa am y wybodaeth honno, bydd y Swyddfa yn troi at bwerau'r Ysgrifennydd Gwladol yn rheoliad 5 i fynnu bod terfynau amser yn cael eu cadw. Os parheir i fethu â darparu'r wybodaeth, gall yr Ysgrifennydd Gwladol fynd ymlaen i wrthod yr apêl (neu benderfynu arni ar y seiliau apêl hynny y mae ganddo ddigon o wybodaeth ar eu cyfer yn unig) oni bai y gall yr apelydd ddangos amgylchiadau lliniarol dilys a'i hataliodd ef neu hi rhag darparu'r wybodaeth angenrheidiol. Pan wrthodir apêl o dan adran 176(3), ni fydd y cais cynllunio tybiedig wedi'i ystyried a chaiff unrhyw ffi sydd eisoes wedi'i thalu gan yr apelydd ei had-dalu gan y Swyddfa a'r ACLl.

2.42 Weithiau bydd datganiad yr apelydd yn annigonol o safbwynt gwybodaeth neu fanylion at ddibenion ymchwiliad cyhoeddus. Os felly, bydd y Swyddfa'n defnyddio pŵer yr Ysgrifennydd Gwladol, yn rheoliad 6 o Reolau Gweithdrefn Ymchwiliadau Gorfodi 1992 i'w gwneud yn ofynnol i'r apelydd gyflwyno datganiad ysgrifenedig o'r sylwadau y mae'n bwriadu eu cyflwyno yn yr ymchwiliad. Bydd rhaid cyflwyno copi o ddatganiad yr apelydd i'r ACLl a'r Ysgrifennydd Gwladol ar amser a bennir cyn dyddiad yr ymchwiliad.

Cynnal apelau gorfodi: gofynion sy'n gymwys i ACLl

2.43 Weithiau mae'r Swyddfa yn cael anhawster mawr wrth sicrhau datganiad yr ACLl ar gyfer yr apêl, hyd yn oed pan fo'n gymharol ddi-drafferth a'r partïon yn bwrw ymlaen drwy gyfrwng cynrychioliadau ysgrifenedig ac ymchwiliad o'r safle gan Arolygydd Cynllunio. Weithiau mae datganiadau ACLl yn annigonol fel ffordd o baratoi at ymchwiliad cyhoeddus, gyda'r canlyniad y bydd partïon yr apêl, a'r Arolygydd Cynllunio sy'n cynnal yr ymchwiliad, yn treulio mwy o amser nag y dylai fod ei angen yn yr ymchwiliad. Os bydd yr ACLl yn methu â chadw at yr amserlen a bennir gan y Swyddfa, gall yr Ysgrifennydd Gwladol ymarfer y pwerau yn rheoliad 7 o Reoliadau 1991 (fel y'u diwygiwyd).

2.44 Mae rheoliad 7(2) yn ei gwneud yn ofynnol i ddatganiad yr ACLl o sylwadau ar yr apêl gael ei gyflwyno -

(1) *yn achos yr ymchwiliadau hynny lle bo'r dyddiad a drefnwyd ar gyfer yr ymchwiliad yn llai na 18 wythnos ar ôl i'r Ysgrifennydd Gwladol roi hysbysiad ysgrifenedig o fwriad i gynnal ymchwiliad i bartïon yr apêl* - o leiaf 6 wythnos cyn dyddiad yr ymchwiliad;

(2) *yn achos ymchwiliadau eraill* - heb fod yn fwy na 12 wythnos ar ôl hysbysiad ysgrifenedig o fwriad i gynnal ymchwiliad; a

(3) *lle na chynhelir ymchwiliad lleol* - heb fod yn fwy na 28 diwrnod ar ôl hysbysiad yr Ysgrifennydd Gwladol i'r ACLl yn gofyn am ddatganiad.

Os na fydd yr ACLl yn cydymffurfio â'r gofynion hyn, mae gan yr Ysgrifennydd Gwladol bŵer dewisol i ddiddymu'r hysbysiad gorfodi yn unol ag adran 176(3)(b). Dylai achosion o'r fath fod yn brin am fod y terfynau amser yn cynnig digon o gyfle i ddatganiad yr ACLl gael ei gyflwyno. Os diddymir hysbysiad gorfodi o dan adran 176(3)(b), bydd yr hysbysiad yn peidio â bod mewn grym; a chaiff unrhyw ffi am gais cynllunio tybiedig a dalwyd gan yr apelydd ei had-dalu gan y Swyddfa a'r ACLl. Nid yw diddymu'r hysbysiad o dan yr amgylchiadau hyn yn effeithio ar bwerau'r ACLl i roi un arall, ar yr amod nad eir y tu hwnt i'r terfyn amser ar gyfer cymryd camau gorfodi.

Cynnal apelau gorfodi: hysbysu'r cyhoedd o'r apêl

2.45 Mae rheoliad 8 o Reoliadau 1991 yn ei gwneud yn ofynnol i'r ACLl, pan drafodir yr apêl heblaw drwy ymchwiliad, hysbysu'r apêl i ddeiliaid y tir yng nghymdogaeth safle'r apêl sydd, ym marn yr ACLl, yn cael eu heffeithio gan y toriad honedig o reolau cynllunio. Wrth hysbysu, rhaid i'r ACLl gynnwys disgrifiad o'r toriad honedig o reolau, eu rhesymau dros gyflwyno'r hysbysiad, y seiliau y gwneir yr apêl arnynt, a'r terfyn amser i bersonau sydd â diddordeb gyflwyno cynrychioliadau ysgrifenedig i'r ACLl. Dylai'r hysbysiad gael ei roi cyn gynted ag y bo'n ymarferol yn ystod apêl gorfodi.

Apelau wedi'u trosglwyddo

2.46 Trosglwyddir y mwyafrif o apelau gorfodi i Arolygwyr Cynllunio i gael eu penderfynu. Pennir y dosbarthiadau o apelau a drosglwyddir yn y Rheoliadau Cynllunio Gwlad a Thref (Penderfynu Apelau gan Bersonau Penodedig) (Dosbarthiadau Penodedig) 1981 (OS 1981/804, fel y'u diwygiwyd gan OS 1986/443, 1986/623, 1989/1087, 1995/2259 a 197/420). Penderfynir ar y cwestiwn a ddylai apêl gael ei "hadfer" i'w phenderfynu gan yr Ysgrifennydd Gwladol drwy gyfeirio at gategori'r toriad o'r rheolau cynllunio a honnir yn yr hysbysiad gorfodi ac amgylchiadau'r apêl.

Costau

2.47 Fel rheol disgwylir i'r partïon mewn apêl hysbysiad gorfodi talu eu costau eu hunain. Yn wahanol i ymgyfreithiad, nid yw costau fel rheol yn "dilyn y digwyddiad" yn yr apêl, ac ni chânt eu dyfarnu yn erbyn parti, ar gais, ond os dangosir eu bod wedi ymddwyn "yn afresymol" ym mhroses yr apêl. Ceir canllawiau cynhwysfawr yng Nghylchlythyr 23/93 y Swyddfa Gymreig ar y polisi a'r gweithdrefnau ar gyfer dyfarnu costau i bartïon mewn apêl. Yn rhinwedd adran 175(7) o Ddeddf 1990 (a fewnosodwyd gan baragraff 3 o Atodlen 4 o Ddeddf Cynllunio (Darpariaethau Canlyniadol) 1990), gellir dyfarnu costau mewn apêl hysbysiad gorfodi p'un a yw'r apêl wedi symud ymlaen drwy gyfrwng cynrychioliadau ysgrifenedig neu ymchwiliad lleol.

Y penderfyniad ar yr apêl yn derfynol

2.48 Pan fydd yr Ysgrifennydd Gwladol, neu Arolygydd yn ymarfer pwerau a drosglwyddwyd, wedi penderfynu ar apêl, nid oes ganddynt awdurdodaeth bellach ac ni allant ei hail-ystyried na'i chywiro. Gellir gwneud cais am ganiatâd i gyflwyno apêl bellach yn yr Uchel Lys ar bwynt o gyfraith, o dan adran 289 o Ddeddf 1990. Mae Rheolau'r Goruchaf Lys yn gofyn bod hwnnw'n cael ei wneud o fewn 28 diwrnod o ddyddiad rhoi'r penderfyniad, neu o fewn cyfnod estynedig yn ôl disgresiwn y Llys. Lle rhoddir caniatâd cynllunio, o dan adran 177(1)(a) a (b) o Ddeddf 1990, gellir apelio, o dan adran 288, o fewn chwe wythnos o ddyddiad y penderfyniad, ar y sail nad yw'r camau o fewn pwerau Deddf 1990 neu na chydymffurfiwyd ag unrhyw "ofyniad perthnasol" fel y'i diffiniwyd yn yr adran.

2.49 Mae adran 175(4) yn cynnwys cyfeiriad at adran 289(4A) ac o dan honno gall yr Uchel Llys, neu'r Llys Apêl, orchymyn (ar delerau a all gynnwys ei gwneud yn ofynnol i'r ACLl roi ymrwymiad o ran iawndal neu unrhyw faterion eraill) y bydd yr hysbysiad gorfodi mewn grym, neu mewn grym i'r graddau a bennir yn y gorchymyn, nes y penderfyniad terfynol ar yr achos hwnnw ac unrhyw ail-wrandawiad a phenderfyniad gan yr Ysgrifennydd Gwladol. Ni ellir dwyn achos o dan adran 289 o Ddeddf 1990 heb ganiatâd yr Uchel Lys neu'r Llys Apêl. Mae dyfarniad gan y Llys Apêl (**Huggett, Wendy Fair Markets Cyf a Bello v Ysgrifennydd Gwladol dros yr Amgylchedd ac Eraill,** [1995] JPL 649) wedi dyfarnu nad oes hawl i apelio i'r Llys hwnnw yn erbyn penderfyniad yr Uchel Lys i wrthod caniatâd o dan adran 289 o Ddeddf 1990.

2.50 Pan ellir cyfiawnhau hynny o dan yr amgylchiadau penodol, ni ddylai'r posibilrwydd y gall fod rhaid iddynt roi ymrwymiad o ran iawndal, er enghraifft pe bai eu hysbysiad gorfodi yn cael ei ddiddymu yn y pen draw, atal yr ACLl rhag gwneud cais i'r Llysoedd am Orchymyn o dan adran 289(4A). Yng ngoleuni ymagwedd T'r Arglwyddi at achosion yr awdurdodau lleol yn achos **Kirklees MBC v Wickes Building Supplies Cyf** [1993] AC 227, mae'n ymddangos ei bod yn ddigon tebygol na fyddai'r Llys yn mynnu bod yr ACLl yn rhoi ymrwymiad o'r fath. Fel arall, gallai'r ACLl gynnig ymrwymiad, er bod yr hysbysiad gorfodi yn dod i rym ar unwaith, na fyddent yn ceisio erlyn mewn perthynas â methiant i gydymffurfio ag ef, neu weithredu eu pwerau yn adran 178 o Ddeddf 1990, nes i'r ymgyfreithiad gael ei benderfynu o'u plaid, neu nes i'r apêl gael ei hail-benderfynu ac i'r hysbysiad gorfodi cael ei gadarnhau fel y bo'n wir, a nes i'r cyfnod ar gyfer cydymffurfio dod i ben, gan ddechrau o'r naill neu'r llall o'r dyddiadau hynny fel y bo'n briodol.

2.51 Lle bo'r penderfyniad terfynol ar apêl yn erbyn hysbysiad gorfodi wedi'i ohirio'n sylweddol gan ymgyfreithiad, neu am unrhyw reswm arall, dylai'r ACLl sicrhau nad yw treigl amser yn atal eu gallu yn y dyfodol i reoli'r toriad honedig o reolau cynllunio y mae eu hysbysiad yn cyfeirio ato, os a phryd y caiff yr apêl yn erbyn yr hysbysiad hwnnw ei benderfynu'n derfynol. O fewn pedair blynedd o'r dyddiad pryd y cymerodd yr ACLl gamau gorfodi cyntaf, mae'n agored iddynt gymryd camau gorfodi pellach o dan yr hyn sydd wedi'i alw'n "ddarpariaeth ail gyfle" yn adran 171B(4)(b) (gweler paragraff 2.5 o'r Atodiad hwn). Gan hynny, o fewn pedair blynedd o gymryd camau gorfodi am y tro cyntaf mewn perthynas ag ef, fel arfer ni all unrhyw ddefnydd, gweithrediad neu fater arall ddod yn "gyfreithlon" o fewn ystyr adran 191(2) neu (3) o Ddeddf 1990, oherwydd, yn rhinwedd y "ddarpariaeth ail gyfle", mae'n bosibl na fydd yr amser ar gyfer cymryd camau gorfodi (pellach) mewn perthynas â'r defnydd, y gweithrediad neu'r mater arall hwnnw, wedi dod i ben erbyn hynny (gweler adran 191(2)(a) a (3)(a)). Yr eithriad i hyn fydd yr achosion hynny lle bo apêl yn erbyn hysbysiad gorfodi blaenorol wedi llwyddo ar unrhyw un o'r seiliau yn adran 171(4) (2)(a), (c) neu (d), neu lle bo caniatâd cynllunio wedi'i roi wedyn ar gyfer y mater o dan sylw. O dan yr amgylchiadau hyn, mae'n glir na fyddai'n agored i'r ACLl gymryd camau gorfodi pellach. Er hynny, lle bo hysbysiad gorfodi eto i gymryd grym, am fod apêl yn ei erbyn yn dal ar y gweill, mae'n bosibl nad edrychid arno fel pe bai "mewn grym" at ddibenion adran 191(2)(b) a (3)(b); a lle bo cyfnod o fwy na phedair blynedd wedi dod i ben ers rhoi'r hysbysiad hwnnw, heb fod hysbysiad pellach wedi'i roi o dan y "ddarpariaeth ail gyfle", mae'n bosibl y bydd treigl amser, erbyn hynny, wedi peri bod y defnydd, y gweithrediad neu'r mater arall y mae'r hysbysiad gorfodi sy'n dal ar y gweill yn cyfeirio ato, yn gyfreithlon at ddibenion adran 191(2) neu (3), fel y bo'n wir, yn rhinwedd y terfynau amser arferol ar gyfer cymryd camau gorfodi. O dan yr amgylchiadau hyn, gall fod yn anodd gwrthsefyll cais dilynol am TDC, a wneir cyn i'r hysbysiad gorfodi sydd dal ar y gweill ddod i rym. Ar hyn o bryd nid oes awdurdod barnwnol ar y cwestiwn a fyddai TDC a roddid o dan yr amgylchiadau hyn yn amddiffyniad yn erbyn hysbysiad gorfodi a roddwyd cyn y dyddiad a bennid yn y TDC honno, ond yn dod i rym ar ôl hynny. Mae angen i ACLl fod yn ymwybodol o'r anhawster posibl hwn lle bo apêl yn erbyn hysbysiad gorfodi heb ei datrys am bron pedair blynedd, a hynny yn sgil ymgyfreithiad hirfaith fel arfer, a defnyddio darpariaethau adrannau 171B(4)(b) a/neu 289(4A) yn gyflym er mwyn diogelu eu gallu parhaus i adfer y toriad honedig o reolau cynllunio.

Gorfodi amodau a osodwyd ar ganiatâd am ddatblygiad gweithrediadol

2.52 Mae paragraff 29 o'r Atodiad i Gylchlythyr 35/95 y Swyddfa Gymreig, ar ddefnyddio amodau mewn caniatadau cynllunio, ynghyd â'i droednodyn esboniadol, yn tynnu sylw at oblygiadau dyfarniad y Llys Apêl yn achos **Handoll ac Eraill v Warner Goodman a Streat (Cwmni) ac Eraill** [1995] JPL 930.

2.53 Lle bo'r ACLl ei hunan yn gyfrifol am sicrhau bod y gwaith yn cydymffurfio â'r Rheoliadau Adeiladu, awgrymir y dylai'r swyddog archwilio cyfrifol gydgysylltu'n agos gyda chydweithwyr yn yr Adran Gynllunio, i osgoi'r angen i'r ddwy Adran archwilio'r datblygiad. Mewn achosion eraill, bydd angen i Adran Gynllunio'r Awdurdod wneud eu harchwiliad manwl eu hunain fod y datblygiad yn cydymffurfio â'r cynlluniau a gymeradwyid. Gan hynny gall dyfarniad y Llys Apêl ddwyn goblygiadau ar gyfer trefniadaeth weinyddol y gwaith yn yr awdurdodau hynny nad ydynt eisoes yn cynnal yr archwiliadau hyn fel rhan o'r drefn, ond yn dibynnu yn hytrach ar eraill i roi gwybod neu i gwyno am unrhyw fethiant i gydymffurfio â chynlluniau a gymeradwywyd. Ni fydd methiannau o'r fath o reidrwydd yn ysgogi cwynion, ond gallant olygu bod unrhyw amodau a osodwyd ar y caniatâd yn amhosibl i'w gorfodi.

2.54 Mater o ffaith a gradd ym mhob achos yw a yw gwyriad oddi wrth gynllun a gymeradwywyd yn ddigon arwyddocaol i beri bod y datblygiad cyfan yn torri'r rheolau cynllunio. Yn achos **Handoll**, ac yn achos **Kerrier DC** a gafodd ei wyrdroi ganddo, yr oedd y gwyriadau o'r cynlluniau a gymeradwywyd yn glir i'w gweld o fwrw cipolwg ar y datblygiad.

2.55 Fel a esbonnir yn llawnach yn Atodiad 4, gall **unrhyw** amod a osodir ar ganiatâd cynllunio cael ei orfodi, o fewn y terfynau amser priodol, drwy ddefnyddio naill ai hysbysiad gorfodi (sy'n honni bod amod wedi'i dorri) neu hysbysiad torri amodau neu'r ddau.

Gorfodi rheolau adeilad rhestredig

2.56 Diwygiodd atodlen 3 (paragraffau 2 i 6) o Ddeddf Cynllunio ac Iawndal 1991 ("Deddf 1991") y darpariaethau gorfodi adeilad rhestredig yn adrannau 38 i 43 o Ddeddf Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1990 ("Deddf Adeiladau Rhestredig"). Cyflwynodd paragraff 8 o Atodlen 3 adran 65(3A) newydd a diwygio adran 65(5) o'r Ddeddf Adeiladau Rhestredig i adlewyrchu newidiadau yn y gyfundrefn gorfodi cynllunio yn adran 289(4A) a (6) o Ddeddf 1990 (gweler paragraffau 2.48 - 2.50 uchod). Yn benodol dylid nodi bod Canllawiau Cynllunio (Cymru): Polisi Cynllunio (ISBN 0-7504-1839-7, pris £10) a Chylchlythyr 61/96 y Swyddfa Gymreig "Cynllunio a'r Amgylchedd Hanesyddol: Adeiladau Hanesyddol ac Ardaloedd Cadwraeth" (ISBN 1-85760-097-5), y gellir eu cael o Siopau Hyfrau'r Llyfrfa, yn rhoi canllawiau polisi penodol a chanllawiau eraill ar reolau adeiladau rhestredig ac ardaloedd cadwraeth, gan gynnwys eu gorfodi. Mae'r prif wahaniaethau rhwng gorfodi rheolau cynllunio a gorfodi rheolau adeiladau rhestredig ac ardaloedd cadwraeth fel a ganlyn: nid yw ceisiadau caniatâd adeiladau rhestredig ac ardaloedd cadwraeth, nac apelau o dan adran 39 o'r Ddeddf Adeiladau Rhestredig yn dwyn unrhyw ffi geisiadau; nid oes unrhyw derfynau amser ar gyfer cyflwyno hysbysiadau gorfodi adeiladau rhestredig neu ardaloedd cadwraeth; mae cyflawni gwaith heb y caniatâd adeilad rhestredig neu'r caniatâd ardal gadwraeth angenrheidiol, neu fethu â chydymffurfio ag amod sydd wedi'i ychwanegu at y caniatâd hwnnw, yn drosedd o dan adran 9 o'r Ddeddf honno, p'un ai yw hysbysiad gorfodi wedi'i gyflwyno gyntaf neu feidio; ac ni threfnir byth bod caniatadau adeiladau rhestredig ac cadwraeth yn ôl-syllol.

Gorfodi rheolau cynllunio mwynau

2.57 Yn ei adroddiad, "Enforcing Planning Control", cydnabu Robert Carnwarth CF, fel yr oedd ar y pryd, fod rheolau cynllunio mwynau wedi hen ymsefydlu fel rhan o'r system gynllunio ac nid argymhellodd ddiwygiadau arbennig i'r darpariaethau gorfodi ynglŷn â mwynau. Ond mae gweithio mwynau'n ddiawdurdod yn peri problemau penodol. Gall niwed i amwynder, sydd weithiau'n ddi-droi'n-ôl, gael ei achosi'n gyflym iawn. Gan hynny mae angen i ACLl allu atal gweithgarwch diawdurdod ar unwaith ar ôl ei weld. Tynnir sylw'r ACLl at adran 184(3) sy'n galluogi hysbysiad stop i ddod i rym ar unwaith lle bo rhesymau arbennig yn cyfiawnhau hynny (gweler paragraff 3.29 o Atodiad 3). Er ei bod yn ddigon posibl y bydd angen camau gorfodi ffurfiol lle bo gwaith mwynau diawdurdod ar y gweill, neu lle bo gwaith awdurdodedig yn cael ei wneud ond nad yw'r amodau cynllunio yn cael eu cadw, mae'n well bod y cysylltiadau a'r trafodaethau arferol rhwng yr ACLl a'r gweithredwyr yn ddigon da i osgoi toriadau o'r rheolau cynllunio. Y ffordd orau o drin unrhyw broblemau yw trafod a chydweithredu yn y lle cyntaf.

Gorchmynion cadw coed: gorfodi Y ddyletswydd i amnewid coed

2.58 O dan adran 206 o Ddeddf 1990, gosodir tirfeddianwyr o dan ddyletswydd i amnewid coed sy'n cael eu diogelu drwy orchmynion diogelu coed (GCC) o dan rai amgylchiadau. Mae'r ddyletswydd yn codi lle gwaredir coeden yn groes i GCC neu am ei bod wedi marw, yn marw, neu am ei bod yn beryglus. Mae'r ddyletswydd yn ei gwneud yn ofynnol i'r tirfeddiannwr blannu coeden arall o faint a rhywogaeth briodol yn yr un lle cyn gynted ag y bo'n rhesymol iddo wneud hynny. Mae'r ddyletswydd yn trosglwyddo i'r perchennog newydd lle bo'r tir o dan sylw yn newid dwylo. Mae coed sy'n cael eu plannu yn unol â'r ddyletswydd yn cael eu diogelu'n awtomatig gan y GCC gwreiddiol, hyd yn oed os rhywogaethau gwahanol ydynt.

2.59 Mewn perthynas â choed ar goetiroedd, dim ond lle gwaredir y coed yn groes i'r GCC y mae'r ddyletswydd yn codi. Gellir cydymffurfio â hi drwy blannu'r un nifer o goed amnewid ar y tir yr oedd y coed gwreiddiol yn sefyll arno neu wrth ei ymyl, neu ar dir arall y cytunir arno rhwng yr ACLl a'r tirfeddiannwr, ac yn y lleoedd y mae'r ACLl yn eu dynodi.

2.60 Nid yw'r ddyletswydd yn gymwys lle bo'r ACLl, ar gais y tirfeddiannwr, yn ei hanwybyddu. Wrth ymdrin â cheisiadau i anwybyddu'r ddyletswydd, dylai'r ACLl roi eu penderfyniad yn ysgrifenedig, gan nodi eu rhesymau.

Gorfodi'r ddyletswydd

2.61 Os yw'n ymddangos i'r ACLl na chydymffurfiwyd â'r ddyletswydd, gallant, cyn pen 4 blynedd ar ôl dyddiad y methiant honedig â chydymffurfio, ei gwneud yn ofynnol i goed amnewid gael eu plannu drwy gyflwyno hysbysiad i'r tirfeddiannwr o dan adran 207 o Ddeddf 1990 ("hysbysiad amnewid coeden"). Yn gyffredinol, dylai hysbysiad amnewid coeden ddweud wrth y tirfeddiannwr yr hyn sydd ym marn yr ACLl wedi arwain at y ddyletswydd a'r hyn y mae'n rhaid ei wneud i gydymffurfio â hi. Dylai bennu maint a rhywogaeth y coed amnewid a chyfnod y mae'n rhaid cyflawni'r gwaith plannu o'i fewn. Rhaid iddo hefyd bennu cyfnod y bwriedir i'r hysbysiad ddod i rym ar ei ddiwedd; rhaid i'r cyfnod hwn beidio â bod yn llai na 28 diwrnod gan ddechrau o ddyddiad cyflwyno'r hysbysiad.

2.62 Pŵer disgresiynol yw'r pŵer i gyflwyno hysbysiad amnewid coed. Wrth benderfynu a ddylid ei ymarfer (ac wrth benderfynu sut i ymdrin â cheisiadau i anwybyddu'r dyletswydd), bydd yr ACLl am ystyried y materion amwynder, gan gynnwys yr effaith y mae gwaredu'r coed wedi'i chael ar yr amgylchedd lleol ac ar y ffordd y mae'r cyhoedd yn ei fwynhau. Bydd angen iddynt ystyried hefyd a fyddai'n rhesymol o dan yr amgylchiadau i fynnu bod y tirfeddiannwr yn eu hamnewid. Dylent ystyried hefyd, yn achos coetiroedd, a fyddai eu hamnewid yn cyd-fynd ag arferion da coedwigaeth.

2.63 Nid trosedd yw methiant â chydymffurfio â hysbysiad amnewid coed. Os na phlennir coeden newydd o fewn y cyfnod penodedig (y gall yr ACLl ei estyn) gall yr ACLl fynd i mewn i'r tir, plannu'r goeden ac adennill oddi wrth y tirfeddiannwr unrhyw gostau rhesymol a dynnir. Bydd unrhyw un sy'n fwriadol yn atal person sy'n ymarfer y pŵer hwn yn euog o drosedd ac yn agored, o gael eu collfarnu'n ddiannod o drosedd hyd at lefel 3 ar y raddfa safonol (£1,000 ar hyn o bryd).

Amodau caniatâd sy'n ei gwneud yn ofynnol amnewid coed

2.64 O dan delerau'r ffurf enghreifftiol o'r GCC, gall yr ACLl, wrth roi caniatâd i gwympo coeden, gynnwys amod sy'n ei gwneud yn ofynnol ei hamnewid ag un neu ragor o goed ar y safle neu yn y cyffiniau agos. Os yw'n ymddangos i'r ACLl na chydymffurfiwyd ag amod o'r fath, gallant ei orfodi hefyd drwy gyflwyno hysbysiad amnewid coed o dan adran 207.

2.65 Nid yw Deddf 1990 yn darparu bod coed a blannwyd yn unol ag amod amnewid yn cael eu diogelu'n awtomatig drwy'r GCC y rhoddwyd y caniatâd odano. Lle bo'r coed a gwympwyd yn cynnwys y cyfan neu ran o goetir, a bod y coed amnewid wedi'u plannu o fewn y man coetir a ddiffinnir gan y GCC, bydd yr Ysgrifennydd Gwladol yn ystyried eu bod yn cael eu diogelu gan y GCC. Mewn achosion eraill, gall y bydd angen GCC newydd i ddiogelu'r coed amnewid.

Gorfodi amnewid coed mewn ardaloedd cadwraeth

2.66 Mae dyletswydd debyg i'r un a ddisgrifiwyd uchod yn gymwys lle gwaredir coed mewn ardaloedd cadwraeth yn groes i'r rheolau sy'n ymwneud â'r ardaloedd hynny (gweler adran 211 a 212 o'r Ddeddf) neu am eu bod wedi marw, yn marw neu'n beryglus. Gall y ddyletswydd honno gael ei gorfodi hefyd drwy gyflwyno hysbysiad amnewid coed o dan adran 207.

Apelau

2.67 Gall person apelio at yr Ysgrifennydd Gwladol yn erbyn hysbysiad amnewid coed. Mae adran 208 o Ddeddf 1990, fel y'i diwygiwyd, yn rhoi pum sail dros apelio, sef:

(1) nad yw darpariaethau'r ddyletswydd o dan adran 206 neu, fel y bo'n briodol, amod y caniatâd yn gymwys neu y cydymffurfiwyd â hwy;
(2) y dylid anwybyddu'r ddyletswydd o dan holl amgylchiadau'r achos;
(3) bod gofynion yr hysbysiad yn afresymol mewn perthynas â'r cyfnod neu faint neu rywogaeth y coed sydd wedi'u henwi ynddo;
(4) nad oes angen plannu yn unol â'r hysbysiad er lles yr amwynder neu y byddai'n groes i arferion da coedwigaeth;
(5) bod y lle y mae angen plannu'r goeden neu'r coed ynddo yn anaddas at y diben hwnnw.

2.68 Rhaid cyflwyno apêl yn ysgrifenedig **cyn bod yr hysbysiad amnewid coed yn dod i rym. Terfyn amser di-amod yw hwn; nid oes gan yr Ysgrifennydd Gwladol ddisgresiwn i dderbyn apelau hwyr.** Cynghorir ACLl, wrth iddynt gyflwyno hysbysiad amnewid coed, i'w gwneud yn glir i'r tirfeddiannwr fod rhaid postio unrhyw apêl a *anfonir* at yr Ysgrifennydd Gwladol (nid at yr Arolygwyr Cynllunio) mewn pryd, drwy'r post arferol, cyn y dyddiad y dywedir y bydd yr hysbysiad yn dod i rym.

2.69 Mae gan yr apelydd a'r ACLl yr hawl i ymddangos gerbron person a benodir gan yr Ysgrifennydd Gwladol, a chael eu gwrando ganddo. Serch hynny, yn y mwyafrif o achosion bydd y Swyddfa yn awgrymu y dylid ymdrin â'r apêl drwy gyfnewid sylwadau ysgrifenedig, ac ymweliad â'r safle ar ôl hynny.

2.70 Fel yn achos hysbysiadau gorfodi cynllunio, mae gan yr Ysgrifennydd Gwladol bŵer, yn yr adran 208(7) ddiwygiedig, i gywiro diffygion, camgymeriadau neu gamddisgrifiadau mewn hysbysiad amnewid coed neu i amrywio ei ofynion, os caiff ei fodloni fod modd iddo wneud hynny heb achosi anghyfiawnder i'r naill barti neu'r llall. Nid yw ei bŵer yn ymestyn at gywiro hysbysiad sydd mor sylfaenol ddiffygiol fel y byddai ei gywiro yn arwain at hysbysiad a fyddai'n sylweddol wahanol. Mae dilyn y dylid drafftio'r hysbysiad â gofal. Gwelir ffurf enghreifftiol ar hysbysiad amnewid coed yn Atodiad 4.

2.71 Ar ôl i'r Ysgrifennydd Gwladol roi penderfyniad ar yr apêl, gall y naill barti neu'r llall geisio caniatâd i apelio i'r Uchel Lys yn erbyn y penderfyniad ar bwynt cyfreithiol. Mae Rheolau'r Llys yn darparu bod rhaid i'r apêl gael ei wneud cyn pen 28 diwrnod ar ôl dyddiad y penderfyniad, er y gall y Llys ganiatáu cyfnod hwy yn ôl eu disgresiwn.

Costau

2.72 Fel rheol, er y disgwylir i'r partïon mewn apêl dalu eu costau eu hunain, gall y naill barti neu'r llall gyflwyno cais am gostau, p'un ai ymdriniwyd â'r apêl drwy sylwadau ysgrifenedig ynteu gwrandawiad/ymchwiliad lleol. Er hynny, dim ond os dangosir bod y naill barti wedi ymddwyn yn afresymol yn y broses apelio, gan achosi costau diangen i'r llall, y dyfernir costau yn ei erbyn.

Gorchmynion cadw coed: cosbau

2.73 Mae unrhyw un sydd, yn groes i GCC:

(1) yn torri coeden i lawr, yn ei dadwreiddio neu'n ei difrodi'n fwriadol, neu

(2) yn fwriadol yn difrodi, brigdorri, neu'n tocio coeden mewn ffordd a fyddai'n debygol o'i difrodi, yn euog o drosedd o dan adran 210(1) o Ddeddf 1990 ac yn agored, ar ôl ei gollfarnu'n ddiannod, i ddirwy o hyd at £20,000. Gellir rhoi'r drosedd ar brawf drwy ddditiad hefyd fel y gellir traddodi person i'w dreialu yn Llys y Goron mewn achosion difrifol ac, ar ôl cael ei gollfarnu, gall fod yn agored i ddirwy anghyfyngedig. Trosedd ddiamod yw hon y gellir ei chyflawni heb wybodaeth am fodolaeth y GCC. Nid oes rhaid i goeden gael ei difodi er mwyn cael ei "difrodi". Ym marn yr Uchel Lys yn **Barnet London Borough Council v Eastern Electricity Board** [1973] 1 WLR 430 dyfarnwyd y gellid dweud bod coeden wedi'i "difrodi" os, o ganlyniad i'r hyn a wnaed iddi, ei bod yn peidio â bod o ddefnydd fel amwynder, fel rhywbeth sy'n werth ei gadw.

2.74 Wrth benderfynu swm unrhyw ddirwy, mae'n ofynnol yn benodol i'r Llys roi sylw i unrhyw fudd ariannol a fydd wedi deillio o ganlyniad i'r drosedd, neu, a fyddai'n debyg o ddeillio, i'r person sydd wedi'i gollfarnu.

2.75 Mae'n drosedd lai o dan adran 210(4) o Ddeddf 1990 i dorri darpariaethau GCC mewn ffordd heblaw'r hyn y soniwyd amdano ym mharagraff 2.73 uchod. Er enghraifft, mae unrhyw un sy'n brigdorri coeden yn groes i GCC ond mewn ffordd sy'n annhebyg o arwain at ddifrodi'r goeden yn euog o'r drosedd hon ac yn agored, ar ôl ei gollfarnu'n ddiannod, i ddirwy na fydd yn fwy na lefel 4 ar y raddfa safonol (£2,500 ar hyn o bryd).

2.76 Mae paragraffau 60 a 63 o Gylchlythyr 64/78 Swyddfa Gymreig wedi'u dileu.

Gorfodi rheolau sylweddau peryglus

2.77 Mae Deddf Cynllunio (Sylweddau Peryglus) 1990 yn ei gwneud yn ofynnol sicrhau caniatâd sylweddau peryglus ar gyfer presenoldeb sylwedd peryglus mewn swm rheoledig ar dir. At ei gilydd mae'r darpariaethau ar gyfer gorfodi yn erbyn torri'r rheolau yn dilyn darpariaethau gorfodi cynllunio, cyn belled ag y bo'n briodol. Mae torri rheolau sylweddau peryglus ynddo'i hun yn drosedd. Ceir cyngor llawnach ar ddarpariaethau gorfodi sylweddau peryglus yng Nghylchlythyr 20/92 y Swyddfa Gymreig.

Asesiad amgylcheddol

2.78 Yn ôl Rheoliadau Cynllunio Gwlad a Thref (Asesiad Amgylcheddol a Datblygu Diawdurdod) 1995 (OS 1995/2258) mae'n ofynnol darparu datganiad amgylcheddol (DA) ar gyfer datblygiad diawdurdod honedig sydd o fewn Atodlen 1 o Reoliadau Cynllunio Gwlad a Thref (Asesu Effeithiau Amgylcheddol) 1988 (OS 1988/1199) neu o fewn Atodlen 2 ac sy'n debyg o gael effaith sylweddol ar yr amgylchedd yn rhinwedd ei natur, ei faint neu ei leoliad. Mae'r gofynion hyn eisoes yn gymwys i geisiadau ac apelau cynllunio. Wrth roi hysbysiad gorfodi, dylai'r ACLl ystyried a yw'r datblygiad diawdurdod yn gofyn am asesiad amgylcheddol. Os yw'n ymddangos bod angen asesiad amgylcheddol, cyflwynir hysbysiad "rheoliad 4" sy'n pennu'r disgrifiad o'r datblygiad. Mae hwn yn ei gwneud yn ofynnol hefyd i'r person sy'n hysbysu apêl o dan adran 174 o Ddeddf 1990 gyflwyno 4 copi o DA. Bydd yr ACLl yn anfon copi o'r hysbysiad "rheoliad 4" at yr Ysgrifennydd Gwladol a chyrff statudol eraill sydd wedi'u rhestru yn rheoliad 4 o'r Rheoliadau. Gall derbynnydd yr hysbysiad "rheoliad 4" geisio cyfarwyddyd pellach ynglŷn â'r angen am asesiad amgylcheddol o dan reoliad 5. Os bydd yr Ysgrifennydd Gwladol yn cadarnhau bod angen AS a bod yr apelydd yn methu â darparu un o fewn yr amserlen benodedig, bydd y cais tybiedig a'r apêl ar sail (a), os oes un, yn dod i ben.

2.79 Rhoddir canllawiau manwl ar weithredu'r Rheoliadau yng Nghylchlythyr 39/95 y Swyddfa Gymreig: The Town and Country Planning (Environmental Assessment and Unauthorised Development) Regulations 1995. Rhoddir canllawiau ar baratoi datganiadau amgylcheddol yn "Preparation of Environmental Statements for Planning Projects that Require Environmental Assessment: A Good Practice Guide" a gyhoeddwyd gan Y Llyfrfa, ISBN 0-11-753207-X.

Dehongli "substantially completed" yn adran 171B(1) o Ddeddf 1990

2.80 Rhoes y term "substantially completed" yn adran 171B(1) o Ddeddf 1990 ddehongliad y Llysoedd o ddarpariaethau adran 172(4)(a), fel y'i deddfwyd yn wreiddiol, ynghylch y dyddiad pryd y mae'r cyfnod o bedair blynedd y gellir cymryd camau gorfodi o'i fewn mewn perthynas â datblygiad gweithrediadol diawdurdod yn dechrau, a hynny er mwyn osgoi amheuaeth. Sefydlodd yr awdurdod barnwrol yn achos **Ewen Developments Cyf v Ysgrifennydd Gwladol dros yr Amgylchedd** [1980] JPL 404 nad yw'r cyfnod o bedair blynedd, yn achos un gweithrediad, megis codi tŷ, yn dechrau nes bod y gweithrediad cyflawn wedi'i gwblhau i raddau helaeth. Mater o ffaith a gradd bob amser yw beth sydd wedi'i gwblhau i raddau helaeth. Felly nid oes modd diffinio'i union beth yw ystyr y term "substantially completed". Yn achos tŷ, gellir dadlau nad yw wedi'i gwblhau i raddau helaeth nes bod yr holl waliau allanol, y teiliau ar y to, y gwaith coed, y landeri a'i ffenestri wedi'u gorffen;

ond gellid cymryd ei fod wedi'i chwblhau i raddau helaeth os nad oes ond rhywfaint o waith plastro neu addurno mewnol, neu waith addurno allanol, ar ôl i'w wneud, yn arbennig os dechreuwyd defnyddio'r adeilad at ei ddiben arfaethedig. Rhaid ystyried yr amgylchiadau perthnasol ym mhob achos.

Dehongli "use as a single dwelling house"

2.81 Mae'n bwysig gwahaniaethu'r term "use as a single dwelling house", yn adran 171B(2), o'r hyn y gellid edrych arno fel rheol fel *bod* yn un tŷ annedd. Mae profiad wedi awgrymu y gall pobl, ar adegau, addasu, neu ddefnyddio, adeiladau neu strwythurau annhebygol neu anarferol fel eu cartref neu eu tŷ annedd er hynny, ac er nad oes diffiniad o beth yw tŷ annedd, mae'r Llysoedd wedi dyfarnu eu bod yn bosibl i'r person rhesymol adnabod un pan fydd yn ei weld. Os na fyddai person rhesymol yn edrych ar y strwythur penodol sy'n cael ei ddefnyddio fel tŷ annedd a'i adnabod fel un, gellir cyfiawnhau dod i'r casgliad, fel mater o ffaith, nad tŷ annedd mohono. O dan yr amgylchiadau hyn, er y gallai ei *ddefnydd* fel tŷ annedd fod yn imwn rhag camau gorfodi, nid t annedd fel y cyfryw mohono ac, felly, ni fyddai byth yn mwynhau manteision hawliau "datblygu a ganiateir" o dan Erthygl 3 o Rhan I o Atodlen 2 o'r GPDO. Mae'r Swyddfa o'r farn y gall fflat gael ei defnyddio fel un tŷ annedd o dan rai amgylchiadau, heb ennill hawliau "datblygu a ganiateir" o dan y GPDO fel y cyfryw, am fod Erthygl 1(1) o'r GPDO yn eu hepgor yn benodol o'r diffiniad o "dŷ annedd" at ddibenion y GPDO. At ddibenion Deddf 1990, lle bo adran 336(1) yn diffinio "adeilad" fel pe bai'n cynnwys unrhyw ran o adeilad, cymerir y farn y gellir *defnyddio* fflat fel un tŷ annedd, p'un a edrychid arni fel *pe bai* yn un tŷ annedd ai peidio (gweler **Doncaster MBC v Ysgrifennydd Gwladol dros yr Amgylchedd a Dunhill** [1993] JPL 565). Bernir bod y meini prawf ar gyfer penderfynu defnydd fel un tŷ annedd yn cynnwys cyflwr ffisegol yr adeilad a dull y defnydd. Lle bo un rhan hunan-gynhwysol o adeilad yn uned o feddiannaeth, y gellir edrych arni fel "uned gynllunio" ar wahân i unrhyw ran arall o'r adeilad sy'n ei chynnwys; lle bo wedi'i dylunio neu wedi'i haddasu at ddibenion preswyl, gan gynnwys y cyfleusterau arferol ar gyfer coginio, bwyta a chysgu sy'n gysylltiedig â defnydd fel tŷ annedd; a lle caiff ei defnyddio fel annedd, yn barhaol neu dros dro, gan un person neu fwy nag un person yn bwy gyda'i gilydd fel, neu yn debyg i un teulu, mae'n briodol edrych ar yr adeilad hwnnw fel pe bai'n cael ei ddefnyddio fel un tŷ annedd at ddibenion y Ddeddf. Ni fyddai'r dehongliad hwn yn cynnwys dibenion megis ystafelloedd byw-a-chysgu, lle bo'r deiliaid yn rhannu rhai cyfleusterau cymunol o fewn yr adeilad, megis ystafell ymolchi neu d bach, pan fo'n debyg mai'r adeilad cyfan yw'r "uned gynllunio", yn cael eu defnyddio at ddibenion meddiannaeth breswyl lluosog, yn hytrach na phob uned unigol o lety.

Cosbau am droseddau hysbysiadau gorfodi

2.82 Os nad oes unrhyw gam sy'n angenrheidiol o dan yr hysbysiad wedi'i gymryd ar unrhyw adeg ar ôl cyfnod ar gyfer cydymffurfio â hysbysiad gorfodi, mae adran 179 o Ddeddf 1990 yn darparu bod trosedd wedi'i gyflawni. Gellir cyhuddo o drosedd drwy gyfeirio at unrhyw ddiwrnod neu gyfnod hirach, a gellir collfarnu person am ail drosedd neu drosedd dilynol drwy gyfeirio at unrhyw gyfnod o amser. Mae person sy'n euog o drosedd o dan yr adran hon yn agored, o'i gollfarnu'n ddiannod, i ddirwy heb fod yn fwy nag £20,000, neu ar gollfarniad ar ddiddiad i ddirwy ddiderfyn. Wrth benderfynu swm unrhyw ddirwy, rhaid i'r Llys roi sylw i unrhyw fantais ariannol sydd wedi cronni neu sy'n ymddangos yn debygol o gronni o ganlyniad i'r trosedd. Gan hynny, dylai'r awdurdodau sy'n erlyn bob amser fod yn barod i roi unrhyw fanylion sydd ar gael ynghylch yr elw sy'n deillio, neu sy'n debygol o ddeillio, o'r trosedd, er mwyn i'r Llys cael eu cymryd i ystyriaeth.

Rhybuddio troseddwyr honedig

2.83 Wrth ymchwilio i'r ffeithiau cyn cychwyn unrhyw achos, dylai ACLl roi sylw i ddarpariaethau adrannau 66 a 67(9) o Ddeddf Heddlu a Thystiolaeth Droseddol 1984 o ran rhybuddio troseddwyr honedig.

Pwerau "diofynnu" yr ACLl

2.84 Mae diwygiadau, a wnaed gan adran 7 o Ddeddf 1991, i adran 178 o Ddeddf 1990 yn ymestyn yn sylweddol ar bwerau "diofynnu" yr ACLl i fynd i fewn i dir hysbysiad gorfodi a chyflawni gofynion yr hysbysiad eu hunain; a darparu ar gyfer trosedd newydd o atal yn fwriadol unrhyw un sy'n ymarfer y pwerau hynny ar ran yr ACLl. Fel yn achos y diwygiadau a wnaed drwy Atodlen 3 i Ddeddf 1991 mewn perthynas â'r pwerau cyfatebol yn adran 42 o'r

Ddeddf Adeiladau Rhestredig, mae'r pŵer diwygiedig yn galluogi'r ACLl i gyflawni *unrhyw* gamau angenrheidiol o dan yr hysbysiad gorfodi, gan gynnwys y cyfryw gamau i roi'r gorau i ddefnydd ar y tir (sydd yn rhinwedd rheoliad 2(1) o Reoliadau Cynllunio Gwlad a Thref (Mwynau) 1995 (OS 1995/2863) yn cynnwys rhoi'r gorau i weithrediadau mwyngloddio) a'r cyfryw gamau i beri bod y datblygiad yn cydymffurfio â thelerau unrhyw ganiatâd cynllunio a roddwyd mewn perthynas â'r tir, neu i ddileu neu liniaru unrhyw niwed i amwynder a barwyd gan y datblygiad.

2.85 Gallai'r cyfeiriad blaenorol, yn adran 178(1), at gamau heblaw rhoi'r gorau i ddefnydd ar dir, gyfyngu ar ymdrechion ACLl i atal defnydd anghyfreithlon ar dir. Nid yw'r ddarpariaeth ddiwygiedig yn golygu y gall yr ACLl ei hunan atal y defnydd anghyfreithlon (oherwydd dim ond y person sydd mewn gwirionedd yn cyflawni'r defnydd a all ei atal yn llwyr). Ond, er enghraifft, lle bo'n rhaid rhoi'r gorau i ddefnydd at ddibenion storio, a ph'un a yw'r hysbysiad yn mynnu symud yr eitemau a storiwyd yn benodol ai peidio, mae bellach yn agored i'r ACLl symud yr eitemau hynny fel cam tuag at roi'r gorau i'r defnydd a pharhau i symud eitemau o'r fath a fydd yn ymddangos ar y tir. Lle bo hysbysiad, yn lle ei gwneud yn ofynnol bod adeilad diawdurdod cyfan yn cael ei dynnu, yn ei gwneud yn ofynnol addasu'r adeilad, er mwyn dileu neu liniaru niwed i amwynder, neu beri bod yr adeilad yn cydymffurfio â thelerau caniatâd cynllunio a roddwyd i godi adeilad tebyg ar y tir, bellach gall yr ACLl gwneud y gwaith hwnnw eu hunain. (O'r blaen, cyfyngid pwerau diofynnu yr ACLl i gymryd camau a fynnid gan yr hysbysiad er mwyn adfer y toriad yn y rheolau cynllunio).

2.86 Bwriad y diwygiadau hyn oedd dileu unrhyw amheuaeth ynghylch cwmpas pwerau diofynnu yr ACLl, ac annog a hwyluso eu defnydd, pan fo dulliau eraill, gan gynnwys erlyn am drosedd, wedi methu â pherswadio perchennog neu ddeiliad y tir i gyflawni unrhyw un o'r camau sy'n angenrheidiol yn yr hysbysiad gorfodi er boddhad yr ACLl. Gall yr ACLl adennill oddi ar y person sydd ar y pryd yn berchennog ar y tir, unrhyw gostau a dynnwyd yn rhesymol ganddynt wrth wneud hynny. Mae rheoliad 14(2) o Reoliadau Cyffredinol Cynllunio Gwlad a Thref 1992 (OS 1992/1492) yn darparu bod unrhyw gostau o'r fath, nes eu hadennill yn arwystl ar y tir sy'n rhwymo'r perchnogion olynol. Bernir y gellir cofrestru arwystl o'r fath fel pridiant dir lleol o dan adran 11a o Ddeddf Pridiannau Tir Lleol 1975; ac yn rhinwedd adran 7 o'r Ddeddf honno, mae arwystl o'r fath wedyn yn rhoi i'r ACLl bwerau morgeisiai-mewn-meddiant, i orchymyn gwerthu'r tir ei hunain, neu i benodi derbynnydd er mwyn adennill eu costau o'r elw, os bydd angen hynny. Mae ymchwil ddiweddar a gomisiynwyd gan y Swyddfa wedi awgrymu bod y mwyafrif o awdurdodau wedi llwyddo i adennill costau o'r fath yn llawn, fel dyled seml o dan y gyfraith gyffredin, heb yr angen i ddefnyddio'r pwerau hyn. Mae rheoliad 14(1) o Reolidau Cyffredinol 1992 yn darparu'r pwerau, y cyfyngiadau a'r hawliau eraill y cyfeirir atynt yn adran 178(3) a (4).

2.87 Mae llawer o ACLl wedi canfod bod ymarfer eu pwerau yn adran 178, os methir â chydymffurfio â gofynion hysbysiad gorfodi, yn ffordd gyflymach a mwy cost-effeithiol o adfer toriad mewn rheolau cynllunio na chychwyn erlyniadau dilynol o dan adran 179 yn unig, a all lyncu llawer o amser. Mae ACLl â phrofiad o weithredu'r darpariaethau hyn wedi tynnu sylw at yr angen achlysurol i drefnu bod yr heddlu yn bresennol, i atal unrhyw dor-heddwch ar ran perchnogion neu ddeiliaid a dramgwyddir neu i drafod hynny, ac i sicrhau na chaiff eu swyddogion a'u contractwyr eu hatal na'u hymosod arnynt wrth gyflawni eu dyletswyddau cyfreithiol. Yn dibynnu ar amgylchiadau penodol bob achos, gall fod yn ddoeth hefyd darparu rhyw fath o ddillad amddiffynnol i swyddogion a pheidio â rhoi cyhoeddusrwydd ymlaen llaw i unrhyw gynnig i weithredu pwerau diofynnu adran 178. Mae'n ddigon posibl y bydd cyhoeddusrwydd addas ar **ôl y digwyddiad** yn rhybudd iach o benderfyniad yr ACLl i eraill a all fod yn ystyried torri'r rheolau cynllunio.

2.88 Mae rhai ACLl wedi rhoi gwybod am enghreifftiau o fygythiadau wedi'u cyfeirio at swyddogion ac aelodau unigol sy'n gyfrifol am orfodi neu benderfynu gorfodi rheolaeth gynllunio. Prin yw'r achosion hyn. Lle gwneir bygythiadau, neu lle ceir trais yn erbyn swyddogion, aelodau unigol, eu teuluoedd neu eu heiddo, gall ACLl ystyried ymarfer eu pwerau o dan adrannau 111 neu 137 o Ddeddf Llywodraeth Leol 1972, fel y'u diwygiwyd gan adran 36 o Ddeddf Llywodraeth Leol a Thai 1989, i dynnu'r gwariant sy'n angenrheidiol i dalu iawndal i'r swyddogion neu'r aelodau hynny y mae angen iddynt ddwyn erlyniadau preifat neu ofyn am waharddeb yn erbyn y gweithredwyr, os nad yw'n briodol i'r ACLl gychwyn achos o'r fath yn eu henw eu hunain, drwy ymarfer eu pwerau yn adran 222 o Ddeddf 1972.

Cyfrifoldeb yr ACLl, drwy ymgynghori â'u hymgynghorwyr cyfreithiol, yw penderfynu a fyddai deddfwriaeth adran 111, 137 neu unrhyw ddeddfwriaeth arall yn briodol yn amgylchiadau unrhyw achos penodol. Lle dygir achos yn erbyn swyddog neu aelod, bwriedir i adran 265 o Ddeddf Iechyd y Cyhoedd 1875, fel y'i diwygiwyd ac fel y'i hestynnwyd, eu diogelu rhag atebolrwydd personol wrth weithredu mewn swyddogaeth bona fide dros yr awdurdod.

Y ffi sy'n daladwy am gais cynllunio tybiedig yn codi o apêl orfodi

2.89 Trafodir y darpariaethau ynghylch ffioedd am geisiadau tybiedig mewn apelau gorfodi yn Atodiadau 1 a 2 yng Nghylchlythyr 73/92 y Swyddfa Gymreig. Dylid nodi bod y symiau penodol y cyfeirir atynt ym mharagraff 1 o'r Atodiad hwnnw wedi'u codi ac maent wedi'u nodi yn Rheoliadau Cynllunio Gwlad a Thref (Ffioedd am Geisiadau a Cheisiadau Tybiedig) (Diwygio) 1997 (OS 1997/37) sydd mewn grym ar hyn o bryd, a'u bod yn dibynnu ar adolygiadau pellach o'r Rheoliadau Ffioedd o bryd i'w gilydd.

HYSBYSIAD GORFODI ENGHREIFFTIOL - DATBLYGIAD GWEITHREDIADOL

PWYSIG - MAE'R OHEBIAETH HON YN EFFEITHIO AR EICH EIDDO

DEDDF CYNLLUNIO GWLAD A THREF 1990
(fel y'i diwygiwyd gan Ddeddf Cynllunio ac Iawndal 1991)

HYSBYSIAD GORFODI

RHODDWYD GAN: [*enw'r Cyngor*]

1. **RHODDWYD YR HYSBYSIAD** hwn gan y Cyngor am ei fod yn ymddangos iddynt fod y rheolau cynllunio wedi'u torri, o fewn paragraff (a) o adran 171A(1) o'r Ddeddf uchod, ar y tir a ddisgrifir isod. Maent o'r farn ei bod yn fanteisiol rhoi'r hysbysiad, gan roi sylw i ddarpariaethau'r cynllun datblygu ac i ystyriaethau cynllunio perthnasol eraill. Mae'r Atodiad ar ddiwedd yr hysbysiad a'r papurau amgaeedig y cyfeirir atynt yn cynnwys gwybodaeth ychwanegol bwysig.

2. **Y TIR Y MAE'R HYSBYSIAD YN CYFEIRIO ATO**
Tir yn [*cyfeiriad y tir*], a ddangosir ag ymylon coch ar y plan amgaeedig.

3. **Y MATERION Y MAE'N YMDDANGOS MAI HWY YW'R TORIAD RHEOLAU CYNLLUNIO**

Heb ganiatâd cynllunio, codi adeilad un-llawr o friciau, ac adeiladu dreif yn arwain ato, yn fras yn y fan a nodir â chroes ar y plan amgaeedig.

4. **Y RHESYMAU DROS ROI'R HYSBYSIAD HWN**

Mae'n ymddangos i'r Cyngor fod y toriad uchod o'r rheolau cynllunio wedi digwydd o fewn y pedair blynedd diwethaf. Cafodd yr adeilad o dan sylw ei gwblhau i raddau helaeth llai na phedair blynedd yn ôl. Mae'r adeilad yn edrych yn debyg i dŷannedd, ac mae'n ymddangos ei fod wedi'i ddylunio fel tŷannedd. Mae'r safle o fewn y llain las a gymeradwywyd â chyda rhai eithriadau nad ydynt yn gymwys yn yr achos hwn, ceir rhagdybiaeth gref yn erbyn unrhyw ddatblygiad yno. Mae'r adeilad yn ymddangos fel ymyriad yn y tirlun gwledig hwn sydd fel arall yn agored yn bennaf. Mae'n mynd yn groes i bolisïau yn y cynllun datblygu ac yn amharu ar amwynderau gweledol yr ardal. Nid yw'r Cyngor o'r farn y dylid rhoi caniatâd cynllunio, am na allai amodau cynllunio goresgyn y gwrthwynebiadau hyn i'r datblygiad.

5. **YR HYN Y MAE'N OFYNNOL I CHI EI WNEUD**

(i) Dileu'r adeilad a'r dreif.
(ii) Symud oddi ar y tir yr holl ddeunyddiau adeiladu a rwbel yn sgil cydymffurfio â gofyniad (i) uchod, ac adfer y tir i'w gyflwr cyn i'r rheol gael ei thorri drwy wastatáu'r tir a'i ail-hadu â glaswellt.

6. **AMSER AR GYFER CYDYMFFURFIO:**
(i) 12 wythnos ar ôl i'r hysbysiad hwn ddod i rym.
(ii) 24 wythnos ar ôl i'r hysbysiad hwn ddod i rym.

7. **PRYD Y DAW'R HYSBYSIAD I RYM**

Daw'r hysbysiad hwn i rym ar [*dyddiad penodol, heb fod yn llai nag 28 diwrnod clir ar ôl y dyddiad rhoi*] , oni chaiff apêl ei gwneud yn ei erbyn cyn hynny.

Dyddiad: [*dyddiad rhoi*]

Llofnodwyd: [*swyddog awdurdodedig y Cyngor*]

ar ran: [*enw a chyfeiriad y Cyngor*]

EICH HAWL I APELIO

ATODIAD

Gallwch apelio yn erbyn yr hysbysiad hwn, ond rhaid i unrhyw apêl **ddod i law**, neu gael ei bostio mewn pryd i ddod i law, yr Ysgrifennydd Gwladol **cyn** y dyddiad a bennwyd ym mharagraff 7 o'r hysbysiad. Nodir eich hawliau yn y llyfryn amgaeedig "Enforcement Notice Appeals - A Guide to Procedure". Cewch ddefnyddio'r ffurflenni apelio amgaeedig.

(a) Mae un i chi ei hanfon i'r Ysgrifennydd Gwladol os penderfynwch apelio, ynghyd â chopi o'r hysbysiad gorfodi hwn.

(b) Dylid anfon yr ail gopi o'r ffurflen apelio a'r hysbysiad i'r Cyngor.

(c) I'ch cofnodion chi y mae'r trydydd copi.

BETH SY'N DIGWYDD OS NA FYDDWCH YN APELIO

Os na fyddwch yn apelio yn erbyn yr hysbysiad gorfodi hwn, bydd yn dod i rym ar y dyddiad a bennwyd ym mharagraff 7 o'r hysbysiad ac yna rhaid i chi sicrhau y cymerir y camau sy'n angenrheidiol i gydymffurfio ag ef, y gellir eich dal chi'n gyfrifol amdanynt, o fewn y cyfnod[au] a bennwyd ym mharagraff 6 o'r hysbysiad. Gall methu â chydymffurfio â hysbysiad gorfodi sydd wedi dod i rym arwain at erlyniad a/neu gamau adferol gan y Cyngor.

HYSBYSIAD GORFODI ENGHREIFFTIOL - NEWID DEFNYDD SYLWEDDOL

PWYSIG - MAE'R OHEBIAETH HON YN EFFEITHIO AR EICH EIDDO

DEDDF CYNLLUNIO GWLAD A THREF 1990
(fel y'i diwygiwyd gan Ddeddf Cynllunio ac Iawndal 1991)

HYSBYSIAD GORFODI

RHODDWYD GAN: *[enw'r Cyngor]*

1. **RHODDWYD YR HYSBYSIAD HWN** gan y Cyngor am ei bod yn ymddangos iddynt fod y rheolau cynllunio wedi'u torri, o fewn paragraff (a) o adran 171A(1) o'r Ddeddf uchod, yn y tir a ddisgrifir uchod. Maent o'r farn ei bod yn fanteisiol rhoi'r hysbysiad hwn, gan roi sylw i'r darpariaethau yn y cynllun datblygu ac i ystyriaethau cynllunio perthnasol eraill. Mae'r Atodiad ar ddiwedd yr hysbysiad a'r papurau amgaeedig y cyfeirir atynt yn cynnwys gwybodaeth ychwanegol bwysig.

2. **Y TIR Y MAE'R HYSBYSIAD YN CYFEIRIO ATO**

Tir yn [*cyfeiriad y tir*], a ddangosir ag ymylon coch ar y plan amgaeedig.

3. **Y MATERION Y MAE'N YMDDANGOS MAI HWY YW'R TORIAD O REOLAU CYNLLUNIO**

Heb ganiatâd cynllunio, newid defnydd tir o ddefnydd ar gyfer amaethyddiaeth i ddefnydd cymysg ar gyfer amaethyddiaeth ac fel canolfan cludiant ffyrdd.

4. **Y RHESYMAU DROS ROI'R HYSBYSIAD HWN**

Mae'n ymddangos i'r Cyngor fod y toriad uchod o'r rheolau cynllunio wedi digwydd yn ystod y deng mlynedd diwethaf. Nid yw'r defnydd diawdurdod fel canolfan cludiant ffyrdd yn ffordd briodol o ddefnyddio'r tir, sydd o fewn ardal wledig ac yn rhan o'r Llain Las a gymeradwywyd yn y cynllun datblygu. Eir at y safle ar hyd lonydd gwledig cul sy'n anaddas i'w defnyddio gan y math a'r nifer o gerbydau a ddenir gan y defnydd. Nid yw'r Cyngor o'r farn y dylid rhoi caniatâd cynllunio, am na allai amodau cynllunio goresgyn y gwrthwynebiadau hyn.

5. **YR HYN Y MAE'N OFYNNOL I CHI EI WNEUD**

Rhoi'r gorau i ddefnyddio unrhyw ran o'r tir fel canolfan cludiant ffyrdd a symud o'r tir yr holl gerbydau ac offer a ddygwyd i'r tir at ddibenion y defnydd hwnnw.

(Cewch gadw ar y tir unrhyw offer a ddefnyddir gennych at ddibenion cynnal-a-chadw cerbydau ac offer fferm a ddefnyddir at ddibenion amaethyddiaeth ar y tir hwnnw yn unig).

6. **AMSER AR GYFER CYDYMFFURFIO**

(i) 8 wythnos ar ôl i'r hysbysiad hwn ddod i rym.

7. **PRYD Y DAW'R HYSBYSIAD HWN I RYM**

Daw'r hysbysiad hwn i rym ar [*dyddiad penodol, heb fod yn llai nag 28 diwrnod clir ar ôl y dyddiad rhoi*], oni chaiff apêl ei gwneud yn ei erbyn cyn hynny.

Dyddiad: [*dyddiad rhoi*]

Llofnodwyd: [*swyddog awdurdodedig y Cyngor*]

ar ran: [*enw a chyfeiriad y Cyngor*]

EICH HAWL I APELIO

ATODIAD

Gallwch apelio yn erbyn yr hysbysiad hwn, ond rhaid i unrhyw apêl **ddod i law**, neu gael ei bostio mewn pryd i ddod i law, yr Ysgrifennydd Gwladol **cyn** y dyddiad a bennwyd ym mharagraff 7 o'r hysbysiad. Nodir eich hawliau yn y llyfryn amgaeedig "Enforcement Notice Appeals - A Guide to Procedure". Cewch ddefnyddio'r ffurflenni apelio amgaeedig.

(a) Mae un i chi ei hanfon i'r Ysgrifennydd Gwladol os penderfynwch apelio, ynghyd â chopi o'r hysbysiad gorfodi hwn.

(b) Dylid anfon yr ail gopi o'r ffurflen apelio a'r hysbysiad i'r Cyngor.

(c) I'ch cofnodion chi y mae'r trydydd copi.

BETH SY'N DIGWYDD OS NA FYDDWCH YN APELIO

Os na fyddwch yn apelio yn erbyn yr hysbysiad gorfodi hwn, bydd yn dod i rym ar y dyddiad a bennwyd ym mharagraff 7 o'r hysbysiad ac yn rhaid i chi sicrhau y cymerir y camau sy'n angenrheidiol i gydymffurfio ag ef, y gellir eich dal chi'n gyfrifol amdanynt, o fewn y cyfnod[eu] a bennwyd ym mharagraff 6 o'r hysbysiad. Gall methu â chydymffurfio â hysbysiad gorfodi sydd wedi dod i rym arwain at erlyniad a/neu gamau adferol gan y Cyngor.

HYSBYSIAD GORFODI ENGHREIFFTIOL - METHIANT Â CHYDYMFFURFIO AG AMOD

PWYSIG - MAE'R OHEBIAETH HON YN EFFEITHIO AR EICH EIDDO

DEDDF CYNLLUNIO GWLAD A THREF 1990
(fel y'i diwygiwyd gan Ddeddf Cynllunio ac Iawndal 1991)

HYSBYSIAD GORFODI

RHODDWYD GAN: *[enw'r Cyngor]*

1. **RHODDWYD YR HYSBYSIAD** hwn gan y Cyngor am ei bod yn ymddangos iddynt fod y rheolau cynllunio wedi'u torri, o fewn paragraff (b) o adran 171A(1) o'r Ddeddf uchod, ar y tir a ddisgrifir isod. Maent o'r farn ei bod yn fanteisiol rhoi'r hysbysiad hwn, gan roi sylw i ddarpariaethau'r cynllun datblygu ac i ystyriaethau cynllunio perthnasol eraill. Mae'r Atodiad ar ddiwedd yr hysbysiad a'r papurau amgaeedig y cyfeirir atynt yn cynnwys gwybodaeth ychwanegol bwysig.

2. **Y TIR Y MAE'R HYSBYSIAD YN CYFEIRIO ATO**

Tir yn [*cyfeiriad y tir*], a ddangosir ag ymylon coch ar y plan amgaeedig.

3. **Y TORIAD HONEDIG O REOLAU CYNLLUNIO**

Ar [*dyddiad y caniatâd cynllunio*] rhoddwyd caniatâd cynllunio ar gyfer codi adeilad i'w ddefnyddio fel siop fanwerthu, o dan amodau. Un o'r amodau oedd na ddylid agor y safle i werthu nwyddau ar y Sul nac ar ôl 1900 o'r gloch ar unrhyw ddiwrnod arall. Mae'n ymddangos i'r Cyngor na chydymffurfiwyd â'r amod, a hynny am fod y safle wedi bod ar agor i werthu nwyddau ar y Sul ac ar ôl 1900 o'r gloch ar rai dyddiau eraill.

4. **Y RHESYMAU DROS ROI'R HYSBYSIAD HWN**

Mae'n ymddangos i'r Cyngor fod y toriad uchod o'r rheolau cynllunio wedi digwydd o fewn y deng mlynedd diwethaf. Mae'r adeilad yn cyffinio ag ardal breswyl. Yn union gyfagos i'r adeilad ceir nifer o fflatiau preswyl uwchben siopau ac adeiladau busnes eraill. Mae gwerthu nwyddau o'r safle ar y Sul ac yn hwyr y nos yn denu niferoedd mawr o bobl i'r ardal ar droed ac mewn cerbydau ac mae'n peri aflonyddwch sylweddol i breswylwyr cyfagos, ar adegau pan fyddai'n rhesymol disgwyl i'r ardal fod yn gymharol dawel. Nid yw'r Cyngor o'r farn y dylid llacio ar yr amod o dan sylw, sydd eisoes yn caniatáu oriau agor rhesymol o hir i'r siop.

5. **YR HYN Y MAE'N OFYNNOL I CHI EI WNEUD**

Rhoi'r gorau i agor y siop i werthu nwyddau ar y Sul ac ar ddyddiau eraill ar ôl 1900 o'r gloch.

6. **AMSER AR GYFER CYDYMFFURFIO**

7 diwrnod ar ôl i'r hysbysiad hwn ddod i rym.

6. **PRYD Y DAW'R HYSBYSIAD HWN I RYM**

Daw'r hysbysiad hwn i rym ar [*dyddiad penodol, heb fod yn llai nag 28 diwrnod clir ar ôl y dyddiad rhoi*], oni chaiff apêl ei gwneud yn ei erbyn cyn hynny.

Dyddiad: [*dyddiad rhoi*]

Llofnodwyd: [*swyddog awdurdodedig y Cyngor*]

ar ran: [*enw a chyfeiriad y Cyngor*]

EICH HAWL I APELIO

Gallwch apelio yn erbyn yr hysbysiad hwn, ond rhaid i unrhyw apêl **ddod i law**, neu gael ei bostio mewn pryd i ddod i law, yr Ysgrifennydd Gwladol **cyn** y dyddiad a bennwyd ym mharagraff 7 o'r hysbysiad. Nodir eich hawliau yn y llyfryn amgaeedig "Enforcement Notice Appeals - A Guide to Procedure". Cewch ddefnyddio'r ffurflenni apelio amgaeedig.

(a) Mae un i chi ei hanfon i'r Ysgrifennydd Gwladol os penderfynwch apelio, ynghyd â chopi o'r hysbysiad gorfodi hwn.

(b) Dylid anfon yr ail gopi o'r ffurflen apelio a'r hysbysiad i'r Cyngor.

(c) I'ch cofnodion chi y mae'r trydydd copi.

BETH SY'N DIGWYDD OS NA FYDDWCH YN APELIO

Os na fyddwch yn apelio yn erbyn yr hysbysiad gorfodi hwn, bydd yn dod i rym ar y dyddiad a bennwyd ym mharagraff 7 o'r hysbysiad ac yna rhaid i chi sicrhau y cymerir y camau sy'n angenrheidiol i gydymffurfio ag ef, y gellir eich dal chi'n gyfrifol amdanynt, o fewn y cyfnod[au] a bennwyd ym mharagraff 6 o'r hysbysiad. Gall methu â chydymffurfio â hysbysiad gorfodi sydd wedi dod i rym arwain at erlyniad a/neu gamau adferol gan y Cyngor.

HYSBYSIAD ENGHREIFFTIOL AMNEWID COED

PWYSIG - MAE'R OHEBIAETH HON YN EFFEITHIO AR EICH EIDDO

DEDDF CYNLLUNIO GWLAD A THREF 1990
(fel y'i diwygiwyd gan Ddeddf Cynllunio ac Iawndal 1991)

HYSBYSIAD AMNEWID COED

GORCHYMYN CADW COED: *[teitl]*

[enw'r Cyngor]

1. **RHODDIR YR HYSBYSIAD HWN** gan y Cyngor o dan adran 207 o Ddeddf Cynllunio Gwlad a Thref 1990 ("y Ddeddf") am ei bod yn ymddangos iddynt -

[nad ydych wedi cydymffurfio â dyletswydd i blannu [coeden/coed] o dan adran 206 o'r Ddeddf].

[nad ydych wedi cydymffurfio ag amod caniatâd a roddwyd o dan y gorchymyn cadw coed uchod [i blannu coeden/coed newydd].

[nad ydych wedi cydymffurfio â dyletswydd i blannu [coeden/coed] mewn ardal gadwraeth o dan adran 213 o'r Ddeddf].

2. Y TIR YR EFFEITHIR ARNO

Tir yn [*cyfeiriad y tir*], a ddangosir gydag ymyl goch ar y plan amgaeedig.

3. Y RHESYMAU DROS ROI'R HYSBYSIAD HWN

[Oddeutu [dyddiad], cwympwyd ffawydden a ddiogelwyd gan y gorchymyn cadw coed uchod ar y sail ei bod yn beryglus. O dan adran 206 o'r Ddeddf mae perchennog y tir o dan ddyletswydd i blannu coeden arall. Mae'n ymddangos i'r Cyngor na chydymffurfiwyd â'r ddyletswydd hon.]

[Ar [dyddiad], rhoes y Cyngor ganiatâd i gwympo derwen a ddiogelwyd gan y gorchymyn cadw coed uchod ar yr amod bod [coeden neu goed amnewid] [*rhowch fanylion y cyflwr*] yn cael ei phlannu/eu plannu. Mae'n ymddangos i'r Cyngor na chydymffurfiwyd â'r amod hwn.]

[Oddeutu [dyddiad], symudwyd onnen a oedd wedi'i leoli yn [*teitl yr ardal gadwraeth*] yn groes i adran 211 o'r Ddeddf. O dan adran 213 o'r Ddeddf mae perchennog y tir o dan ddyletswydd i blannu coeden arall. Mae'n ymddangos i'r Cyngor na chydymffurfiwyd â'r ddyletswydd hon.]
[*Yna nodwch unrhyw gefndir perthnasol sy'n arwain at benderfyniad y Cyngor i gyflwyno'r hysbysiad (ee. cyfeiriadau at ohebiaeth gyda'r tirfeddiannwr).*

4. YR HYN Y MAE'N OFYNNOL I CHI EI WNEUD

Mae'n ofynnol i chi blannu [*nifer, rhywogaeth a maint y goeden neu'r coed sydd i'w plannu*] yn y lle(oedd) a ddangosir ar y plan amgaeedig.

5. AMSER AR GYFER CYDYMFFURFIO:

X mis ar ôl y dyddiad a nodwyd ym mharagraff 5 isod

5. PRYD Y DAW'R HYSBYSIAD HWN I RYM

Daw'r hysbysiad hwn i rym ar [dyddiad penodol (heb fod yn llai nag 28 diwrnod clir ar ôl y dyddiad cyflwyno)], oni bai bod apêl yn cael ei gwneud yn ei erbyn ymlaen llaw.

Dyddiad: *[dyddiad yr hysbysiad]*

Llofnodwyd: *[Swyddog awdurdodedig y Cyngor]*

ar ran *[Enw a chyfeiriad y Cyngor]*

EICH HAWL I APELIO

Gallwch apelio yn erbyn yr hysbysiad hwn, ond rhaid i unrhyw apêl **ddod i law'r** Ysgrifennydd Gwladol, neu gael ei bostio mewn pryd i ddod i law, **cyn y dyddiad** a bennwyd yn yr hysbysiad (yn 5 uchod)]. Gallwch apelio ar un neu ragor o'r seiliau canlynol -

(1) nad yw darpariaethau'r ddyletswydd i amnewid coed neu, fel y bo'n briodol, amodau'r caniatâd sy'n ei gwneud yn ofynnol amnewid coed, yn gymwys neu eich bod wedi cydymffurfio â hwy;

(2) y dylid anwybyddu'r ddyletswydd i amnewid coed o dan holl amgylchiadau'r achos mewn perthynas ag unrhyw goeden;

(3) bod gofynion yr hysbysiad yn afresymol mewn perthynas â'r cyfnod neu faint neu rywogaeth y coed sydd wedi'u henwi ynddo;

(4) nad oes angen plannu coeden neu goed yn unol â'r hysbysiad er lles amwynder neu y byddai'n groes i arferion da coedwigaeth;

(5) bod y lle y mae angen plannu'r goeden neu goed ynddo yn anaddas at y diben hwnnw.

Rhaid i chi ddatgan y ffeithiau hefyd y mae'ch apêl yn seiliedig arnynt.

METHIANT Â CHYDYMFFURFIO

Os na fyddwch yn cydymffurfio â'r hysbysiad hwn, gall y Cyngor fynd i mewn i'r tir, plannu'r goeden/coed ac adennill oddi wrthych unrhyw gostau rhesymol a dynnir.

CYNGOR

Os oes gennych unrhyw gwestiynau am yr hysbysiad hwn neu os hoffech gael rhywfaint o gyngor ar sut i gydymffurfio ag ef, cysylltwch â [*enw, cyfeiriad a rhif ffôn swyddog priodol y Cyngor*].

YR HYSBYSIAD STOP

Y prif ddarpariaethau statudol

3.1 Mae darpariaethau adran 183 o Ddeddf Cynllunio Gwlad a Thref 1990 ("Deddf 1990") yn galluogi'r awdurdod cynllunio lleol (ACLl) i gyflwyno hysbysiad stop, o dan rai amgylchiadau, pan fyddant yn cyflwyno copi o hysbysiad gorfodi, neu wedyn. Diwygiwyd adran 183 yn sylweddol gan adran 9 o Ddeddf Cynllunio ac Iawndal 1991 ("Deddf 1991"). Gan fod y pŵer i gyflwyno hysbysiad stop yn deillio o roi hysbysiad gorfodi cynllunio, nid yw'r Atodiad hwn yn gymwys i reolau adeiladau rhestredig neu ardaloedd cadwraeth, rheolau sylweddau peryglus neu reolau coed gwarchodedig.

Y pŵer i gyflwyno hysbysiad stop

3.2 Lle bo'r ACLl o'r farn ei bod yn fanteisiol y dylai unrhyw "weithgarwch perthnasol" beidio cyn i'r cyfnod cydymffurfio a bennwyd mewn hysbysiad gorfodi dod i ben, mae adran 183(1) yn galluogi'r ACLl i gyflwyno hysbysiad stop sy'n gwahardd cyflawni'r gweithgarwch hwnnw ar dir yr hysbysiad gorfodi, neu unrhyw ran o'r tir hwnnw. "Gweithgarwch perthnasol" yw unrhyw weithgarwch y mae'n ofynnol iddo beidio o dan yr hysbysiad gorfodi, ac unrhyw weithgarwch a gyflawnir fel rhan o'r gweithgarwch hwnnw neu'n gysylltiedig ag ef. Ni ellir cyflwyno hysbysiad stop ar ôl i'r hysbysiad gorfodi cysylltiedig ddod i rym.

3.3 Gellir cyflwyno hysbysiad stop i unrhyw berson yr ymddengys bod ganddo fuddiant yn y tir y mae'r hysbysiad yn ymwneud ag ef, neu yr ymddengys ei fod yn ymgymryd ag unrhyw weithgarwch a waherddir gan yr hysbysiad. Rhaid i'r ACLl amgáu gyda'r hysbysiad stop gopi o'r hysbysiad gorfodi cysylltiedig.

Hysbysu'r cyhoedd bod hysbysiad stop wedi'i gyflwyno

3.4 Gall yr ACLl roi cyhoeddusrwydd i'r ffaith bod hysbysiad stop wedi'i gyflwyno drwy arddangos "hysbysiad safle", yn unol ag adran 184(6), ar y tir y mae'r hysbysiad stop yn ymwneud ag ef. Os caiff hysbysiad safle ei arddangos, mae'n estyn effaith yr hysbysiad stop i unrhyw berson sy'n ei dorri.

3.5 Rhaid i hysbysiad safle, yn rhoi cyhoeddusrwydd i hysbysiad stop, ddatgan:

(1) bod hysbysiad stop wedi'i gyflwyno;

(2) y gall unrhyw berson sy'n torri'r hysbysiad stop gael ei erlyn am drosedd o dan adran 187; a

(3) y dyddiad y daw'r hysbysiad stop i rym a gofynion yr ACLl yn yr hysbysiad.

Cwmpas y gwaharddiad mewn hysbysiad stop

3.6 Gyda'r eithriadau a nodir ym mharagraff 3.7 isod, gall hysbysiad stop wahardd unrhyw un, neu'r cyfan, o'r gweithgareddau sy'n ffurfio'r toriad honedig o reolau cynllunio yn yr hysbysiad gorfodi cysylltiedig. Felly gellir cyfeirio'r gwaharddiad at y canlynol -

(1) defnydd tir sy'n atodol, neu'n ategol, i brif ddefnydd y tir a bennir yn yr hysbysiad gorfodi fel toriad rheolau; neu

(2) gweithgarwch penodol sy'n digwydd ar ran yn unig o'r tir a bennir yn yr hysbysiad gorfodi; neu

(3) gweithgarwch sy'n digwydd ar y tir yn achlysurol neu'n dymhorol.

Gellir defnyddio hysbysiad stop i wahardd defnyddio'r tir fel safle ar gyfer carafan a feddiannir gan unrhyw berson fel ei unig neu ei brif breswylfa.

3.7 *Ni* all hysbysiad stop wahardd y canlynol:

(1) defnyddio unrhyw adeilad fel tŷannedd;

(2) cyflawni unrhyw weithgarwch nad yw'n "ddatblygiad gweithredol", neu ollwng sbwriel neu ddeunyddiau gwastraff, os cyflawnwyd y gweithgarwch (yn barhaol neu beidio) am gyfnod o fwy na phedair blynedd gan ddod i ben gyda chyflwyno'r hysbysiad stop. (At y diben hwn, ni chymerir i ystyriaeth unrhyw gyfnod pan awdurdodwyd y gweithgarwch gan ganiatâd cynllunio.)

Pŵr i dynnu hysbysiad stop yn ôl

3.8 Gall yr ACLl dynnu hysbysiad stop yn ôl ar unrhyw adeg (heb ragfarnu eu pŵer i gyflwyno hysbysiad arall) trwy hysbysu pawb y cyflwynwyd yr hysbysiad stop iddynt ei fod wedi'i dynnu'n ôl. Os cafodd hysbysiad safle ei arddangos ar y tir a bennir yn yr hysbysiad stop, rhaid arddangos hysbysiad ei fod wedi'i dynnu'n ôl yn lle'r hysbysiad safle.

Dirwyn effaith hysbysiad stop i ben

3.9 Bydd grym hysbysiad stop yn dod i ben -

(1) pan dynnir yr hysbysiad gorfodi cysylltiedig yn ôl gan yr ACLl, neu pan gaiff ei ddiddymu;

(2) pan ddaw'r cyfnod a ganiatawyd gan yr ACLl ar gyfer cydymffurfio â'r hysbysiad gorfodi cysylltiedig i ben (bryd hynny, yn lle bod yn drosedd torri'r gwaharddiad yn yr hysbysiad stop, bydd yn drosedd peidio â chydymffurfio â'r gofynion a bennwyd gan yr ACLl yn yr hysbysiad gorfodi);

(3) pan hysbysir penderfyniad yr ACLl i dynnu'r hysbysiad stop yn ôl gyntaf.

3.10 Pan gaiff hysbysiad gorfodi ei amrywio (er enghraifft, ar apêl i'r Ysgrifennydd Gwladol o dan adran 174), fel nad yw'r toriad honedig o'r rheolau cynllunio bellach yn cynnwys gweithgarwch penodol a waherddir yn yr hysbysiad stop cysylltiedig, bydd y gwaharddiad yn yr hysbysiad stop yn peidio â bod mewn grym cyn belled â'i fod yn ymwneud â'r gweithgarwch penodol hwnnw.

Cosbau am dorri hysbysiad stop

3.11 Mae adran 187(1), fel y'i diwygiwyd, yn darparu, pan fydd person yn torri hysbysiad stop ar ôl i'r hysbysiad safle gael ei arddangos neu ar ôl i'r hysbysiad stop gael ei gyflwyno iddynt, y byddant yn euog o drosedd. Gellir eu cyhuddo o'r trosedd drwy gyfeirio at unrhyw ddiwrnod neu gyfnod hwy o amser a gellir collfarnu person o ail drosedd, neu drosedd dilynol drwy gyfeirio at unrhyw gyfnod o amser yn dilyn y gollfarn flaenorol am drosedd o'r fath. Mae person sy'n euog o'r trosedd hwn yn agored, o'i gollfarnu'n ddiannod, i ddirwy heb fod yn fwy nag £20,000; ac, o'i gollfarnu ar dditiad, i ddirwy ddiderfyn. Wrth benderfynu swm unrhyw ddirwy sydd i'w gosod, rhaid i'r Llys roi sylw i unrhyw fantais ariannol a gronnwyd, neu sy'n ymddangos yn debygol o gronni, o ganlyniad i'r trosedd.

3.12 Mae'n amddiffyniad i unrhyw berson a erlynir am drosedd o dan adran 187 brofi na chyflwynwyd yr hysbysiad stop iddynt ac na wyddent, ac na ellid disgwyl yn rhesymol iddynt wybod, am ei fodolaeth. Felly mae'n bwysig i ACLl barchu'r canllawiau ym mharagraffau 3.16 i 3.18 o'r Atodiad hwn.

Herio'r gwaharddiad mewn hysbysiad stop

3.13 Nid oes unrhyw hawl i apelio i'r Ysgrifennydd Gwladol yn erbyn y gwaharddiad mewn hysbysiad stop. Ni ellir archwilio rhagoriaethau penderfyniad yr ACLl i gyflwyno hysbysiad stop yn ystod apêl i'r Ysgrifennydd Gwladol, o dan adran 174, yn erbyn yr hysbysiad gorfodi cysylltiedig. Gellir herio dilysrwydd hysbysiad stop, a phriodoldeb penderfyniad yr ACLl i

gyhoeddi hysbysiad, drwy geisio caniatâd yr Uchel Lys i wneud cais am arolwg barnwrol, yn unol â Rheolau'r Goruchaf Lys; ond nid, mae'n debyg, fel amddiffyniad i erlyniad a ddygir gan yr ACLl o dan adran 187 os yw'r hysbysiad yn ddilys ar ei wyneb, drwy gydweddiad â dyfarniad y Llys Apêl (Adran Droseddol) yn **R v Wicks** [1995] 93 LGR 377.

Rhwymedigaeth yr ACLl i dalu iawndal o ganlyniad i hysbysiad stop

3.14 Nid oes dim iawndal yn daladwy mewn perthynas â'r gwaharddiad mewn hysbysiad stop ar unrhyw weithgarwch sydd, *ar unrhyw adeg pan fo'r hysbysiad mewn grym*, yn gyfystyr â thorri rheol gynllunio neu'n cyfrannu at ei thorri, a hynny yn rhinwedd adran 186(5) o Ddeddf 1990.

3.15 Mae adran 186(5) (b) yn darparu, lle bo hysbysiad torri rheolau cynllunio, neu hysbysiad o dan adran 330 o Ddeddf 1990 neu adran 16 o Ddeddf Llywodraeth Leol (Darpariaethau Amrywiol) 1976, wedi'i gwneud yn ofynnol bod gwybodaeth yn cael ei rhoi i'r ACLl, nad oes dim iawndal yn daladwy am unrhyw golled neu ddifrod y mae'r ceisydd wedi'u dioddef y gellid bod wedi'u hosgoi pe baent wedi darparu'r wybodaeth honno, neu wedi cydweithredu fel arall â'r ACLl wrth ymateb i'r hysbysiad.

Gweithdrefnau gweinyddol ar gyfer ymdrin â hysbysiadau stop

3.16 Pan fydd yr ACLl wedi penderfynu cyflwyno hysbysiad stop, mae'n hanfodol gweithredu'r penderfyniad yn gyflym ac yn effeithiol. Dylid bob amser sicrhau dealltwriaeth glir (wedi'i datgan mewn cyfarwyddiadau gweinyddol, os oes modd) am wahanol gyfrifoldebau Adran Gynllunio ac Adran Gyfreithiol yr awdurdod lleol ar gyfer y gwaith paratoi angenrheidiol, llunio telerau'r hysbysiad stop, y trefniadau ar gyfer ei gyflwyno a sut yr asesir ei effaith ymarferol (gan gynnwys yr angen i ddwyn erlyniad yn gyflym os torrir yr hysbysiad). Gan mai yn gymharol anaml y cyflwynir hysbysiad stop yn achos llawer o ACLl, y peth gorau fel rheol yw cadw'r wybodaeth a'r profiad hanfodol o weithdrefnau hysbysiadau stop mewn grp bach o swyddogion cynllunio a swyddogion cyfreithiol.

3.17 Dylai cyflwyniad hysbysiad stop bob amser gael ei gofnodi ar unwaith yn y gofrestr o hysbysiadau gorfodi a hysbysiadau stop y mae'n ofynnol i ACLl ei chynnal, o dan adran 188.

3.18 Mae'r gweithdrefnau ar gyfer cyflwyno hysbysiadau, a bennir yn adran 329 o Ddeddf 1990, yn gymwys i gyflwyno hysbysiad stop. Yn benodol, dylai'r derbynnydd bob amser allu adnabod hysbysiad stop fel gohebiaeth o'r pwys mwyaf. Os cyflwynir yr hysbysiad drwy'r post, dylai'r amlen sy'n ei gynnwys nodi'n glir ei fod yn ohebiaeth frys a phwysig; a dylid ei anfon drwy'r gwasanaeth cofnodi dosbarthiad.

Defnyddio pwerau i gyflwyno hysbysiad stop

3.19 Effaith cyflwyno hysbysiad stop, fel arfer, fydd rhoi terfyn ar dorri'r rheol, neu ar y gweithgarwch penodedig, bron ar unwaith. Dylai'r ACLl sicrhau felly fod asesiad cyflym ond trylwyr o ganlyniadau tebygol cyflwyno hysbysiad stop ar gael (os oes modd, pan na ddirprwyir y penderfyniad i swyddogion, ar ffurf adroddiad a gyflwynir gan Swyddogion Cynllunio neu Swyddogion Gorfodi sy'n hollol gyfarwydd â'r ardal a'r toriad honedig o'r rheol) i'r Pwyllgor neu'r swyddog a fydd yn awdurdodi cyflwyno'r hysbysiad stop. Dylai'r asesiad archwilio'r costau a'r manteision y gellir eu rhag-weld sy'n debyg o godi yn sgil hysbysiad stop.

Asesiad cost/budd ar gyfer hysbysiadau stop

3.20 Fel arfer, cyfyngir y costau sy'n codi o gyflwyno hysbysiad stop i'r cwmni, y gweithredwr neu'r tirfeddiannwr a rwystrir trwy'r hysbysiad rhag cyflawni'r gweithgarwch a waherddir gan yr hysbysiad. Yn achlysurol mae'n bosibl y bydd rhai costau i'r economi lleol. Gall y costau i'r cwmni amrywio o orfod diwygio proses gynhyrchu, ar ychydig neu ddim cost ychwanegol (yn y naill begwn), i derfynu busnes yn gyfan gwbl (yn y pegwn arall), gyda cholled swyddi, methiant i gwblhau contractau, neu fethdaliad o ganlyniad. Dylid archwilio effaith gwahardd gweithgarwch penodol yn ofalus bob amser. Er enghraifft, gall rhwystro storio defnyddiau crai neu gynhyrchion gorffenedig yn yr awyr agored gael effaith uniongyrchol a difrifol ar broses gynhyrchu sy'n dibynnu ar y deunyddiau crai hynny neu argaeledd y man storio i'r cynnyrch gorffenedig. Hyd yn oed os bydd effaith ymarferol yr hysbysiad stop yn

llai nag amharu ar broses gynhyrchu, fe all serch hynny ychwanegu'n sylweddol at gostau'r cwmni, gan fod pris y cynnyrch gorffenedig yn ormod ar gyfer ei farchnad gartref, neu am na all y cwmni gystadlu'n effeithiol â chwmnïau eraill mwyach mewn marchnad ehangach. Gan fod modd cyfeirio hysbysiad stop at unrhyw weithgarwch a bennir yn yr hysbysiad gorfodi, neu unrhyw ran o weithgarwch, neu unrhyw weithgarwch cysylltiedig, dylai'r ACLl sicrhau nad yw gofynion yr hysbysiad stop yn gwahardd ond yr hyn sy'n hanfodol er mwyn diogelu amwynder neu ddiogelwch y cyhoedd yn y gymdogaeth; neu er mwyn rhwystro niwed difrifol neu ddiwrthdro i'r amgylchedd yn yr ardal gyfagos.

3.21 Cyn penderfynu cyflwyno hysbysiad stop, dylai cynrychiolydd yr ACLl drafod, lle bynnag y bo'n ymarferol, gyda'r person sy'n cyflawni'r gweithgarwch a oes unrhyw ddull arall o gynhyrchu neu weithredu a fyddai'n goresgyn y gwrthwynebiadau iddo mewn modd sy'n dderbyniol i'r amgylchedd. Os byddai dulliau eraill derbyniol o gynhyrchu neu weithredu yn ei gwneud yn ofynnol rhoi caniatâd cynllunio, er mwyn ei gyflawni'n gyfreithlon, dylai'r ACLl gymryd y cam cyntaf drwy wahodd cais cynllunio. Serch hynny, am mai gorfodi'r gweithgareddau a bennir ynddo i beidio yw diben hysbysiad stop, dylid cadw unrhyw oedi i'r lleiaf posibl.

3.22 Fel arfer bydd manteision cyflwyno hysbysiad stop yn amlwg fel gwelliant yn amwynder y gymdogaeth. Dylai'r ACLl ystyried faint o bobl sy'n debyg o elwa, a pha mor andwyol yr effeithir ar eu hamwynderau os na chyflwynir hysbysiad stop (ar y rhagdybiaeth y bydd yr hysbysiad gorfodi yn dod i rym yn y pen draw wrth i'r cyfnod cydymffurfio a bennir ynddo ddod i ben).

3.23 Yn nyfarniad yr Uchel Lys, ar 12 Hydref 1994, yn achos **R v Cyngor Bwrdeistref Elmbridge ex parte Wendy Fair Markets Cyf** ([1995] JPEL, p.B36), ystyriodd y Llys yr angen am asesiad cost/budd o dan amgylchiadau lle gohiriwyd penderfyniad apêl Arolygydd Cynllunio i gadarnhau hysbysiad gorfodi, yn rhwystro parhad marchnad Sul ar dir yn y Llain Las, gan apêl bellach gan yr apelydd i'r Uchel Lys (o dan adran 289 o Ddeddf 1990). Ymhlith pethau eraill, dyfarnodd y Llys **yn yr achos hwn** nad oedd yn briodol cynnal asesiad cost/budd manwl iawn: ei bod yn ddigon, fel mater o synnwyr cyffredin, fod yr ACLl wedi sylweddoli y byddai'r hysbysiad stop i bob pwrpas yn rhwystro'r gweithredwyr a'r masnachwyr rhag parhau â'r farchnad Sul. Ar y llaw arall, yr oedd yr ACLl hefyd wedi cymryd i ystyriaeth ddifrifoldeb y gwrthwynebiad yngln â'r Llain Las. Daeth y Llys i'r casgliad fod gan yr ACLl hawl i beidio â chynnal asesiad cost-budd manylach na'r ymarfer syml yr oeddent wedi'i gynnal **yn yr achos hwn**.

3.24 Esbonnir sut y gall yr ACLl orfod talu iawndal o ganlyniad i hysbysiad stop ym mharagraffau 3.14 a 3.15 o'r Atodiad hwn.

Cyflwyno'r hysbysiad stop yn effeithiol

3.25 Ni ellir herio dilysrwydd hysbysiad stop ar y sail nad yw wedi'i gyflwyno i rywun y dylid bod wedi'i gyflwyno iddo. Mae adran 183(6) yn galluogi'r ACLl i gyflwyno hysbysiad stop i unrhyw berson yr ymddengys iddynt fod ganddo fuddiant yn y tir, neu ei fod yn ymwneud ag unrhyw weithgarwch a waherddir gan yr hysbysiad. Felly, er enghraifft, pan gyfeirir hysbysiad stop at doriad rheol gynllunio sy'n ymwneud â gweithrediadau i ail-adeiladu tŷ annedd wledig diffaith, ac na ellir cysylltu â pherchennog y tir, gall yr ACLl gyflwyno'r hysbysiad stop i unrhyw un sydd wrthi'n cyflawni'r gwaith adeiladu a waherddir gan yr hysbysiad. Dylai'r arferion gweinyddol arferol gynnwys olrhain unrhyw berchennog neu ddeiliad tir a threfnu i'r hysbysiad stop gael ei gyflwyno iddynt hwythau hefyd.

3.26 Nid yw hysbysiad stop yn annilys am na chyflwynwyd copi o'r hysbysiad gorfodi cysylltiedig fel sy'n ofynnol o dan adran 172(2) a (3), os dangosir bod yr ACLl wedi cymryd yr holl gamau hynny a oedd yn rhesymol ymarferol i'w gyflwyno'n briodol.

3.27 Amlinellir y darpariaethau ar gyfer hysbysu'r cyhoedd fod yr hysbysiad stop wedi'i gyflwyno neu wedi'i dynnu'n ôl ym mharagraffau 3.4 ac 3.8 o'r Atodiad hwn.

Y cyfnod pryd y gellir cyflwyno hysbysiad stop

3.28 Mae adran 183(3) yn darparu na ellir cyflwyno hysbysiad stop lle bo'r hysbysiad gorfodi cysylltiedig wedi dod i rym. (Mae adran 173(8) yn ei gwneud yn ofynnol i'r ACLl bennu'r dyddiad y daw'r hysbysiad gorfodi i rym.) Serch hynny, os ceir apêl orfodi i'r

Ysgrifennydd Gwladol, mae adran 175(4) yn gohirio effaith yr hysbysiad gorfodi nes i'r apêl yn ei erbyn cael ei benderfynu'n derfynol neu ei dynnu'n ôl. Pan geir apêl yn erbyn yr hysbysiad gorfodi cysylltiedig, mae'n dilyn o'r darpariaethau hyn y gall yr ACLl gyflwyno hysbysiad stop ar unrhyw adeg yn ystod cyfnod yr apêl orfodi, gan gynnwys unrhyw apêl bellach o dan adran 289, i'r Uchel Lys.

Y dyddiad y daw'r hysbysiad stop i rym

3.29 Rhaid i'r ACLl bennu yn yr hysbysiad stop y dyddiad pan fydd yn dod i rym. Mae adran 184(3) (fel y'i diwygiwyd) yn pennu bod rhaid i'r dyddiad gweithredol fel rheol beidio â bod yn gynharach na 3 diwrnod (nac yn fwy nag 28 diwrnod) ar ôl dyddiad cyflwyno'r hysbysiad stop ond, lle ceir rhesymau arbennig dros bennu dyddiad cynharach, gall hysbysiad stop ddod i rym cyn pen 3 diwrnod, neu ar unwaith. Os bwriedir i'r hysbysiad ddod i rym cyn pen tri diwrnod, rhaid cyflwyno datganiad o'r rhesymau gydag ef. Er enghraifft, mae'n bosibl y bernir ei bod yn hanfodol diogelu ardal o werth tirlun arbennig, neu ardal gadwraeth, rhag datblygiad gweithredol (megis adeiladau, ffyrdd neu wynebau caled eraill) a fyddai, pe bai'n parhau, yn arbennig o niweidiol.

Erlyn am drosedd

3.30 Pan fydd hysbysiad safle wedi'i arddangos ar gyfer hysbysiad stop, mae'n drosedd ar unwaith i rywun dorri, neu beri neu ganiatáu torri, y gwaharddiad yn yr hysbysiad stop, pan fydd yr hysbysiad stop wedi dod i rym. Pan nad yw hysbysiad safle wedi'i arddangos a bod yr hysbysiad stop wedi'i gyflwyno i berson, mae'n drosedd i'r person hwnnw dorri, neu beri neu ganiatáu torri, y gwaharddiad yn yr hysbysiad stop yn union ar ôl i'r hysbysiad stop gael ei gyflwyno iddynt. Fel arfer, yn Llys yr Ynadon yr erlynir am drosedd o dan adran 187, ond fe ellir erlyn yn Llys y Goron os yw'r trosedd yn ddigon difrifol.

3.31 Dylai awdurdodau sy'n erlyn bob amser fod yn fodlon rhoi manylion, os ydynt ar gael, am yr enillion sy'n deillio o'r trosedd, er mwyn i'r Llys eu cymryd i ystyriaeth wrth benderfynu ar swm y ddirwy.

Rhybuddio troseddwyr honedig

3.32 Wrth ymchwilio i'r ffeithiau, cyn cychwyn unrhyw achos, dylai ACLl roi sylw i ddarpariaethau adrannau 66 a 67(9) o Ddeddf yr Heddlu a Thystiolaeth Droseddol 1984 o ran rhybuddio troseddwyr honedig.

Hysbysiad stop enghreifftiol

3.33 Mae hysbysiad stop enghreifftiol ynghlwm wrth yr Atodiad hwn.

HYSBYSIAD STOP ENGHREIFFTIOL

PWYSIG - MAE'R OHEBIAETH HON YN EFFEITHIO AR EICH EIDDO

DEDDF CYNLLUNIO GWLAD A THREF 1990
(Fel y'i diwygiwyd gan ddeddf cynllunio ac iawndal 1991)

HYSBYSIAD STOP

CYFLWYNWYD GAN: *[enw'r Cyngor]*

I: *[enw derbynnydd arfaethedig yr hysbysiad]*

1. Ar *[dyddiad]*, rhoes y Cyngor hysbysiad gorfodi (yr amgaeir copi ohono gyda'r hysbysiad hwn) yn honni bod rheolau cynllunio wedi'u torri ar *[disgrifiad o'r tir y mae'r hysbysiad yn ymwneud ag ef]*.

2. **RHODDIR YR HYSBYSIAD HWN** gan y Cyngor, drwy ymarfer eu pwerau o dan adran 183 o Ddeddf 1990, am eu bod o'r farn ei bod yn fanteisiol y dylai'r gweithgarwch a bennir yn yr hysbysiad hwn beidio cyn i'r cyfnod a ganiateir i gydymffurfio â gofynion yr hysbysiad gorfodi dod i ben [ar y tir a ddisgrifir ym mharagraff 3 isod]. Mae'r Cyngor bellach yn gwahardd cyflawni'r gweithgarwch a bennir yn yr hysbysiad hwn. Rhoddir gwybodaeth ychwanegol bwysig yn Atodiad yr hysbysiad hwn.

3. **Y TIR Y MAE'R HYSBYSIAD HWN YN CYFEIRIO ATO**

Tir yn *[cyfeiriad y tir, neu ddisgrifiad o'r rhan berthnasol o'r tir y mae'r hysbysiad gofnodi'n cyfeirio ato]*, a ddangosir ag ymylon coch ar y plan amgaeedig.

4. **Y GWEITHGARWCH Y MAE'R HYSBYSIAD HWN YN CYFEIRIO ATO**

[Noder y gweithgaredd y mae'r hysbysiad yn ei gwneud yn ofynnol iddo beidio, ac unrhyw weithgaredd a gyflawnir fel rhan o'r gweithgaredd hwnnw, neu sy'n gysylltiedig ag ef].

5. **YR HYN Y MAE'N OFYNNOL I CHI EI WNEUD**

Rhoi'r gorau i'r holl weithgareddau a bennir yn yr hysbysiad hwn.

6. **PRYD BYDD YR HYSBYSIAD HWN YN DOD I RYM**

Daw'r hysbysiad hwn i rym ar *[dyddiad]* pan fydd rhaid i'r holl weithgareddau a bennir yn yr hysbysiad hwn beidio.

Dyddiad: *[dyddiad yr hysbysiad]*
Llofnod: *[swyddog awdurdodedig y Cyngor]*
Ar ran: *[enw a chyfeiriad y Cyngor]*

RHYBUDD

ATODIAD

DAW'R HYSBYSIAD HWN I RYM AR Y DYDDIAD A BENNIR YM MHARAGRAFF 6

NID OES HAWL I APELIO AT YSGRIFENNYDD GWLADOL CYMRU YN ERBYN YR HYSBYSIAD HWN

Mae'n drosedd torri hysbysiad stop ar ôl i hysbysiad safle gael ei arddangos neu ar ôl i'r hysbysiad stop gael ei gyflwyno i chi. (Adran 187(1) o Ddeddf 1990). Os byddwch yn methu â chydymffurfio â'r hysbysiad stop byddwch mewn perygl o **erlyniad ar unwaith** yn y Llys Ynadon, gyda chosb uchaf o £20,000 o'ch collfarnu'n ddiannod am y trosedd cyntaf ac am unrhyw drosedd dilynol. O'ch collfarnu ar dditiad, nid oes terfyn ar y ddirwy. Os oes gennych amheuaeth ynglŷn â'r hyn y mae'r Cyngor yn gofyn i chi ei wneud, dylech gysylltu **ar unwaith** â [*swyddog enwebedig y Cyngor i ymdrin ag ymholiadau, cyfeiriad a rhif ffôn*].

Os oes arnoch angen cyngor annibynnol am yr hysbysiad hwn, fe'ch cynghorir i gysylltu ar fyrder â chyfreithiwr, ymgynghorydd cynllunio neu gynghorydd proffesiynol arall sy'n arbenigo ar faterion cynllunio. Os hoffech herio dilysrwydd yr hysbysiad, yr unig ffordd i chi wneud hynny yw cais i'r Uchel Lys am adolygiad barnwrol.

GORFODI AMODAU CYNLLUNIO: YR HYSBYSIAD TORRI AMOD

Cyflwyniad

4.1 Mae adran 187A o Ddeddf Cynllunio Gwlad a Thref 1990 ("Deddf 1990") yn darparu ar gyfer gorfodi amod cynllunio drwy'r hysbysiad torri amod. Mae'r Atodiad hwn yn esbonio sut y bwriedir i'r hysbysiad weithredu fel ffordd wahanol o ymdrin â'r math hwn o dorri rheolau; neu, os yw'n briodol, yn ogystal â hysbysiad gorfodi. Nid yw'n gymwys i achosion torri rheolau adeiladau rhestredig neu ardaloedd cadwraeth, rheolau sylweddau peryglus neu reolau coed gwarchodedig.

Y darpariaethau statudol

4.2 Mae'r darpariaethau statudol perthnasol ar gyfer hysbysiad torri amod fel a ganlyn:-

(1) adran 187A o Ddeddf 1990 (wedi'i mewnosod gan adran 2 o Ddeddf Cynllunio ac Iawndal 1991 ("Deddf 1991");

(2) adrannau 171A a 171B o Ddeddf 1990 (wedi'u mewnosod gan adran 4 o Ddeddf 1991);

(3) adran 4(2) o Ddeddf 1991;

(4) adran 180 o Ddeddf 1990 (wedi'i disodli gan baragraff 26 o Atodlen 7 o Ddeddf 1991); a

(5) adran 188 o Ddeddf 1990 (fel y'i diwygiwyd gan baragraff 30 o Atodlen 7 o Ddeddf 1991).

4.3 Nid oes hawl i apelio at yr Ysgrifennydd Gwladol yn erbyn hysbysiad torri amod.

Lle gellir defnyddio hysbysiad torri amod

4.4 Mae gweithdrefn hysbysiad torri amod yn gymwys lle mae caniatâd cynllunio (gan gynnwys rhoi caniatâd, ar apêl, gan yr Ysgrifennydd Gwladol neu Arolygydd Cynllunio) i gyflawni unrhyw ddatblygiad ar dir wedi'i roi o dan amodau.

4.5 Yn rhinwedd adran 187A(13) (a) a (b) o Ddeddf 1990 -

(1) mae'r cyfeiriad at amodau yn cynnwys cyfeiriad at "gyfyngiadau" a osodir yn statudol gan rai o'r darpariaethau ar gyfer hawliau "datblygu a ganiateir" yn Erthygl 3, ac Atodlen 2, o'r Gorchymyn Cynllunio Tref a Gwlad (Datblygu Cyffredinol a Ganiateir) 1995 (OS 1995/418);

(2) mae'r ymadrodd "cyflawni unrhyw ddatblygiad" yn cynnwys peri neu ganiatáu i berson arall gyflawni datblygiad.

4.6 Bwriedir yr hysbysiad torri amod yn bennaf fel dewis arall yn lle hysbysiad gorfodi i adfer toriad rheolau sy'n deillio o fethiant i gydymffurfio ag unrhyw amod neu gyfyngiad cynllunio. Ond gellir ei gyflwyno hefyd yn ychwanegol at roi hysbysiad gorfodi, hwyrach fel dewis arall yn lle hysbysiad stop, lle bydd yr ACLl o'r farn y byddai'n fanteisiol rhoi terfyn ar y toriad yn gyflym a chyn y caiff unrhyw apêl yn erbyn yr hysbysiad gorfodi ei phenderfynu, er enghraifft, am ei fod yn achosi niwed amgylcheddol difrifol, neu'n niweidiol i amwynder neu ddiogelwch y cyhoedd. Mae'n arbennig o addas i'w ddefnyddio lle mae'n amlwg bod amod cynllunio dilys wedi'i dorri a'i fod yn debyg y byddai'r profiad llesol o erlyniad diannod (neu'r bygythiad o erlyn) yn gorfodi'r person sy'n gyfrifol i gydymffurfio â'r amod. Os oes unrhyw amheuaeth gyfreithiol ynghylch dilysrwydd amod, ni fyddai'n ddoeth defnyddio'r weithdrefn hysbysiad torri amod.

"Imwnedd" rhag hysbysiad torri amod

4.7 Mae adran 171B(3) yn darparu na ellir cymryd unrhyw gamau gorfodi yn erbyn (ymhlith achosion eraill) torri amod cynllunio ar ôl i'r cyfnod o ddeng mlynedd o'r dyddiad pan ddigwyddodd y toriad gyntaf ddod i ben. I bob pwrpas, mae yna reol "imwnedd" o ddeng mlynedd yn gymwys i gyflwyno hysbysiad torri amod (ac eithrio amod sy'n ymwneud â defnydd fel un tŷannedd lle mae'r cyfnod o "imwnedd" yn bedair blynedd). Felly, a bwrw bod y toriad wedi bod yn barhaol, mae gan unrhyw doriad amod a ddigwyddodd gyntaf fwy na deng mlynedd calendr cyn y dyddiad y mae'r ACLl yn cydnabod yn ffurfiol ei fod wedi digwydd (ee drwy hysbysu perchennog neu ddeiliad y tir ynglŷn â'u barn y cafwyd toriad) imwnedd parhaol. (Mae hyn yn cymryd yn ganiataol na chafodd unrhyw gamau gorfodi eu cymryd gynt yn ei erbyn). Rhoddir esboniad o hyn ac eithriadau eraill i'r rheol deng mlynedd, fel y mae'n gymwys i hysbysiadau torri amod, ym mharagraffau 2.4 a 2.5 o Atodiad 2 i'r Cylchlythyr hwn.

4.8 Yn ychwanegol, mae adran 180 o Ddeddf 1990 yn darparu, lle rhoddir caniatâd cynllunio wedyn er mwyn awdurdodi unrhyw weithgarwch sydd wedi'i nodi mewn hysbysiad torri amod fel gweithgarwch sy'n mynd yn groes i amod cynllunio, neu lle bo amod a bennir yn yr hysbysiad wedi'i ollwng, mae'r hysbysiad yn peidio â bod mewn grym cyn belled â'i fod yn ei gwneud yn ofynnol i unrhyw un sicrhau cydymffurfiad â'r amod hwnnw. Ond mae adran 180(3) yn darparu'n benodol hefyd, pan fydd hysbysiad torri amod yn peidio â bod mewn grym, yn gyfan gwbl neu'n rhannol, o dan yr amgylchiadau hyn, nad effeithir ar atebolrwydd unrhyw berson am drosedd o fethu â chydymffurfio o'r blaen, neu o beidio â sicrhau cydymffurfiad, â'r hysbysiad. Mewn geiriau eraill gellir erlyn person am dorri hysbysiad torri amod sy'n digwydd yn ystod unrhyw gyfnod cyn y dyddiad pan roddir y caniatâd cynllunio dilynol neu pan ollyngir yr amod perthnasol.

Drafftio hysbysiad torri amod

4.9 Diben hysbysiad torri amod yw ei gwneud yn ofynnol i'w dderbynnydd sicrhau cydymffurfiad â thelerau amod, neu amodau, cynllunio a bennir gan yr ACLl yn yr hysbysiad. Felly gellir cyfeirio un hysbysiad at dorri dau neu ragor o amodau cynllunio. Ond mae'r darpariaethau ynglŷn â'r trosedd (adran 187A(8) a (9)) yn ymwneud ag unrhyw fethiant i gydymffurfio â gofynion yr hysbysiad ar ôl diwedd y cyfnod cydymffurfio a bennir gan yr ACLl. Yn unol â hyn, lle bydd un hysbysiad i'w gyfeirio at dorri dau neu ragor o amodau cynllunio a lle byddai hynny'n golygu pennu mwy nag un cyfnod cydymffurfio yn yr un hysbysiad, gall fod yn fwy boddhaol cyflwyno hysbysiad torri amod am bob toriad, fel na fydd unrhyw amheuaeth ynglŷn â pha gyfnod cydymffurfio sy'n gymwys ymhob achos.

4.10 Mae adran 187A(5) yn darparu bod rhaid i hysbysiad torri amod bennu'r camau y mae'r ACLl yn credu y dylid eu cymryd neu'r gweithgareddau y credant y dylent ddod i ben, er mwyn sicrhau cydymffurfiad â'r amodau a bennir yn yr hysbysiad. Felly gall hysbysiad -

(1) fod yn orfodol (ee i'w gwneud yn ofynnol cyflawni a chwblhau cynllun tirlunio yn unol â thelerau amod tirlunio a osodwyd wrth roi caniatâd); neu

(2) yn waharddol (ee ei gwneud yn ofynnol i d bwyta, neu siop prydau parod, beidio ag agor i gwsmeriaid ar ôl yr amser cau a bennwyd mewn amod cynllunio).

4.11 Darperir enghraifft o hysbysiad torri amod yn yr Ychwanegiad i'r Atodiad hwn.

Cyflwyno hysbysiad torri amod

4.12 Mae Adran 187A (2) yn darparu mai'r person y gellir cyflwyno hysbysiad torri amod iddo -

(a) yw unrhyw berson sy'n cyflawni neu wedi cyflawni'r datblygiad; neu

(b) unrhyw berson sy'n rheoli'r tir.

Ond mae adran 187A(4) i bob pwrpas yn cyfyngu cyflwyno hysbysiad torri amod i unrhyw berson sy'n rheoli'r tir i'r achos lle mae'r amod (neu'r amodau) a dorrwyd yn rheoleiddio defnydd y tir. Felly, er enghraifft, lle mae datblygwr wedi cyflawni datblygiad preswyl yn ddarostyngedig i amod (ymhlith eraill) y dylid codi wal sgrin neu ffens ardd, a bod yr amod hwnnw wedi'i dorri ond bod pob un o'r tai annedd unigol wedi'u meddiannu gan berchnogion sydd bellach yn rheoli'r tir sy'n ffurfio cwrtil pob annedd, ni ellir defnyddio'r hysbysiad torri amod yn eu herbyn hwy. Am nad yw amod sy'n mynnu bod waliau neu ffensiau'n cael eu codi yn rheoleiddio defnydd y tir, dim ond yn erbyn y datblygwr gwreiddiol y gellir defnyddio'r hysbysiad torri amod. (Nid yw hynny'n golygu mai dim ond yn erbyn y person a gyflawnodd y datblygiad y gellir cymryd y camau gorfodi hyn pan geir y math yma o dorri amod: ar yr amod nad yw'r toriad amod wedi sicrhau imwnedd rhag camau gorfodi, mae'n dal yn bosibl rhoi hysbysiad torri amod er mwyn adfer y toriad honedig.)

4.13 Yn rhinwedd adran 187A(3), diffinnir unrhyw berson y mae'r ACLl yn cyflwyno hysbysiad torri amod iddo fel "y person cyfrifol". Prif effaith y ddarpariaeth hon yw y byddai unrhyw un sy'n cael hysbysiad wedi mynd yn groes i'r hysbysiad os na chydymffurfiwyd ag unrhyw amod sydd wedi'i nodi ynddo ac os nad yw'r camau a bennwyd wedi'u cymryd neu os nad yw'r gweithgareddau a bennwyd wedi dod i ben, ar ôl y cyfnod cydymffurfio (adran 187A(8)); ac y byddai'r person hwnnw yn euog o drosedd (adran 187A(9)). Mae'r darpariaethau hyn yn ei gwneud yn hanfodol i'r ACLl, ar y dechrau, ystyried a phenderfynu ymhob achos pwy y dylid edrych arno fel y "person cyfrifol" am doriad honedig o amod cynllunio. Fel rheol, dim ond un derbynnydd y dylai hysbysiad torri amod ei gael.

Y cyfnod cydymffurfio

4.14 Rhaid i'r hysbysiad torri amod bennu cyfnod cydymffurfio y mae'n rhaid i'r person sy'n gyfrifol gydymffurfio ag ef, neu sicrhau cydymffurfio, â'r amod y mae'r hysbysiad yn ymwneud ag ef. Mae'r cyfnod a ganiateir ar gyfer cydymffurfio â'r hysbysiad fel a ganlyn -

(1) cyfnod o nid llai nag 28 diwrnod gan ddechrau ar ddyddiad cyflwyno'r hysbysiad; neu

(2) y cyfnod cychwynnol o 28 diwrnod neu fwy, wedi'i ymestyn gan pa gyfnod pellach bynnag y gall yr ACLl ei ganiatáu drwy gyflwyno hysbysiad pellach i'r person cyfrifol.

Bydd ACLl yn dymuno sicrhau bod y cyfnod cydymffurfio yn gymesur â gofynion yr hysbysiad.

Tynnu'r hysbysiad yn ôl

4.15 Mae adran 187A(6) yn darparu y gall yr ACLl dynnu hysbysiad yn ôl drwy gyflwyno hysbysiad tynnu'n ôl i'r "person cyfrifol". Ond, yn rhinwedd darpariaethau "ail-gyfle" adran 171B(4) (gweler Atodiad 2 paragraff 2.5), nid yw'r ffaith bod yr ACLl yn tynnu hysbysiad yn ôl yn effeithio ar eu pŵer i gyflwyno i'r person cyfrifol hysbysiad torri amod pellach sydd wedi'i gyfeirio at yr amodau a bennwyd yn yr hysbysiad cynharach, neu at unrhyw amodau eraill (ar yr amod nad yw'r toriad wedi cael "imwnedd" rhag camau gorfodi yn y cyfamser). Gall tynnu hysbysiad yn ôl ddigwydd ar unrhyw bryd, gan gynnwys ar ôl i'r cyfnod cydymffurfio ddod i ben.

Torri'r hysbysiad

4.16 Yn dilyn diwedd y cyfnod a ganiateir ar gyfer cydymffurfio â'r hysbysiad, os nad yw'r "person cyfrifol" -

(1) wedi cydymffurfio â phob un o'r amodau a bennwyd yn yr hysbysiad; a

(2) a'i fod heb sicrhau bod unrhyw gamau penodedig wedi'u cymryd, neu fod unrhyw weithgareddau penodedig wedi dod i ben.

mae adran 187A(8) a (a) yn darparu ei fod wedi torri'r hysbysiad ac yn euog o drosedd (adran 187A(9)).

Erlyn troseddau

4.17 Gellir dwyn erlyniad diannod yn y Llys Ynadon am y drosedd o dorri hysbysiad torri amod. Dirwy nad yw'n fwy na "lefel 3" ar y raddfa safonol (sef £1,000 ar hyn o bryd) yw'r gosb uchaf ar ôl collfarn. Gan y gellir mynd â'r drosedd hon i brawf diannod, mae darpariaethau adran 127(1) o Ddeddf Llysoedd Ynadon 1980 yn gymwys. Ceir cyfnod cyfyngu o chwe mis, sy'n rhedeg o'r amser pan gyflawnwyd y trosedd, y mae'n rhaid cyflwyno hysbysiaeth gerbron y Llys ynddo. Mae'r cyfnod hwn yn rhedeg, nid o'r dyddiad pan gyflawnwyd y trosedd gyntaf, ond ar sail barhaol, fel na ellir cyhuddo ond o gymaint o'r trosedd ag sy'n dod o fewn y cyfnod o chwe mis. Er enghraifft, os digwyddodd y toriad o'r hysbysiad dros gyfnod o dri mis, a bod hysbysiaeth yn cael ei chyflwyno bum mis ar ôl y diwrnod olaf i'r toriad hwnnw ddigwydd, dim ond y trydydd mis (a'r un olaf) o gyfnod y toriad a fydd yn dod o fewn y cyfnod cyfyngu ac a fydd felly'n gyhuddadwy. Dylid cyflwyno hysbysiaeth felly cyn gynted â phosibl bob amser. Mae pob trosedd, i bob pwrpas, yn drosedd unigol sy'n gyhuddadwy drwy gyfeirio at unrhyw ddiwrnod neu gyfnod hwy. Gellir cyhuddo o drosedd canlynol drwy gyfeirio at gyfnod diweddarach.

4.18 Mae adran 187A(10) yn darparu y gellir cyhuddo o drosedd drwy gyfeirio at unrhyw ddiwrnod neu gyfnod amser hwy; ac y gall person gael ei gollfarnu o ail drosedd, neu un dilynol. Mae'r darpariaethau hyn yn caniatáu dwyn erlyniadau pellach lle bo'r person cyfrifol wedi'i erlyn a'i ddirwyo ond yn dal yn methu â chydymffurfio â'r hysbysiad. Rhaid profi achos yr erlyniad bob amser yn ôl y safon brawf troseddol, sef "y tu hwnt i amheuaeth resymol".

4.19 Mae'n amddiffyniad yn erbyn erlyniad i berson sy'n cael ei gyhuddo o drosedd o dan adran 187A(9) brofi -

(1) ei fod wedi cymryd pob mesur rhesymol i sicrhau cydymffurfio â'r amodau a bennwyd yn yr hysbysiad; neu

(2) lle cyflwynwyd yr hysbysiad iddo fel person â rheolaeth ar y tir, nad oedd ganddo reolaeth arno fwyach pan gyflwynwyd yr hysbysiad iddo, yn rhinwedd adran 187A(2) (b).

Herio dilysrwydd hysbysiad

4.20 Er nad oes hawl i apelio i'r Ysgrifennydd Gwladol yn erbyn hysbysiad torri amod, gellir herio dilysrwydd yr hysbysiad, neu ddilysrwydd penderfyniad yr ACLl i'w gyflwyno, drwy wneud cais i'r Uchel Lys am adolygiad barnwrol; ond nid mae'n debyg fel amddiffyniad i erlyniad a ddygir gan yr ACLl os yw'r hysbysiad yn ddilys ar ei wyneb, drwy gydweddiad â dyfarniad y Llys Apêl (Adran Droseddol) yn **R v Wicks** [1995] 93 LGR 377. Mae hyn yn pwysleisio ei bod yn ddoeth peidio â defnyddio'r hysbysiad torri amod ond lle bo'r amod cynllunio a dorrwyd yn ddilys yn ôl y gyfraith; lle mae'n bodloni'r meini prawf ar gyfer gorfodi'r amodau sydd wedi'u datgan yng nghylchlythyr 35/95 y Swyddfa Gymreig; a'i bod yn amlwg, yn ôl y dystiolaeth sydd ar gael, ei fod wedi'i dorri. Gall methu â sicrhau bod yr amod o dan sylw'n ddilys ac yn amod y gellir ei orfodi, cyn cyflwyno hysbysiad torri amod, arwain at gyfreithiad hirfaith, gan ddirymu felly brif bwrpas y weithdrefn hon o sicrhau cydymffurfiad cyflym ag amodau a chyfyngiadau cynllunio. Lle bo'r ACLl yn rhag-weld bod lle i ddadlau yngln â dehongliad, dilysrwydd neu allu i orfodi amod, ond er hynny yn credu y byddai'n fuddiol cymryd camau gorfodi, gall cyflwyno hysbysiad gorfodi fod yn weithdrefn fwy priodol.

Cofnod yn y gofrestr hysbysiadau gorfodi a hysbysiadau stop

4.21 Mae darpariaethau adran 188(1) (c) o Ddeddf 1990 (fel y'i diwygiwyd gan baragraff 30 Atodlen 7 o Ddeddf 1991) yn ei gwneud yn ofynnol i'r ACLl gofnodi manylion pob hysbysiad torri amod y maent yn ei gyflwyno mewn cofrestr (ynghyd â gwybodaeth am hysbysiadau gorfodi a hysbysiadau stop). Mae erthygl 26 Gorchymyn Cynllunio Tref a Gwlad (Gweithdrefn Ddatblygu Gyffredinol) 1995 (OS 1995/419) yn pennu'r manylion y mae'n rhaid eu cofnodi yn y gofrestr mewn perthynas â hysbysiad torri amod.

4.22 Nid yw hysbysiad torri amod yn arwystl cyfreithiol ar y tir, ac nid oes angen felly ei gofnodi yn y Gofrestr Pridiannau Tir lleol. Yn ymarferol, mae bodolaeth yr amod eisoes wedi'i chofnodi wrth gofrestru'r caniatâd cynllunio y cafodd ei orfodi arno. Gan fod yr hysbysiad wedi'i gyfeirio at unigolyn (y "person cyfrifol"), mae'n gymwys i'r person hwnnw yn hytrach na'r tir, ac ni ellir ei orfodi yn erbyn unrhyw berson arall.

HYSBYSIAD TORRI AMOD ENGHREIFFTIOL

PWYSIG:- MAE'R OHEBIAETH HON YN EFFEITHIO AR EICH EIDDO

DEDDF CYNLLUNIO GWLAD A THREF 1990
(fel y'i diwygiwyd gan Ddeddf Cynllunio ac Iawndal 1991)

HYSBYSIAD TORRI AMOD

CYFLWYNIAD GAN: *[enw'r Cyngor]*

I: *[enw[au] y person[au] sy'n gyfrifol am y toriad amod honedig]*

1. **RHODDIR YR HYSBYSIAD HWN** a gyflwynir gan y Cyngor, o dan adran 187A o'r Ddeddf uchod, am eu bod o'r farn na chydymffurfiwyd ag *[amod] [amodau]* a osodwyd ar ganiatâd cynllunio a roddwyd, ynglŷn â'r tir a ddisgrifir ym mharagraff 2 isod. Mae'r Cyngor o'r farn y dylid ei gwneud yn ofynnol i chi *[gydymffurfio] [sicrhau y cydymffurfir] â'r amod[au]* a bennir yn yr hysbysiad hwn. Ceir gwybodaeth ychwanegol bwysig yn yr Atodiad ar ddiwedd yr hysbysiad hwn.

2. **Y TIR Y MAE'R HYSBYSIAD HWN YN CYFEIRIO ATO**

Tir yn *[cyfeiriad y tir]*, a ddangosir gydag ymyl goch ar y plan amgaeedig.

3. **Y CANIATÂD CYNLLUNIO PERTHNASOL**

Y caniatâd a roddwyd gan y Cyngor ar *[dyddiad rhoi'r caniatâd]* ar gyfer *[disgrifiad o'r datblygiad]* yw'r caniatâd cynllunio perthnasol y mae'r hysbysiad hwn yn cyfeirio ato *[cyfeirnod y Cyngor]*.

4. **YR AMOD SYDD WEDI'I DORRI**

Ni chydymffurfiwyd â'r amod*[au]* canlynol:

(1)

(2) *[Nodwch delerau pob amod na chydymffurfiwyd ag ef.]*

(3)

5. **YR HYN Y MAE'N OFYNNOL I CHI EI WNEUD**

Fel y person sy'n gyfrifol am dorri'r amod*[au]* sydd wedi'u pennu ym mharagraff 4 o'r hysbysiad hwn, mae'n ofynnol i chi *[gydymffurfio] [sicrhau y cydymffurfir]* â'r amod*[au]* a nodwyd drwy gymryd y camau canlynol:-

(1) *[Nodwch yn glir y camau sydd i'w*
(2) *cymryd er mwyn sicrhau y cydymffurfir*
(3) *â'r amod[au] ym mharagraff 4 uchod.]*

[*a*] [*rhoi'r gorau i'r gweithgareddau canlynol:-]*

(1) *[Nodwch yn glir y gweithgareddau y mae'n*
(2) *rhaid rhoi'r gorau iddynt er mwyn sicrhau y*
(3) *cydymffurfir â'r amod[au] ym mharagraff 4 uchod.]*

Cyfnod ar gyfer cydymffurfio: 30 diwrnod gan ddechrau ar y diwrnod pan gyflwynwyd yr hysbysiad hwn i chi. *Gellir pennu cyfnodau gwahanol ar gyfer pob gofyniad.*

Dyddiad: *[dyddiad yr hysbysiad]*

Llofnodwyd: *[Swyddog awdurdodedig y Cyngor]*

Ar ran: *[enw a chyfeiriad y Cyngor]*

RHYBUDD

DAW'R HYSBYSIAD HWN I RYM *YN UNION* PAN GAIFF EI GYFLWYNO I CHI YN BERSONOL NEU AR Y DIWRNOD PAN DDAW I LAW DRWY'R POST.

NID OES HAWL I APELIO AT YSGRIFENNYDD GWLADOL CYMRU YN ERBYN YR HYSBYSIAD HWN.

Mae'n drosedd torri'r gofynion sydd wedi'u datgan ym mharagraff 5 o'r hysbysiad hwn ar ôl diwedd y cyfnod cydymffurfio. Byddwch wedyn mewn perygl o gael eich **erlyn ar unwaith** yn Llys yr Ynadon. £1,000 yw'r gosb uchaf am drosedd cyntaf neu am unrhyw drosedd canlynol. Os oes gennych unrhyw amheuaeth yngln â'r hyn y mae'r hysbysiad hwn yn ei gwneud yn ofynnol i chi ei wneud, dylech gysylltu **ar unwaith** â *[swyddog enwebedig y Cyngor i ymdrin ag ymholiadau, cyfeiriad a rhif ffôn].*

Os oes arnoch angen cyngor annibynnol ynglŷn â'r hysbysiad hwn, fe'ch cynghorir i gysylltu ar frys â chyfreithiwr, ymgynghorydd cynllunio neu unrhyw gynghorydd proffesiynol arall sy'n arbenigo mewn materion cynllunio. Os ydych yn dymuno herio dilysrwydd yr hysbysiad, ni allwch wneud hynny ond drwy gais i'r Uchel Lys am adolygiad barnwrol.

ATODIAD 5

GWAHARDDEB I ATAL TORRI RHEOLAU CYNLLUNIO

Cwmpas achos gwaharddol

5.1. Mae adran 187B o Ddeddf Cynllunio Gwlad a Thref ("Deddf 1990") (a fewnosodwyd gan adran 3 o Ddeddf Cynllunio ac Iawndal 1991 ("Deddf 1991") yn galluogi'r ACLl, lle bônt o'r farn ei bod yn fanteisiol i unrhyw doriad gwirioneddol neu ddisgwyliedig o reolau cynllunio cael ei atal drwy waharddeb, i wneud cais i'r Uchel Lys neu'r Llys Sirol am waharddeb. Gellir gwneud cais *p'un a yw'r* ACLl wedi ymarfer, neu'n bwriadu ymarfer, unrhyw un o'u pwerau eraill i orfodi'r rheolau cynllunio *neu beidio.*

5.2. Yn yr un modd, o dan adran 214A o Ddeddf 1990 gall yr ACLI wneud cais am waharddel i atal trosedd wirioneddol neu ddisgwyliedig o dan adran 210 (gwaith ar goed sy'n torri gorchymyn cadw coed) neu adran 211 (gwaith gwaharddedig ar goed mewn ardaloedd cadwraeth).

5.3. Mewnosododd Paragraff 7 o Atodlen 3 o Ddeddf 1991 adran 44A yn Neddf Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1990. Mae'r adran hon yn cyfateb â darpariaethau adran 187B at ddibenion gorfodi rheolau adeiladau rhestredig. Mae'r cyngor yn yr Atodiad hwn yr un mor gymwys i waharddebau a geisir o dan adran 44A.

Gwaharddebau o dan adran 222 o Ddeddf Llywodraeth Leol 1972

5.4 Nid yw'n debyg y bydd angen i ACLl ddefnyddio adran 222 o Ddeddf Llywodraeth Leol 1972 am fod adran 187B ar gael bellach; gweler hefyd **City of London Corporation v Bovis** [1992] 3 AllER 697

Gweithredu achos gwaharddol

5.5 Mater i'r ACLl yw penderfynu a ddylid dwyn achos gwaharddol. Gall y bydd o gymorth i'r ACLl ystyried -

(i) a ydynt wedi cymryd i ystyriaeth yr hyn sy'n ymddangos yn ystyriaethau perthnasol, gan gynnwys amgylchiadau personol y rhai o dan sylw, wrth benderfynu ei bod yn angenrheidiol neu'n fanteisiol dwyn achos gwaharddol;

(ii) a oes tystiolaeth glir bod rheolau cynllunio, rheolau adeiladau rhestredig neu reolau coed eisoes wedi digwydd, neu'n debygol o ddigwydd, ar dir o fewn ardal yr ACLl;

(iii) a yw rhyddhad drwy waharddeb yn rhwymedi cymesur o dan amgylchiadau'r achos penodol;

(iv) yn achos gwaharddeb a geisir yn erbyn person anhysbys, a yw'n ymarferol i'r gorchymyn llys gael ei gyflwyno ar y person neu'r personau y bydd yn gymwys iddynt.

5.6 Dechreuir y mwyafrif o geisiadau drwy gyfrwng Grŵp Gychwynnol yn Adran Mainc y Frenhines o'r Uchel Lys. Gall yr ACLl ofyn am waharddeb yn absenoldeb y person y'i ceisir yn eu herbyn ("*ex parte*"); neu gellir dwyn achos lle cynrychiolir y partïon ("*inter partes*").

5.7 Er mwyn lleihau'r posibilrwydd o dynnu costau sy'n wastraff ar achos seithug, bydd angen i'r ACLl wneud eu hasesiad gorau eu hunain (drwy gael barn Cwnsel os bydd angen), o'r canlyniad tebygol cyn penderfynu cychwyn achos. Wrth asesu'r costau posibl, bydd yr ACLl am gofio y gallai'r Llys ei gwneud yn ofynnol os caiff gwaharddeb dros dro ei rhoi, i'r awdurdod roi ymrwymiad o iawndal a all gael ei wireddu os bydd yr ACLl yn aflwyddiannus yn y treial yn y pen draw lle bo'r ACLl yn gofyn am waharddeb barhaol). Er hynny, yng ngoleuni ymagwedd Tŷ'r Arglwyddi yn **Kirklees MBC v Wickes Building Supplies Cyf** [1993] AC 227, mae'n ymddangos yn annhebygol y byddai'r Llys yn ei gwneud yn ofynnol i ACLl roi ymrwymiad o'r fath lle bo'r ACLl yn gweithredu ei swyddogaethau gorfodi cyfreithlon.

5.8. Mewn dyfarniad a roddwyd ar 7 Chwefror 1994, yn achos **Runnymede Borough Council v. Harwood** [1994] 1 PLR 22, dyfarnodd y Llys Apêl fod adran 187B o Ddeddf 1990 yn rhoi pŵer i'r Llys lesteirio toriad rheolau drwy gyfrwng gwaharddeb dros dro. Wrth roi gwaharddeb dros dro, gall y Llys benderfynu caniatáu cyfnod ar gyfer cydymffurfio, neu, fel yn **Hambleton v Bird** [1995] EGCS 67, ohirio'r waharddeb (yn yr achos hwnnw i ganiatáu i'r sipsiwn, sef yr ymatebwyr, wneud trefniadau eraill).

5.9. Mewn dyfarniad ar wahân a roddwyd ar 7 Chwefror 1994, yn **Croydon London Borough Council v Gladden** [1994] 1 PLR 30, dyfarnodd y Llys Apêl fod y pŵer a roddwyd gan adran 187B o Ddeddf 1990 yn caniatáu rhoi gwaharddeb orfodol ac nad oedd yn gyfyngedig i waharddebau gwaharddol (rhoes y Llys waharddeb orfodol yn yr achos hwnnw).

5.10 Mater i ddisgresiwn absoliwt y Llys bob amser yw a ddylid caniatáu gwaharddeb. Yn **Bovis** (a ddyfynnwyd ym mharagraff 5.4) y "sylfaen hanfodol" a fynegwyd gan y Llys ar gyfer ymarfer disgresiwn oedd a ellid casglu y byddai gweithrediadau anghyfreithlon yr ymatebydd yn parhau hyd nes ac oni chaent eu rhwystro'n effeithiol gan y gyfraith ac na fyddai dim byd llai na gwaharddeb yn effeithiol i rwystro'r gweithrediadau hynny. Ategwyd y "prawf" hwn yn achos **Hambleton** a ddyfynnwyd ym mharagraff 5.8.

Personau nad yw eu henw'n hysbys

5.11. Effaith Adran 187B(3) (sy'n gymwys hefyd i'r adran 214A newydd, gyda'r darpariaethau cyfatebol yn adran 44A o Ddeddf Adeiladu Rhestredig) yw galluogi'r Llys i roi gwaharddeb yn erbyn person nad yw eu henw'n hysbys. Serch hynny, bydd angen i ACLl, hyd eithaf eu gallu, enwi'r person y ceisir y waharddeb yn ei erbyn. Gellir defnyddio'r canlynol i ategu sylwadau'r awdurdod i'r Llys:-

(1) tystiolaeth ffotograffig o'r personau perthnasol;

(2) tystiolaeth affidafid wedi'i thyngu gan swyddogion yr ACLl;

(3) cyfeiriad at declynnau ar y tir, y gwyddys eu bod yn perthyn i'r person hwnnw, neu'n cael eu defnyddio ganddo (ee cerbyd modur cofrestredig);neu

(4) tystiolaeth berthnasol arall (megis enw a elwir yn gyffredin ar y person, er nad dyna eu henw priodol).

Wrth wneud cais i'r Llys, bydd rhaid i'r ACLl ddarparu tystiolaeth affidafid o'u hanallu i ddarganfod enw'r person, o fewn yr amser sydd ar gael yn rhesymol, a'r camau sydd wedi'u cymryd wrth ymdrechu i wneud hynny.

HAWLIAU MYNEDIAD I DIR AT DDIBENION GORFODI

Y darpariaethau statudol

6.1. Mae adrannau 196A, 196B a 196C o Ddeddf Cynllunio Gwlad a Thref 1990 fel y'i diwygiwyd ("Deddf 1990"), yn galluogi ACLl ac Ynadon Heddwch i awdurdodi swyddogion a enwir i gael mynediad i dir yn unswydd at ddibenion gorfodi. Cyfyngir yr hawl hon i'r hyn y bernir ei fod yn hanfodol, o dan yr amgylchiadau penodol, ar gyfer gorfodi rheolau cynllunio yn effeithiol. Nid yw darpariaethau adrannau 324 a 325 o Ddeddf 1990 ar gael mwyach at ddibenion gorfodi.

6.2. Mae adran 196A(1) yn pennu'r dibenion y gellir awdurdodi mynediad i dir ar eu cyfer, sef -

(a) darganfod *a oes, neu a fu*, unrhyw doriad ar y rheolau cynllunio ar y tir, neu ar unrhyw dir arall;

(b) penderfynu a *ddylid* ymarfer unrhyw un o bwerau gorfodi'r ACLl mewn perthynas â'r tir, neu unrhyw dir arall;

(c) penderfynu *sut* y dylid ymarfer unrhyw ber o'r fath; a

(d) darganfod a *gydymffurfiwyd* ag unrhyw ofyniad sy'n deillio o gamau gorfodi cynharach mewn perthynas â'r tir, neu unrhyw dir arall.

Mae cynnwys y geiriau " . . . neu unrhyw dir arall" yn golygu, os bydd angen, y gellir cael mynediad i dir cyfagos, p'un yw o dan yr un berchnogaeth neu beidio, neu p'un a yw wedi'i feddiannu gan y person yr ymchwilir i'w dir neu beidio.

6.3. Mae darpariaethau adran 196A yn datgan bod rhaid cael "... reasonable grounds for entering [the land] for the purpose in question". Dehonglir mai ystyr hyn yw mai cael mynediad i'r tir yw'r dull rhesymegol o gael y wybodaeth y mae ar yr ACLl ei hangen.

Cael mynediad i'r tir

6.4. Mae adran 196C(1) yn darparu bod rhaid i berson awdurdodedig, wrth gael mynediad i unrhyw dir yn unol â'r hawl mynediad:-

(a) cyflwyno tystiolaeth o'i awdurdodiad, os gofynnir, a datgan diben cael mynediad cyn iddo gael mynediad i'r tir;

(b) bod yng nghwmni y cyfryw bersonau eraill ag y gall fod eu hangen.

Ymadael â'r tir

6.5. Mae adran 196C(1)(c) yn darparu bod rhaid i'r person awdurdodedig, wrth ymadael â'r tir, os nad yw'r perchennog neu'r deiliad yn bresennol bryd hynny, ei adael wedi'i ddiogelu mor effeithiol yn erbyn tresmaswyr ag y daethpwyd o hyd iddo.

Rhwystro bwriadol ar yr hawl i gael mynediad

6.6. Mae adran 196C(2) yn darparu y bydd unrhyw berson sy'n rhwystro person awdurdodedig yn fwriadol wrth weithredu i ymarfer hawl fynediad yn euog o drosedd. Mae'r gosb ddiannod uchaf am y drosedd hon ar "lefel 3" ar y raddfa safonol o gosbau, sef £1,000 ar hyn o bryd.

Difrod i dir neu declynnau wrth ymarfer hawl fynediad

6.7. Os caiff unrhyw ddifrod ei achosi i dir (sy'n cynnwys adeilad), neu declynnau (er enghraifft, peiriannau, offer neu dda byw), mae adran 196C(3) yn darparu y caiff unrhyw berson sy'n dioddef y difrod adennill iawndal oddi ar yr awdurdod a roes yr awdurdod ysgrifenedig ar gyfer y mynediad. Rhaid i ddadl ynghylch maint unrhyw iawndal gael ei chyfeirio at y Tribiwnlys Tiroedd, a'i phenderfynu ganddynt yn unol â darpariaethau adran 118 o Ddeddf 1990, fel y'u cymhwysir gan adran 196C(4) o Ddeddf 1990, fel y'u cymhwyssir gan adran 196C(4) ol Ddeddf 1990.

6.8. Fel awdurdodau cyhoeddus, disgwylir i ACLI gymryd pob mesur diogelwch i sicrhau nad achosir unrhyw ddifrod i dir neu declynnau o ganlyniad i ymarfer yr hawl i gael mynediad. Gan y caiff eu hymchwiliadau at ddibenion gorfodi eu cyfyngu fel rheol i archwiliad gweledol, dylai unrhyw ddifrod o ganlyniad iddynt fod yn eithriadol iawn.

Mynediad i dir amaethyddol

6.9. Atgoffir ACLI fod mesurau diogelwch arbennig yn hanfodol, er lles iechyd anifeiliaid a phlanhigion, lle caiff yr hawl i gael mynediad i dir amaethyddol ei ymarfer. Mae'r mesurau diogelwch ychwanegol y mae'n *rhaid* eu cymryd cyn, ac wrth gael mynediad i dir amaethyddol, wedi'u datgan yn Ychwanegiad yr Atodiad hwn.

Datgelu gwybodaeth a geir wrth gael mynediad i dir

6.10. Mae adran 196C(5) yn darparu y bydd unrhyw berson sy'n cael mynediad i dir, wrth ymarfer hawl fynediad, ac sy'n datgelu i unrhyw berson unrhyw wybodaeth a geir tra bu ar y tir, ynghylch unrhyw broses gweithgynhyrchu neu gyfrinach fasnachol, yn euog o drosedd. Y gosb ddiannod uchaf am y drosedd hon yw £5,000 ar hyn o bryd. Ar gollfarn am y drosedd hon, ar ddiddiad yn Llys y Goron, y gosb yw cyfnod o garchar heb fod yn fwy na dwy flynedd neu ddirwy ddiderfyn, neu'r ddau.

6.11. Nid yw'n drosedd o dan adran 196C(5) os caiff y wybodaeth ei datgelu gan berson awdurdodedig wrth iddynt berfformio eu dyletswydd mewn cysylltiad â'r diben y cawsant eu hawdurdodi i gael mynediad i'r tir ar ei gyfer.

Hawl i gael mynediad i dŷ annedd

6.12. Ni ellir mynnu cael mynediad i adeilad a ddefnyddir fel tŷ annedd fel hawl oni bai fod 24 awr o rybudd o'r mynediad arfaethedig wedi'i roi i'r deiliad. Yn achos adeilad diwydiannol neu fasnachol (megis ffatri neu siop), lle bo llety preswyl ar gael hefyd (megis fflat gofalwr), nid yw'r gofyniad i roi rhybudd 24 awr ymlaen llaw yn gymwys ond i ran breswyl yr adeilad. Er hynny, nid yw'r gofyniad hwn i rybuddio ymlaen llaw yn gymwys i'r adeiladau allanol nac i dir yr ardd yng nghwrtil tŷ annedd, oni bai na ellir cael mynediad iddynt ond drwy fynd drwy'r tŷ annedd.

Mynediad a awdurdodir drwy warant a roddir gan Ynad Heddwch

6.13. Os caiff mynediad ei wrthod, neu os yw'n rhesymol disgwyl y caiff ei wrthod, neu os yw'r achos yn achos brys, mae'r adran 196B(1) yn darparu bod mynediad drwy warant a roddir gan Ynad Heddwch yn bosibl, lle bo seiliau rhesymol dros gael mynediad i dir at ddibenion gorfodi. Dyfernir bod mynediad i'r tir wedi'i wrthod os na ddaw unrhyw ateb i gais am fynediad i law o fewn cyfnod rhesymol (adran 196B(2). Ceir tri chyfyngiad ar ddefnyddio gwarant:-

(1) dim ond ar un achlysur y mae'n awdurdodi mynediad;

(2) rhaid sicrhau mynediad cyn pen mis ar ôl rhoi'r warant; a

(3) rhaid sicrhau mynediad ar amser rhesymol, oni bai fod yr achos yn achos brys.

Mynediad i adeiladau rhestredig

6.14. Effaith adrannau 88, 88A a 88B o Ddeddf Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1990 (fel y'i diwygiwyd) yw darparu hawliau mynediad at ddibenion gorfodi adeilad rhestredig sy'n cyfateb â phwerau gorfodi cynllunio.

Mynediad i dir at ddibenion gorfodi cadw coed

6.15. O dan adrannau 214B, 214C a 214D Deddf 1990 (a fewnosodwyd gan adran 23 Deddf 1991) mae darpariaethau gweddol debyg ynglŷn â'r hawl fynediad yn gymwys mewn perthynas â choed sydd wedi'u diogelu, gan ddisodli darpariaethau blaenorol adrannau 324 a 325 o Ddeddf 1990.

6.16 Mae adran 214B(1) yn pennu'r tri diben canlynol y gellir awdurdodi mynediad i dir gan yr ACLl ar eu cyfer heb warant:

(a) arolygu'r tir mewn cysylltiad â gwneud neu gadarnhau gorchymyn cadw coed;

(b) cael gwybod a oes trosedd o dan adran 210 neu 211 wedi'i chyflawni; neu

(c) penderfynu a ddylai hysbysiad amnewid coed o dan adran 217 gael ei gyflwyno i berchennog y tir,

os oes yna seiliau rhesymol dros gael mynediad felly. Rhaid i'r mynediad ddigwydd ar adeg resymol. Nid oes rhaid rhoi hysbysiad o 24 awr ynglŷn â'r mynediad arfaethedig at y dibenion hyn i'r deiliad. Ond mae angen hysbysiad o'r fath os bwriedir mynd i mewn i dŷ annedd wrth ymarfer y pwerau hyn.

6.17 Mae mynediad yr ACLl i dir heb warant at ddibenion eraill sy'n gysylltiedig â choed gwarchodedig, a'u pŵer i awdurdodi eraill i gael mynediad mewn perthynas ag ymarfer eu swyddogaethau (megis penderfynu ar gais am ganiatâd o dan orchymyn cadw coed, neu gyflawni gwaith yn dilyn methiant â chydymffurfio â gorchymyn amnewid coed) o fewn yr hawl gyffredinol a ddarperir o dan adran 214B(3) o'r Ddeddf. Rhaid rhoi hysbysiad o 24 awr bob amser at y dibenion hyn mewn perthynas ag unrhyw dir sydd wedi'i feddiannu.

6.18 Lle bo angen mynediad o dan adran 214B(1) (gweler paragraff 6.17 uchod) a bod yr achos yn achos brys neu fod mynediad wedi'i wrthod (neu ei bod yn rhesymol disgwyl gwrthodiad), gellir awdurdodi mynediad trwy warant a roddir gan ynad o dan adran 214C(1). Mae gwarant yn awdurdodi mynediad ar un achlysur yn unig o fewn un mis ar ôl dyddiad ei roi. Ymhellach, rhaid i'r mynediad ddigwydd ar adeg resymol, oni bai bod yr achos yn achos brys.

6.19 Mae darpariaethau atodol o dan 214D yn cynnwys trosedd o atal yn fwriadol rywun sy'n ymarfer yr hawl i gael mynediad, a phŵer i gymryd samplau o unrhyw goeden a'r pridd.

MYNEDIAD I DIR AMAETHYDDOL

Iechyd Anifeiliaid

1. Pan geir achos o glefyd difrifol mewn anifeiliaid (megis clwy'r traed a'r genau neu anthracs), caiff hysbysiadau yn rhoi rhybudd am y clefyd eu gosod yn strategol gan Arolygwyr Clefydau Anifeiliaid wrth ymyl y ffermdir. Byddai hyn yn rhybuddio unrhyw ymwelwyr annisgwyl neu achlysurol (megis Swyddog Gorfodi yr awdurdod lleol) am y peryglon ac i bob pwrpas dylai eu hatal rhag mynd ar y tir a bod yn gyfrifol felly am ledu'r afiechyd. Er hynny, ceir achosion eraill (megis yn ystod achos o TB/brwselosis) lle nad oes unrhyw ofyniad i godi hysbysiadau yn rhybuddio am y peryglon, ond lle gallai mynd ar y tir beri i'r clefyd ledu. Dylai swyddogion o'r ACLl gysylltu felly â Rheolwr Milfeddygol Rhanbarthol MAFF yn y Swyddfa Iechyd Anifeiliaid lleol i sicrhau nad oes unrhyw orchmynion iechyd anifeiliaid mewn grym i wahardd symudiadau (neu broblemau iechyd anifeiliaid eraill) ar y fferm y maent yn bwriadu ymweld â hi.

Iechyd Planhigion

2. Yn yr un modd, lle mae plâu ac afiechydon sy'n bodoli yn effeithio'n ddifrifol ar blanhigion, gall mynediad i dir gael ei reoli yn llym o dan Orchymyn Iechyd Planhigion (Prydain Fawr) 1993. O ran afiechydon a ddygir gan y pridd, mae yna risg penodol y gallai pridd heintiedig gael ei ledaenu ar esgidiau i ran o'r fferm sydd heb ei heffeithio neu hyd yn oed i leoliad arall. *Ni ddylai* swyddogion o'r ACLl ddibynnu ar weld arwydd ar dir o'r fath ac yn hytrach dylent holi Swyddfa Ranbarthol AASG neu MAFF lleol, er mwyn gofyn i'r Arolygiaeth Iechyd Planhigion a Hadau lleol a oes gwaharddiad iechyd planhigion mewn grym ar y tir y bwriedir ymweld ag ef.

RHEOLI DATBLYGU AR DIR Y GORON

Cyflwyniad

7.1 Nid yw Deddf Cynllunio ac Iawndal 1991 ("Deddf 1991") wedi diwygio darpariaethau adrannau 294 a 295 o Ddeddf Cynllunio Gwlad a Thref 1990 ("Deddf 1990") sy'n gymwys i ddatblygu ar Dir y Goron, heblaw gan neu ar ran y Goron, ar adeg pan nad oes gan unrhyw berson hawl i'w feddiannu yn rhinwedd buddiant preifat. Enghraifft o ddatblygiad o'r fath yw lleoli bar byrbrydau symudol neu fan luniaeth ar gilfan cefnffordd.

"Hysbysiad gorfodi arbennig"

7.2 Lle'r ymddengys bod datblygiad o'r fath wedi digwydd ar neu ar ôl 12 Ebrill 1984 (y dyddiad y daeth y darpariaethau hyn i rym yn rhinwedd Deddf Cynllunio Gwlad a Thref 1984), mae gan yr ACLl bŵer o dan ddarpariaethau adran 294(3) o Ddeddf 1990 i gyhoeddi "hysbysiad gorfodi arbennig", os byddant o'r farn ei bod yn hwylus gwneud hynny, gan roi sylw i ddarpariaethau'r cynllun datblygu ac i unrhyw ystyriaethau perthnasol eraill. Mae'n ofynnol sicrhau caniatâd yr awdurdod priodol (a ddiffinnir yn adran 293) o dan adran 294(4) cyn cyhoeddi'r hysbysiad. Nid yw adrannau o'r Llywodraeth a chyrff eraill y Goron yn dal eu caniatâd yn ôl yn afresymol lle meddiannir y tir heb eu caniatâd ysgrifenedig.

Yr hyn y mae'n rhaid i'r hysbysiad ei bennu

7.3 Mae Adran 294(5) yn ei gwneud yn ofynnol i'r hysbysiad bennu'r materion yr honnir eu bod yn gyfystyr â datblygu a'r camu y mae'n ofynnol i'r ACLl eu cymryd ar gyfer adfer y tir i'w gyflwr blaenorol, neu i ddirwyn i ben unrhyw ddefnydd a gychwynnwyd gan y datblygiad. Mae Adran 294(6) yn ei gwneud yn ofynnol i'r hysbysiad bennu'r dyddiad y bydd yn dod i rym a'r cyfnod pryd y bydd yn ofynnol cymryd camau angenrheidiol. Gellir pennu cyfnodau gwahanol ar gyfer cymryd camau gwahanol (adran 294(7)).

Cyflwyno'r hysbysiad

7.4 Rhaid cyflwyno copi o'r hysbysiad i'r person yr honnir eu bod wedi cyflawni'r datblygiad (oni bai, yn sgil ymholiadau rhesymol, nad yw'r awdurdod cynllunio lleol yn gallu eu hadnabod neu eu holrhain), i unrhyw berson sy'n meddiannu'r tir pan roddir yr hysbysiad, ac i gorff y Goron. Rhaid cyflwyno'r copïau heb fod yn hwyrach nag 28 diwrnod ar ôl rhoi'r hysbysiad a heb fod yn hwyrach nag 28 diwrnod cyn iddo ddod i rym (adran 295(1) a (2)).

Hawl i apelio yn erbyn yr hysbysiad

7.5 Mae Adran 295(3) yn rhoi hawl i'r person yr honnir eu bod wedi cyflawni'r datblygiad ac unrhyw berson sy'n meddiannu'r tir - p'un a gyflwynwyd copi o'r hysbysiad iddynt neu beidio (adran 295(4)) - apelio i'r Ysgrifennydd Gwladol. Ni ellir gwneud apêl ond ar sail nad yw'r materion a honnir yn yr hysbysiad wedi digwydd, neu nad ydynt yn gyfystyr â datblygiad y mae adran 294 yn gymwys iddo. Er enghraifft, gallai'r apelydd ddadlau bod y datblygiad wedi digwydd cyn 12 Ebrill 1984; nad tir y Goron yw'r tir; bod yna fuddiant preifat yn y tir; neu nad oedd y materion a honnir yn yr hysbysiad yn golygu datblygu'r tir. Nid yw rhinweddau cynllunio't datblygiad yn berthnasol mewn apêl o'r fath.

Gweithdrefnau

7.6 Mae Adran 295(5) yn darparu y bydd y darpariaethau a gynhwysir yn adrannau 174(3) i (5), 175(1) i (4) a 176(1) i (4), neu sydd mewn grym o dan y rhain, yn gymwys i hysbysiadau gorfodi arbennig ac apelau yn eu herbyn; ac mae is-adran (6) yn galluogi'r Ysgrifennydd Gwladol, trwy Reoliadau, i gymhwyso darpariaethau eraill Deddf 1990. Y Rheoliadau hyn yw Rheoliadau Cynllunio Gwlad a Thref (Hysbysiadau Gorfodi Arbennig) 1992 (OS 1992/1562).

7.7 Yng ngoleuni'r seiliau cyfyngedig ar gyfer apelio yn erbyn hysbysiad gorfodi arbennig, nid yw'r Ysgrifennydd Gwladol yn bwriadu cymhwyso'r darpariaethau perthnasol yn Rheoliadau Cynllunio Gwlad a Thref (Hysbysiadau Gorfodi ac Apelau) 1991 (OS 1991/2804) a Rheolau Cynllunio Gwlad a Thref (Gorfodi) (Gweithdrefn Ymchwiliadau) 1992 (OS 1992/1903), sy'n ymdrin â hysbysiadau gorfodi cyffredin a roddir o dan adran 172 o Ddeddf 1990 ac apelau gorfodi yn ffurfiol at hysbysiadau ac apelau gorfodi arbennig. Yn hytrach, bydd y Swyddfa yn prosesu apelau yn unol â'r darpariaethau hynny, cyn belled ag y bo'n ymarferol, fel pe baent yn gymwys i hysbysiadau gorfodi arbennig, a bydd yn disgwyl i'r ACLl a'r apelwyr ymateb yn unol â hynny. Yn benodol, gofynnir i'r ACLl amgáu ffurflenni apêl a "Nodiadau i Apelwyr" gyda phob copi o hysbysiad gorfodi arbennig a gyflwynir ganddynt.

7.8 Darperir enghraifft o hysbysiad gorfodi arbennig a thestun y "Nodiadau i Apelwyr" yn Ychwanegiad 1 i'r Atodiad hwn. Mae copïau o'r Nodiadau a'r ffurflenni apêl ar gael, os oes eu hangen, oddi wrth yr Arolygwyr Cynllunio, Adeilad y Goron, Parc Cathays, Caerdydd CF1 3NQ, ffôn 01222 825670 neu ffacs 01222 825150.

7.9 Ceir siart llif, sy'n dangos llwybrau gorfodi posibl i'r ACLl eu hystyried mewn perthynas â datblygu ar dir y Goron, yn Ychwanegiad 2 i'r Atodiad hwn.

HYSBYSIAD GORFODI ARBENNIG ENGHREIFFTIOL

DEDDF CYNLLUNIO GWLAD A THREF 1990

HYSBYSIAD GORFODI ARBENNIG

RHODDWYD GAN: *[enw'r Cyngor]*

I: *[Enw'r person yr honnir ei fod wedi cyflawni'r datblygiad]*
[Enw[au] y person[au] sy'n meddiannu'r tir pan roddir yr hysbysiad]
[Enw'r awdurdod priodol]

1. **RHODDIR YR HYSBYSIAD** hwn gan y Cyngor drwy ymarfer eu pwerau yn Adran 294 o'r Ddeddf uchod [gyda chaniatâd yr awdurdod priodol] am ei bod yn ymddangos iddynt fod datblygiad ar dir y Goron wedi'i gyflawni, o fewn paragraff (2) o adran 294 o'r Ddeddf, ar y tir a ddisgrifir ym mharagraff 2 isod. Maent o'r farn ei bod yn fanteisiol rhoi'r hysbysiad hwn ("hysbysiad gorfodi arbennig"), o roi sylw i ddarpariaethau'r cynlluniau datblygu ac i unrhyw ystyriaethau perthnasol eraill. Ceir gwybodaeth ychwanegol bwysig yn yr Atodiad ar ddiwedd yr hysbysiad.

2. Y TIR Y MAE'R HYSBYSIAD YN CYFEIRIO ATO

Tir yn [*cyfeiriad y tir*], a ddangosir ag ymyl goch ar y plan amgaeedig.

3 Y MATERION YR HONNIR MAI HWY YW'R DATBLYGIAD AR Y TIR

Datblygu, sef *[disgrifiad y datblygiad sydd wedi digwydd]*, heblaw gan neu ar ran y Goron, ar adeg ar ôl 11 Ebrill 1984 pan nad oes gan neb hawl i feddiannu'r tir yn rhinwedd buddiant preifat (gan gynnwys trwydded ysgrifenedig).

4. RHESYMAU DROS ROI'R HYSBYSIAD

[Rhesymau pam mae'r Cyngor o'r farn ei bod yn fanteisiol rhoi'r hysbysiad gorfodi arbennig]

5. YR HYN Y MAE'N OFYNNOL I CHI EI WNEUD

[Nodwch y camau sy'n ofynnol er mwyn [adfer y tir i'w gyflwr cyn i'r datblygiad ddigwydd] [rhoi'r gorau i unrhyw ddefnydd ar y tir y mae'r datblygiad wedi'i ddechrau]]

Amser ar gyfer cydymffurfio: *[Noder y nifer o ddyddiau/misoedd ar ôl y dyddiad y daw'r hysbysiad i rym]*

6. PRYD Y DAW'R HYSBYSIAD HWN I RYM (DYDDIAD PENODEDIG)

Daw'r hysbysiad hwn i rym, yn ddarostyngedig i ddarpariaethau adran 175(4), fel y'i cymhwysir yn adran 295(5) o'r Ddeddf, ar *[dyddiad penodol, heb fod yn llai nag 28 diwrnod clir ar ôl y dyddiad cyflwyno]*, oni bai bod apêl yn cael ei gwneud yn ei erbyn ymlaen llaw.

Dyddiedig: *[Dyddiad rhoi]*

Llofnodwyd: *[Swyddog awdurdodi i'r Cyngor]*

Ar ran: *[Enw a chyfeiriad y Cyngor]*

NODIADAU ENGHREIFFTIOL I APELWYR

Tynnir eich sylw at y ffaith y gall unrhyw berson:-

(a) a gyflawnodd y datblygiad a honnir yn yr hysbysiad hwn, neu

(b) a oedd meddiannu'r tir ar y dyddiad y rhoddwyd yr hysbysiad hwn,

(p'un a gyflwynwyd copi o'r hysbysiad gorfodi arbennig hwn iddynt ai peidio), ar unrhyw adeg cyn y dyddiad a bennir yn yr hysbysiad hwn fel y dyddiad y bydd yn dod i rym, apelio yn erbyn yr hysbysiad i Ysgrifennydd Gwladol Cymru ar y sail nad yw'r materion a honnir yn yr hysbysiad:-

(a) wedi digwydd, neu

(b) yn gyfystyr â datblygiad y mae adran 294 yn gymwys iddo.

Dyma'r unig sail apêl sydd ar gael. Er ei bod yn bosibl bod datganiad o resymau'r awdurdod cynllunio lleol pam y maent o'r farn ei bod yn gyfleus rhoi'r hysbysiad ynghlwm wrth yr hysbysiad gorfodi arbennig, sef rhesymau a fydd yn gysylltiedig â "rhagoriaethau cynllunio" y datblygiad (megis niwed i amwynder, llif traffig neu ddiogelwch y briffordd), er gwybodaeth yn unig y cynigir hwnnw. Nid yw materion o ragoriaethau gynllunio neu galedi ariannol yn berthnasol mewn unrhyw apêl yn erbyn yr hysbysiad ac ni chânt eu cymryd i ystyriaeth gan yr Ysgrifennydd Gwladol.

Yr unig faterion perthnasol mewn unrhyw apêl yw:

(1) ai tir y Goron yw'r tir mewn gwirionedd nad oes gan unrhyw berson hawl i'w feddiannu yn rhinwedd buddiant preifat (gan gynnwys trwydded ysgrifenedig oddi wrth yr awdurdod priodol);

(2) a yw'r materion a honnir yn yr hysbysiad wedi digwydd, mewn gwirionedd;

(3) os yw'r manteision wedi digwydd, a ddigwyddasant cyn 12 Ebrill 1984; a

(4) a yw'r materion yn gyfystyr â datblygu'r tir.

Diffinnir y termau "Tir y Goron", "buddiant preifat" a'r "awdurdod priodol" yn adran 293 y Ddeddf.

Diffinnir "Datblygiad" yn adran 55.

MAE'N BWYSIG IAWN, os ydych yn dymuno apelio yn erbyn yr hysbysiad ar y sail sydd ar gael, eich bod yn sicrhau bod eich apêl yn dod i law yn yr Adran, neu ei fod yn cael ei bostio mewn pryd i ddod i law gyda'r post arferol, **CYN** y dyddiad a bennir yn yr hysbysiad fel y dyddiad y bydd yn dod i rym. Nid oes gan yr Ysgrifennydd Gwladol unrhyw ddisgresiwn o gwbl i dderbyn apêl a gyflwynir ar neu ar ôl y dyddiad a bennir.

Y ffordd orau i apelio yw llenwi'r ffurflen apêl a ddylai fod wedi ei hamgáu gan yr awdurdod cynllunio lleol wrth iddynt gyflwyno copi o'r hysbysiad i chi. Os nad oes ffurflen gennych, ac nad oes modd i chi gael un yn gyflym, dylech apelio trwy gyfrwng llythyr, gan ddatgan eich enw a'ch cyfeiriad llawn, enw a chyfeiriad yr awdurdod cynllunio lleol o dan sylw, a chan roi disgrifiad byr o'r tir. Ar ôl i chi lenwi'ch ffurflen apêl, neu os ydych yn apelio drwy lythyr, anfonwch drwy'r post dosbarth cyntaf at:-

Arolygwyr Cynllunio
Adeilad y Goron
Parc Cathays
Caerdydd CF1 3NQ
Ffacs: 01222 825150

Marciwch yr amlen "Apêl hysbysiad gorfodi arbennig".

Atgynhyrchir testun llawn adrannau 294 a 295 o Ddeddf Cynllunio Gwlad a Thref 1990 isod. Mae copïau o'r Ddeddf ar gael oddi wrth Siopau Llyfrau Gwasg Ei Mawrhydi. Fel arall, gallwch eu gweld yn swyddfeydd eich Cyngor lleol neu mewn llyfrgell gyhoeddus.

294. -

(1) No enforcement notice shall be issued under section 172 in respect of development carried out by or on behalf of the Crown after 1st July 1948 on land which was Crown land at the time when the development was carried out.

(2) The following provisions of this section apply to development of Crown land carried out otherwise than by or on behalf of the Crown at a time when no person is entitled to occupy it by virtue of a private interest.

(3) Where -

(a) it appears to a local planning authority that development to which this subsection applies has taken place in their area, and

(b) they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations,

they may issue a notice under this section (a "special enforcement notice").

(4) No special enforcement notice shall be issued except with the consent of the appropriate authority.

(5) A special enforcement notice shall specify -

(a) the matters alleged to constitute development to which this section applies; and

(b) the steps which the authority issuing the notice require to be taken for restoring the land to its condition before the development took place or for discontinuing any use of the land which has been instituted by the development.

(6) A special enforcement notice shall also specify -

(a) the date on which it is to take effect ("the specified date"), and

(b) the period within which any such steps as are mentioned in subsection (5)(b) are to be taken.

(7) A special enforcement notice may specify different periods for the taking of different steps.

295. -

(1) Not later than 28 days after the date of the issue of a special enforcement notice and not later than 28 days before the specified date, the local planning authority who issued it shall serve a copy of it -

(a) on the person who carried out the development alleged in the notice;

(b) on any person who is occupying the land when the notice is issued; and

(c) on the appropriate authority.

(2) The local planning authority need not serve a copy of the notice on the person mentioned in subsection (1)(a) if they are unable after reasonable enquiry to identify or

trace him.

(3) Any such person as mentioned in subsection (1)(a) or (b) may appeal against the notice to the Secretary of State on the ground that the matters alleged in the notice:-

(a) have not taken place, or

(b) do not constitute development to which section 294 applies.

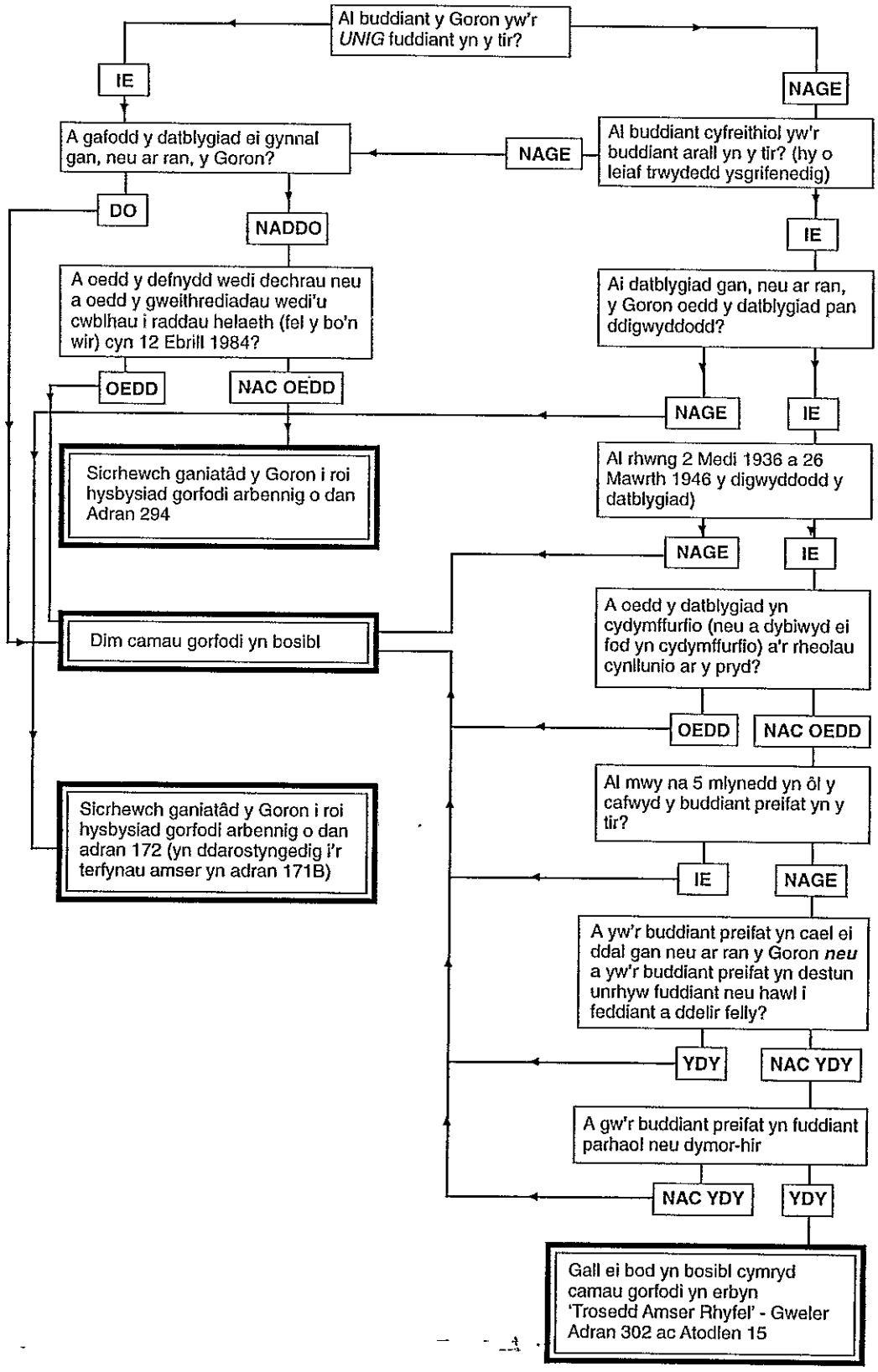
(4) A person may appeal against a special enforcement notice under subsection (3) whether or not he was served with a copy of it.

(5) The provisions contained in or having effect under sections 174(3) to (5), 175(1) to (4) and 176(1) to (4) shall apply to special enforcement notices issued by local planning authorities and to appeals against them under subsection (3) as they apply to enforcement notices and to appeals under section 174.

(6) The Secretary of State may by regulations apply to special enforcement notices and to appeals under subsection (3) such other provisions of this Act (with such modifications as he thinks fit) as he thinks necessary and expedient.

Mae'r Ysgrifennydd Gwladol wedi gwneud rheoliadau o dan adran 295(6) (adran 3(8) o Ddeddf Cynllunio Gwlad a thref 1984 gynt) o dan y teitl Rheoliadau Cynllunio Gwlad a Thref (Hysbysiadau Gorfodi Arbennig) 1992, OS 1992/1562. Mae'r Rheoliadau hyn hefyd yn gymwys, gyda'r diwygiadau angenrheidiol, i adrannau 173(1), 173A, 175(5), 179, 180, 181, 183, 184, 186, 187, 188, 285(1) a (2), 289 a 322 Deddf 1990, fel y'i diwygiwyd gan Ddeddf Cynllunio ac Iawndal 1991, i hysbysiadau gorfodi arbennig ac apelau yn erbyn hysbysiadau o'r fath.

TIR Y GORON - Ilwybrau gorfodi posibl o dan Ddeddf Cynllunio Gwlad A Thref 1990



ATODIAD 8

CYFREITHLONDEB A'R DYSTYSGRIF DATBLYGU CYFREITHLON

Cyflwyniad

8.1 Yn yr Atodiad hwn ystyr "Deddf 1990" (ac eithrio lle caiff ei amodi gan "fel y'i deddfwyd yn wreiddiol") yw Deddf Cynllunio Gwlad a Thref 1990 fel y'i diwygiwyd gan Ddeddf Cynllunio ac Iawndal 1991 ("Deddf 1991").

8.2 Mae adrannau 191 a 192 o Ddeddf 1990 yn darparu i unrhyw un (ac nid person sydd â buddiant cyfreithiol yn y tir yn unig) wneud cais i'r awdurdod cynllunio lleol (ACLl) am dystysgrif datblygu cyfreithlon (TDC). Dogfen statudol yw'r dystysgrif sy'n ardystio:-

(1) yn achos cais o dan adran 191, fod datblygiad gweithredol neu ddefnydd tir neu ryw weithrediadau **presennol** sy'n cael eu cyflawni yn groes i amod cynllunio yn gyfreithlon at ddibenion cynllunio; neu

(2) yn achos cais o dan adran 192, fod datblygiad gweithredol neu ddefnydd tir **arfaethedig** yn gyfreithlon.

Nid oes gan ACLI unrhyw swyddogaeth o ran penderfynu a all fod angen caniatâd o dan ddeddfwriaeth arall megis Deddf Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1990.

Cyfreithlondeb at ddibenion cynllunio

8.3 Yn rhinwedd adran 191(2), mae *dibenion a gweithrediadau* yn "gyfreithlon" os na ellir cymryd unrhyw gamau gorfodi yn eu herbyn ac nad ydynt yn torri unrhyw hysbysiad gorfodi sydd mewn grym. Ac, yn rhinwedd adran 191(3), *mae methiant i gydymffurfio ag unrhyw amod neu gyfyngiad y rhoddwyd caniatâd cynllunio odanynt* yn "gyfreithlon" os yw'r amser ar gyfer cymryd camau gorfodi mewn perthynas â'r methiant wedi dod i ben ac os nad yw'n mynd yn groes i unrhyw hysbysiad gorfodi neu hysbysiad torri amodau sydd mewn grym. Mae datblygiad neu weithgarwch arall ar dir yn gyfreithlon at ddibenion cynllunio os bydd o fewn un o'r categorïau canlynol ac nad yw'n cynnwys methiant i gydymffurfio ag amod neu gyfyngiad y rhoddwyd caniatâd cynllunio odanynt:-

(1) nid yw o fewn y diffiniad o "ddatblygiad" yn adran 55(1) ac (1A) o Ddeddf 1990. (Gall hyn fod am ei fod mor ddibwys nes y gellir ei ddiystyru (gweithrediad, defnydd neu weithgarwch "de minimis"); neu am ei fod yn cynnwys newid defnydd nad yw, fel mater o ffaith a graddfa, yn sylweddol wahanol, at ddibenion cynllunio, i ddefnydd cyfreithlon blaenorol ar y tir); neu

(2) mae wedi'i hepgor yn benodol o'r diffiniad o ddatblygiad gan adran 55(2) (er enghraifft, defnyddio'r tir at ddibenion "amaethyddiaeth"); neu

(3) mae o fewn y diffiniad o "ddatblygiad" yn adran 55, ond wedi'i eithrio o'r angen am ganiatâd cynllunio gan ddarpariaethau adran 57; neu

(4) mae'n manteisio ar ganiatâd cynllunio sydd mewn bodolaeth o dan Ran III o Ddeddf 1990 (neu'r Rhannau cyfatebol o Ddeddfau blaenorol); neu

(5) mae'n manteisio ar ganiatâd cynllunio cyffredinol a roddwyd gan Gorchymyn Cynllunio Gwlad a Thref (Datblygu Cyffredinol a Ganiateir) 1995 (OS 1995/ 418), neu gan gynllun parth cynllunio syml neu gynllun parth menter; neu

(6) mae'n manteisio ar ganiatâd cynllunio tybiedig, boed o dan adran 90 neu yn

rhinwedd cydymffurfio â gofynion hysbysiad gorfodi sydd mewn grym; neu

(7) digwyddodd cyn 1 Gorffennaf 1948 (y "diwrnod penodedig" ar gyfer Deddf Cynllunio Gwlad a Thref 1947); neu

(8) mae'n ddatblygiad gan neu ar ran y Goron; neu

(9) mae'r amser ar gyfer cymryd camau gorfodi wedi dod i ben.

Diffinnir "cymryd camau gorfodi" yn adran 171A o Ddeddf 1990, sef cyhoeddi hysbysiad gorfodi neu gyflwyno hysbysiad torri amod. Mae'r adran hefyd yn diffinio "torri rheol gynllunio" (y mae'n bosibl cymryd camau gorfodi yn ei erbyn) fel cyflawni datblygiad heb y caniatâd cynllunio angenrheidiol, neu fethu â chydymffurfio ag unrhyw amod neu gyfyngiad y rhoddwyd y caniatâd cynllunio odanynt.

8.4 Daw toriad rheol cynllunio yn "imiwn" rhag camau gorfodi cynllunio os na chymerwyd camau o'r fath o fewn terfynau amser penodol. Yn rhinwedd adran 191(2) a (3) o Ddeddf 1990, daw toriad rheol gynllunio sydd wedi cael imwnedd oherwydd yr amser sydd wedi mynd heibio hefyd yn "gyfreithlon" at ddibenion cynllunio, fel yr esbonnir ym mharagraff 8.3 uchod.

8.5 Fel yr esbonnir ym mharagraffau 2.4 a 2.5 o Atodiad 2 i'r Cylchlythyr hwn, mae adran 171B o Ddeddf 1990 yn pennu'r terfynau amser ar gyfer cymryd camau gorfodi.

8.6 Ceir canllawiau ar ddehongli'r termau "wedi'i gwblhau'n sylweddol" a "defnyddio fel un tŷannedd", lle cânt eu defnyddio mewn perthynas â'r terfynau amser, ym mharagraffau 2.80 a 2.81 o Atodiad 2 o'r Cylchlythyr hwn.

8.7 Effaith gyfun y darpariaethau hyn yw os oedd y datblygiad neu'r gweithgarwch yn imwn, ar neu ar ôl 27 Gorffennaf 1992, rhag camau gorfodi, daeth yn gyfreithlon hefyd at ddibenion cynllunio. Mae hyn yn gymwys ni waeth a roddwyd TDC neu beidio o dan adrannau 191 neu 192 o Ddeddf 1990. Nid oes unrhyw reidrwydd i wneud cais am TDC, er bod sicrhau tystysgrif neu sicrhau caniatâd cynllunio yn rhagofyniad i wneud cais am unrhyw un o'r trwyddedau y cyfeirir atynt ym mharagraff 8.24 isod.

Gwneud cais am TDC

8.8 Mae erthygl 24(1) i (4) o'r Gorchymyn Datblygu Gwlad a Thref (Gweithdrefn Ddatblygu Gyffredinol) 1995, OS 1995/419, ("y GDPO"), yn pennu cynnwys cais a sut y dylid ei gyflwyno. Rhaid cyflwyno ceisiadau yn ysgrifenedig i'r ACLl. Er na phennir unrhyw ffurflen gais yn y GDPO, ceir ffurflenni cais enghreifftiol, y gallai'r ACLl ddymuno'u defnyddio, ynghlwm wrth yr Atodiad hwn.

8.9 Ceir dau fath o gais:

(1) mae is-adran (1) o adran 191 yn darparu ar gyfer cais i benderfynu a yw defnydd neu weithrediad presennol penodedig, neu fethiant presennol penodedig â chydymffurfio ag amod neu gyfyngiad cynllunio, sydd eisoes wedi'i gyflawni ar dir, yn gyfreithlon at ddibenion cynllunio; a

(2) mae is-adran (1) o adran 192 yn darparu ar gyfer cais i benderfynu a fyddai unrhyw ddefnydd neu weithrediadau arfaethedig yn gyfreithlon at ddibenion cynllunio.

Y ffi am y cais

8.10 Mae ffi a bennir yn statudol yn daladwy i'r ACLl mewn perthynas â'r mwyafrif o geisiadau am TDC. Y ddeddfwriaeth sylfaenol sy'n hwyluso hyn yw adran 303 o Ddeddf 1990. Pennir lefel y ffi gan y Rheoliadau Cynllunio Gwlad a Thref (Ffioedd am Geisiadau a Cheisiadau Tybiedig) 1989 (OS 1989 Rhif 193) fel y'i diwygiwyd gan OS 1992 Rhif 1817, OS 1993 Rhif 3170 ac OS 1997/37. Nid oes disgresiwn ynghylch y swm a godir, er bod yna rai consesiynau. Gwelir gwybodaeth bellach yn Ychwanegiad 2 o'r Atodiad i Gylchlythyr 73/92 y Swyddfa Gymreig. Tynnwyd un consesiwn interim yn ôl (hanner y ffi berthnasol) am gais mewn perthynas â defnydd presennol a ategir gan "dystysgrif defnydd sefydledig".

Penderfynu ceisiadau - cyffredinol

8.11 Mae'n bwysig cadw diben y darpariaethau mewn cof. Maent yn galluogi perchnogion ac eraill i ddarganfod a fyddai defnyddiau, gweithrediadau neu weithgareddau *penodol* yn gyfreithlon. Ond nid ydynt yn galluogi unrhyw un i ofyn y cwestiwn cyffredinol, "beth sy'n gyfreithlon neu beth fyddai'n gyfreithlon?" Oherwydd hynny, rhaid i'r ceisydd ddisgrifio'n fanwl yr hyn y mae'n gwneud cais amdano - fel sy'n ofynnol o dan adran 191(1) neu 192(1) o Ddeddf 1990 ac Erthygl 24(1) o'r GDPO. Mae'n annigonol i'r ceisydd roi manylion un yn unig o'r "dosbarthiadau defnydd" yn yr Atodlen i Orchymyn Cynllunio Gwlad a Thref (Dosbarthiadau Defnydd) 1987 ("yr UCO"). Yn achlysurol gall y sawl sy'n gwerthu eiddo wneud cais adran 192 a cheisio disgrifio'r gweithgaredd arfaethedig fel hyn. Er enghraifft, gellir defnyddio adeilad fel swyddfeydd (heblaw Dosbarth A2) ac mae'r cais yn disgrifio'r cynnig fel "defnydd fel swyddfeydd o fewn dosbarth B1". Yn ddieithriad, wrth i'r ACLl ei archwilio'n gyntaf, ceir mai'r angen i ddarganfod a yw'r defnydd presennol yn gyfreithlon yw'r gwir reswm am y cais: ac fe ddaw'n glir y dylai'r cais fod wedi'i gyflwyno o dan adran 191 . Er hynny, os oedd gwybodaeth sy'n ofynnol o dan Erthygl 24(1) mewn perthynas â chais adran 191 yn cyd-fynd â'r cais, gellir ei benderfynu felly, er y dylid wrth gwrs roi gwybod gyntaf i'r ceisydd fod yr ACLl yn cynnig ymdrin â'r cais fel hyn. Pan fyddant wedi'u bodloni bod y cais yn ddilys, yr hyn y mae'n rhaid i'r ACLl fynd i'r afael ag ef wrth ddod i'w penderfyniad yw a yw'r mater penodedig yn gyfreithlon neu a fyddai'n gyfreithlon ar sail ffeithiau'r achos a Chyfraith Gynllunio berthnasol.

Y baich prawf mewn cais

8.12 Yn nwylo'r ceisydd yn bendant y mae'r baich prawf mewn cais am TDC. Er y dylai'r ACLl bob amser gydweithredu gyda cheisydd sy'n ceisio gwybodaeth sydd ganddynt am statws cynllunio'r tir, trwy drefnu bod cofnodion ar gael yn rhwydd, nid oes angen iddynt fynd i drafferth fawr i ddangos nad yw'r defnydd, y gweithrediadau, neu'r methiant â chydymffurfio ag amod, a bennir yn y cais yn gyfreithlon. Er ei bod yn ofynnol yn statudol i ACLl gynnal y gofrestr gynllunio, nid yw hon yn gofnod cyflawn o statws cynllunio'r holl dir yn eu hardal. Mewn llawer o achosion, y ceisydd am dystysgrif fydd yn y sefyllfa orau i gynnig gwybodaeth am y gweithgareddau presennol, ac unrhyw weithgareddau blaenorol, sy'n digwydd ar y tir, gan gynnwys copi o unrhyw ganiatâd cynllunio a ddelir ganddo. Bydd rhywfaint o wybodaeth, yn enwedig ynglŷn â hanes unrhyw weithgarwch diawdurdod ar y tir, o fewn gwybodaeth y ceisydd yn unig. Nid yw'r ffaith y gellir gwrthod TDC am na chyflawnir y baich prawf gan y ceisydd yn rhwystro cyflwyno cais pellach os bydd tystiolaeth well ar gael wedyn. Felly nid yw gwrthod rhoi TDC o reidrwydd yn golygu nad yw rhywbeth yn gyfreithlon: gall olygu cyn lleied ag na chyflwynwyd tystiolaeth ddigonol, hyd yn hyn, i fodloni'r ACLl bod defnydd, gweithrediad neu weithgarwch yn gyfreithlon. Am y rheswm hwn, nid oes diben i drydydd partïon fynd ar drywydd gwrthwynebiadau i weithgareddau drwy wneud ceisiadau am TDC.

Cais am TDC mewn perthynas â gweithrediadau, dibenion neu weithgareddau sy'n bodoli eisoes (adran 191)

8.13 Mae adran 191(1) o Ddeddf 1990 yn galluogi unrhyw un i wneud cais i'r ACLl am benderfyniad a yw defnydd presennol, datblygiad gweithredol presennol, neu fethiant presennol â chydymffurfio ag amod neu gyfyngiad cynllunio, sydd eisoes wedi'i gyflawni ar y tir, yn gyfreithlon at ddibenion cynllunio.

8.14 Pan geir cais o dan adran 191, os rhoddir gwybodaeth i'r ACLl sy'n eu bodloni, adeg y cais, fod y defnydd, y gweithrediadau neu'r mater arall a ddisgrifir yn y cais, neu'r disgrifiad hwnnw fel y'i diwygiwyd gan yr ACLl neu'r disgrifiad a fewnosodir ganddynt (gweler paragraff 8.35 isod) yn gyfreithlon, mae is-adran (4) o adran 191 yn darparu bod rhaid iddynt roi tystysgrif i'r perwyl hwn; ac, mewn unrhyw achos arall, rhaid iddynt wrthod y cais.

Y prawf perthnasol o'r dystiolaeth a gyflwynir

8.15 Mewn apelau at yr Ysgrifennydd Gwladol sy'n codi "materion cyfreithiol" (er enghraifft, apelau gorfodi ar seiliau (b) i (e) yn adran 174(2)), lle bo'r baich prawf ar yr apelydd, mae'r Llysoedd wedi dyfarnu mai'r prawf perthnasol o'r dystiolaeth ar faterion o'r fath yw "cydbwysedd tebygolrwydd". Gan y cymhwysir y prawf hwn felly gan yr Ysgrifennydd Gwladol mewn unrhyw apêl yn erbyn eu penderfyniad, ni ddylai ACLl wrthod tystysgrif am

fod y ceisydd wedi methu â chyflawni'r baich prawf llymach, troseddol, sef "y tu hwnt i amheuaeth resymol". Ymhellach, mae'r Llys wedi dyfarnu (gweler - **F W Gabbitas v Yr Ysgrifennydd Gwladol dros yr Amgylchedd a Newham LBC** [1985] JPL 630) nad oes rhaid i dystiolaeth y ceisydd ei hun gael ei hategu gan dystiolaeth "annibynnol" er mwyn cael ei derbyn. Os nad oes gan yr ACLl unrhyw dystiolaeth eu hunain, nac oddi wrth bobl eraill, i wrth-ddweud neu beri bod fersiwn y ceisydd o ddigwyddiadau fel arall yn llai na thebygol, nid oes unrhyw reswm da dros wrthod y cais, ar yr amod bod tystiolaeth yr ymgeisydd ei hun yn ddigon manwl-gywir a diamwys i gyfiawnhau rhoi tystysgrif "ar gydbwysedd tebygolrwydd". Dylai'r ACLl symud ymlaen ar y sail nad yw enw'r ceisydd (ac eithrio i'r graddau y bydd neu na fydd ef neu hi yn gallu cadarnhau cywirdeb unrhyw honiad a wneir ynghylch hanes y parsel o dir yn bersonol), na rhagoriaethau cynllunio'r gweithrediad, y defnydd neu'r gweithgarwch, yn berthnasol i ystyriaethau ar y materion cyfreithiol pur sydd ynghlwm wrth benderfynu cais.

Cynnwys TDC o dan adran 191

8.16 Mae is-adran (5) o adran 191 yn darparu ar gyfer rhai materion y mae'n rhaid i dystysgrif eu cynnwys. Mae'r TDC yn arbennig o werthfawr am fod ei heffaith yn debyg i roi caniatâd cynllunio. Mae'n hanfodol felly fod y dystysgrif yn nodi'n fanwl-gywir arwynebedd y tir y mae'n ymwneud ag ef (fel rheol trwy amgáu plan o'r safle yn ôl graddfa); union fanylion pa ddefnydd, gweithredoedd neu fethiant â chydymffurfio ag amod sy'n gyfreithlon, pam a phryd. Er enghraifft, os yw'r dystysgrif yn un ar gyfer defnydd tir - oni bai fod y defnydd yn dod o fewn un o'r "dosbarthiadau defnydd" a bennir yn yr UCO sy'n gyfredol ar y pryd, neu os rhoddir y dystysgrif ar y sail bod rhoi caniatâd cynllunio penodol yn rhoi cyfreithlondeb i'r defnydd - mae'n bwysig iddi ddatgan cyfyngiadau'r defnydd ar ddyddiad penodol. Ni fydd y manylion hyn yn gyfartal yn gyfreithiol ag amod neu gyfyngiad cynllunio. Pwynt cyfeirio fyddant, sy'n pennu'r hyn a oedd yn gyfreithlon ar ddyddiad penodol, y gellir asesu unrhyw newid wedyn yn ei erbyn. Os bydd y defnydd yn dwysáu wedyn, neu'n newid mewn rhyw ffordd i'r graddau lle bydd newid "sylweddol" yn y defnydd yn digwydd, gall yr ACLl wedyn gymryd camau gorfodi yn erbyn y toriad o'r rheol gynllunio (y gallai tystysgrif lai fanwl-gywir eu rhwystro). Felly rhaid i'r TDC gael ei llunio'n fanwl-gywir ym mhob peth. (Gweler 8.11 hefyd ynglŷn â'r angen i geisiadau fod yn rhai penodol).

8.17 Yn rhinwedd adran 191(5)(b), rhaid i TDC gynnwys disgrifiad o'r defnydd, y gweithrediadau neu fater arall y mae'n cael ei roi ar eu cyfer ni waeth a yw'r materion yn dod o fewn "dosbarth defnydd" o'r UCO. Ond lle bo'r TDC o fewn "dosbarth defnydd", rhaid iddo bennu'r "dosbarth" perthnasol. Ym mhob achos rhaid i'r disgrifiad fod yn fwy na theitl neu label yn unig, os fwnedir osgoi problemau dehongli yn y dyfodol. Dylai'r TDC felly ddargan nodweddion y mater er mwyn ei ddiffinio yn ddiamwys. Mae hyn yn arbennig o fwysig ar gyfer defnyddiau nad ydynt yn dod on fewn unrhyw "ddosbarth defnydd" (hynny yw, defnydd "sui generis"). Felly gall TDC ar gyfer safle carafannau gynnwys fel rheol nifer a math neu faint carafan *sy'n gyfreithlon ar ddyddiad y cais* a, lle bo'r defnydd yn ddefnydd tymhorol, dyddiadau'r calendar pan ddigwyddodd y defnydd hwnaw.

8.18 Mae paragraff 8.16 uchod yn esbonio, o ran egwyddor, pam y gall fod angen cymaint o fanylion, yn gyntaf ar y ceisydd wrth wneud cais am y TDC, ac wedyn yn y dystysgrif ei hun. Hwyrach y bydd enghreifftiau pellach yn ddefnyddiol i ACLl ac i ddarpar-geiswyr.

8.19 Un enghraifft amlwg lle byddai manylion o'r fath yn angenrheidiol fyddai achos adeilad diawdurdod a gwblhawyd yn sylweddol mwy na phedair blynedd yn ôl ac y mae tystysgrif yn cael ei cheisio ar ei gyfer. Dylai'r cais, ac unrhyw TDC, enwi lleoliad a ffurf yr adeilad hwnnw (a all fod ar safle gyda nifer o adeiladau tebyg) yn ddigon manwl-gywir i sicrhau na ellir ei gamgymryd am **unrhyw** adeilad arall ar y safle, naill ai ar ddyddiad y cais neu yn y dyfodol. Mae hyn yn lleihau'r posibilrwydd o'i gymysgu ag unrhyw adeilad newydd a fydd yn ei ddisodli wedyn ar yr un lle yn y safle. Fel rheol y ffordd orau o adnabod adeilad yw plan neu blaniau yn ôl graddfa a pha ddeunydd disgrifiadol ychwanegol bynnag sy'n angenrheidiol i ddisgrifio lleoliad, dyluniad a golwg yr adeilad, gan gynnwys lluniadau manwl-gywir o drychiadau'r adeilad.

8.20 Yn yr un modd, dylai TDC ar gyfer parc cerbydau, a ddefnyddiwyd yn y gorffennol ar gyfer parcio ceir modur yn unig, bennu'r cyfyngiad hwnnw (a bwrw bod y TDC yn deillio o

ddefnydd di-awdurdod deng mlynedd yn hytrach nag o ganiatâd cynllunio). Yna, os defnyddir y tir wedyn ar gyfer parcio lorïau cymalog neu goetsys, a all gael y cyfryw effaith ar amwynder yr ardal gyffiniol, o ran termau cynllunio, nes bod newid "sylweddol" yng nghymeriad y defnydd yn digwydd, byddai'r ACLl yn gallu ei reoli.

8.21 Derbynnir yn gyffredinol y gall defnydd "sui generis" nad yw mewn "dosbarth defnydd" yn yr UCO, megis iard adeiladwr neu lawer o ganolfannau cludwyr, fod yn "sylweddol" wahanol yn nhermau cynllunio i ddefnydd arall sydd er hynny yn dod o fewn yr un disgrifiad cyffredinol. Mewn geiriau eraill, fe all fod newid defnydd "sylweddol" y mae'n ofynnol sicrhau caniatâd cynllunio ar ei gyfer, rhwng, er enghraifft, defnydd iard un adeiladwr, neu ddefnydd penodol fel canolfan cludwr, a'r llall. Nid yw newid perchnogaeth neu ddaliadaeth tir ynddo'i hun yn gyfystyr â newid defnydd sylweddol. Serch hynny, lle nad yw iard adeiladwr wedi'i ddefnyddio yn y gorffennol ond gan adeiladwr bach ar gyfer ei swyddfa, fel canolfan i un neu ddau gerbyd ac i storio deunyddiau adeiladu, oni bai fod y manylyn hwnnw ar lefel y defnydd yn cael ei bennu yn y dystysgrif (neu drwy amod neu gyfyngiad yn y caniatâd y seilir y TDC arno), ni fydd gan yr ACLl ddigon o reolaeth yn y dyfodol dros unrhyw ddwysáu sylweddol ar y defnydd (o bosibl gan gontractiwr adeiladu sy'n dechrau storio offer trwm a pheiriannau, cymysgu concrid a gweithgynhyrchu eitemau saernïaeth ar y tir). Ni ellir rheoli dwysáu o'r fath, er y gellid dadlau ei fod yn gyfystyr â newid defnydd "sylweddol" o'r defnydd blaenorol, pe bai'r safle yn manteisio ar dystysgrif defnydd cyfreithlon a oedd yn nodi y gallai fod yn "iard adeiladwr" yn gyfreithlon, heb amodau pellach.

8.22 Lle rhoddir TDC ar gyfer un defnydd ar "uned gynllunio" sydd mewn defnydd cymysg neu ddefnydd cyfansawdd, mae'n bosibl y bydd angen adlewyrchu'r sefyllfa hon yn ofalus yn y dystysgrif. Gall methu â gwneud hynny arwain at golli rheolaeth dros unrhyw ddwysáu canlynol ar y defnydd yn y dystysgrif os yw'n ymestyn i'r cyfan o'r tir yn yr uned gynllunio, gan gau allan y dibenion eraill a oedd yn digwydd ar y tir o'r blaen (gweler **Wipperman v Barking LBC** (1965) 17 P&CR 225).

Effaith TDC o dan adran 191

8.23 Mae is-adran (6) o adran 191 yn darparu bod rhaid rhagdybio cyfreithlondeb unrhyw fater y mae tystysgrif mewn grym ar ei gyfer o dan yr adran hon yn llwyr oherwydd, pan fydd tystysgrif wedi'i rhoi, mae'n bwysig na ddylai neb allu "edrych y tu ôl iddo" er mwyn amau a yw'r hyn sydd ar ei wyneb yn ddilys. **Nid yw'r datganiad mewn TDC o'r hyn sy'n gyfreithlon yn ymwneud ond â'r sefyllfa ar y tir ar ddyddiad y cais am y dystysgrif.** Fel yr esboniwyd uchod, os ceir datblygiad ar y tir sy'n torri rheol gynllunio, ar ôl rhoi tystysgrif, dylai'r ACLl allu cymryd y camau gorfodi hynny sy'n gyfleus.

8.24 Mewn rhai achosion, mae adran 191(7) yn darparu bod rhoi TDC yn cyfateb â rhoi caniatâd cynllunio ar gyfer sicrhau trwydded sy'n ofynnol gan y cyfundrefnau trwyddedu a ddeddfwyd mewn deddfwriaeth arall. Ar hyn o bryd yr achosion hyn yw cais am:-

(1) trwydded safle carafanau o dan adran 3 o Ddeddf Safleoedd Carafanau a Rheoli Datblygu 1960; a

(2) trwydded rheoli gwastraff a roddir gan Asiantaeth yr Amgylchedd o dan adran 36 o Ddeddf Diogelu'r Amgylchedd 1990.

Cais am TDC mewn perthynas â gweithrediadau, dibenion neu weithgareddau arfaethedig (adran 192)

8.25 Diben is-adran (1) o adran 192 yw galluogi unrhyw berson sy'n dymuno darganfod a fyddai defnydd neu weithrediadau arfaethedig yn gyfreithlon i wneud cais i'r ACLl i'r perwyl hwnnw.

8.26 Mae is-adran (2) o adran 192 yn cyfateb, ar gyfer cynigion, ag adran 191(4) a ddisgrifiwyd ym mharagraff 8.14 uchod. Os rhoddir gwybodaeth i'r ACLl sy'n eu bodloni y byddai'r defnydd neu'r gweithrediadau a ddisgrifir yn y cais yn gyfreithlon, pe baent yn cael eu dechrau adeg y cais, mae'n darparu bod rhaid iddynt roi tystysgrif i'r perwyl hwnnw; ac, mewn unrhyw achos arall, bod rhaid iddynt wrthod y cais. Yn nwylo'r ceisydd y mae'r baich prawf yn bendant. Bydd rhaid iddo ddisgrifio'r cynnig yn ddigon clir a manwl-gywir i alluogi'r

ACLl i ddeall (o ddisgrifiad ysgrifenedig a phlaniau) beth yn union y mae'r cais yn ei olygu; a chyflwyno'r wybodaeth ategol honno neu'r cyflwyniad cyfreithiol hwnnw ag y mae'n dymuno ei wneud i fodloni'r ACLl y dylid rhoi tystysgrif datblygu cyfreithlon ar gyfer y cynnig. Lle bydd hynny'n cynnwys newid defnydd, bydd angen disgrifio'r defnydd presennol, neu'r defnydd diweddaraf, ar y tir; a, lle dibynnir ar gyfreithlondeb y defnydd hwnnw i hwyluso gweithredu'r defnydd arfaethedig, bydd angen darparu gwybodaeth ddigonol i fodloni'r ACLl fod y defnydd presennol yn gyfreithlon (gan roi sylw i'r meini prawf ym mharagraff 8.16 uchod ar gyfer penderfynu peth sy'n gyfreithlon).

8.27 Wrth wneud eu penderfyniad ar gais o dan adran 192, bydd yr ACLl yn gofyn iddynt eu hunain y cwestiwn damcaniaethol - "Pe bai'r newid defnydd arfaethedig hwn wedi digwydd, neu pe bai'r gweithrediad arfaethedig hwn wedi dechrau, ar ddyddiad y cais, a fyddai wedi bod yn gyfreithlon at ddibenion cynllunio?". Wrth wneud hynny, byddant yn ystyried nid yn unig a fyddai'r cais yn golygu "datblygiad" y byddai'n ofynnol gwneud cais am ganiatâd cynllunio ar ei gyfer, ond a fyddai'n golygu torri unrhyw amod neu gyfyngiad presennol a osodwyd wrth roi caniatâd cynllunio sydd wedi'i weithredu, ac sydd felly'n cyfyngu ar yr hyn y gellir ei wneud ar y tir.

TDC a roddir o dan adran 192

8.28 Mae is-adran (3) o adran 192 yn cyfateb, yn achos dibenion neu weithrediadau arfaethedig, ag adran 191(5). Mae'n darparu bod rhaid i TDC a roddir o dan adran 192 bennu'r tir y mae'n ymwneud ag ef; disgrifio'r defnydd neu'r gweithrediadau o dan sylw (lle bo'n briodol, gan adnabod defnydd drwy gyfeirio at y "dosbarth defnydd" perthnasol); rhoi'r rheswm pam y byddai cyflawni'r cynnig yn gyfreithlon; a phennu dyddiad y cais. Er na fyddai'r dystysgrif hon yn cyfateb, yn gyfreithiol, â rhoi caniatâd cynllunio ar gyfer y datblygiad arfaethedig, fe fyddai'n nodi, oni bai fod unrhyw ffactor berthnasol wedi newid ers dyddiad y cais a bennir yn y dystysgrif, y byddai'n gyfreithlon bwrw ymlaen â'r cynnig. Felly mae'n hanfodol sicrhau bod telerau'r dystysgrif yn fanwl-gywir ac nad oes unrhyw le i amau beth sy'n gyfreithlon ar unrhyw ddyddiad penodol.

Effaith TDC a roddir o dan adran 192

8.29 Mae is-adran (4) o adran 192 yn darparu bod rhaid rhagdybio cyfreithlondeb unrhyw ddefnydd neu weithrediadau y mae tystysgrif mewn grym ar eu cyfer yn yr adran hon yn llwyr oni bai fod yna newid sylweddol, cyn i'r defnydd hwnnw gael ei gychwyn neu cyn i'r gweithrediadau ddechrau, mewn unrhyw un o'r materion sy'n berthnasol wrth benderfynu cyfreithlondeb o'r fath.

8.30 Enghreifftiau amlwg o newid o'r fath fyddai cyfarwyddyd o dan Erthygl 4 y GPDO yn dileu'r hawl benodol "datblygu a ganiateir", yn Atodlen 2 y GPDO y byddai'r cynnig wedi dibynnu arni am ei gyfreithlondeb; neu ddiddymu'r caniatâd cynllunio y mae'r cynnig yn dibynnu arno; neu ddiwygiad statudol i'r hawliau "datblygu a ganiateir" yn y GPDO ei hun. Serch hynny, ar yr amod bod yr amgylchiadau a'r darpariaethau statudol yn aros heb eu newid rhwng dyddiad y cais a bennir yn y dystysgrif a dyddiad cychwyn y defnydd arfaethedig neu ddechrau'r gweithrediadau arfaethedig, mae'r newid defnydd yn aros yn gyfreithlon, neu mae'r gweithrediadau'n gyfreithlon, a gellir eu cwblhau'n gyfreithlon, fel y bo'n wir.

Effaith tystysgrif "defnydd sefydledig" sy'n bodoli eisoes, a roddir o dan adran 194 neu 195 y Ddeddf fel y'i deddfwyd yn wreiddiol, a'i throsi'n TDC

8.31 Nid oes unrhyw reidrwydd i drosi tystysgrif "defnydd sefydledig" (TDS) sydd eisoes yn bodoli yn dystysgrif datblygu cyfreithlon. Mae'n bosibl bod TDS yn ddogfen lai werthfawr na thystysgrif datblygu cyfreithlon. Serch hynny, mae'n cadw ei gwerth blaenorol, fel y'i disgrifiwyd yn adran 192(4) Deddf 1990 fel y'i deddfwyd yn wreiddiol. Yn gryno, mae'n derfynol mewn perthynas ag unrhyw faterion a nodir ynddi at ddiben yr apêl yn erbyn unrhyw hysbysiad gorfodi a roddir ar ôl y dyddiad a bennir gan y dystysgrif. Nid yw'n derfynol o ran unrhyw beth sydd wedi digwydd ar y tir ers y dyddiad a bennwyd yn y dystysgrif. Felly, lle cafwyd newid defnydd sylweddol pellach, neu lle rhoddwyd y gorau i'r "defnydd sefydledig" ers y dyddiad hwnnw, mae'n bosibl na fydd y defnydd a ddisgrifir yn y TDS yn "imwn" bellach rhag camau gorfodi, neu nad yw'n gyfreithlon bellach. Am y rheswm hwn, lle nad oes

angen iddynt "edrych y tu ôl" i unrhyw TDS a gyflwynir i ategu cais i "drosi" TDS yn dystysgrif datblygu cyfreithlon (ac yn y mwyafrif o achosion dylai hyn leihau costau gweinyddol yr ACLl yn sylweddol wrth ystyried ceisiadau o'r fath), bydd angen i'r ACLl eu bodloni eu hunain fod y "defnydd sefydledig" a enwir yn y dystysgrif wedi parhau i ddigwydd ar y tir heb unrhyw newid "sylweddol" cyn rhoi tystysgrif datblygu cyfreithlon am yr un defnydd. Yn ogystal, yn yr un modd ag unrhyw gais tystysgrif datblygu cyfreithlon, gall fod yn angenrheidiol, ac yn berffaith briodol, i'r ACLl ddisgrifio'r defnydd yn fwy manwl-gywir yn y dystysgrif datblygu cyfreithlon nag yn y TDS a'i rhagflaenodd.

8.32 Am y rhesymau hyn, er bod effaith a gwerth TDS sy'n bodoli eisoes yn aros heb eu newid, nid oes gan TDS unrhyw effaith "at ddibenion adran 191" o Ddeddf 1990, fel y'i diwygiwyd. Rhaid i gais i "drosi" TDS yn dystysgrif datblygu cyfreithlon gael ei gyflwyno yn yr un modd ag unrhyw gais arall am dystysgrif datblygu cyfreithlon.

Darpariaethau atodol: ceisiadau o dan adrannau 191 a 192

8.33 Fel a nodwyd yn y paragraffau blaenorol, mae erthygl 24 o'r GDPO yn darparu ar gyfer y ffordd y mae ceisiadau am dystysgrifau datblygu cyfreithlon i'w cyflwyno a'u trafod, a'r materion sydd i'w cynnwys mewn ceisiadau a thystysgrifau. Mae adran 193 o Ddeddf 1990 yn pennu'r trefniadau hyn ac yn cynnwys darpariaethau atodol, yn ogystal â'r pŵer hwyluso ar gyfer y GDPO.

8.34 Mae'r GDPO yn darparu i'r ACLl gyfarwyddo'r ymgeisydd i ddarparu gwybodaeth sy'n angenrheidiol i brosesu a phenderfynu'r cais. Nid oes gofyniad i gynnwys tystysgrif o dan adrannau 66 neu 67 o Ddeddf 1990 ynghlwm wrth gais am TDC, o dan adran 191 neu adran 192. Mae hyn oherwydd bod y materion sydd i'w penderfynu yn y ddau achos yn faterion o ffaith dystiolaethol a'r Gyfraith Gynllunio yn unig, gyda'r baich prawf ar y ceisydd. Gall fod gan unrhyw un heblaw'r ceisydd sydd â buddiant yn y tir neu gymdogion y safle dystiolaeth sy'n berthnasol i'r cais. Os bydd y dystiolaeth honno'n ategu'r cais, mater i'r ceisydd yw ei dangos, os gall wneud hynny, i ategu ei gais. Os bydd y dystiolaeth yn tueddu i wrthbrofi'r achos mae'r ceisydd mewn perygl o gael ei erlyn, a gall unrhyw TDC a roddwyd gael ei diddymu, os yw'n ei dal yn ôl (gweler paragraffau 8.38 a 8.40 isod). Serch hynny, os bydd yr ACLl o'r farn y gall person sydd â buddiant cyfreithiol yn y tir neu gymydog wrthbrofi honiad a wnaed mewn cais, mae'n agored iddynt ganfasio'r dystiolaeth honno os dymunant, cyn penderfynu'r cais. Serch hynny, mae unrhyw sylwadau ar ragoriaethau cynllunio'r achos, neu a oes gan y ceisydd unrhyw hawliau preifat i gynnal y gweithrediad, y defnydd neu'r gweithgarwch o dan sylw, yn amherthnasol. (Fel yr esboniwyd ym mharagraffau 8.15 ac 8.45, nid yw rhagoriaethau cynllunio yn cael eu hystyried ar unrhyw adeg yn y cais am TDC neu'r broses apêl: nid oes unrhyw "gais tybiedig am ganiatâd cynllunio" os na roddir TDC ar apêl).

8.35 Mae is-adran (4) o adran 193 yn darparu i TDC gael ei rhoi mewn perthynas â'r cyfan neu ran o'r tir a bennir yn y cais, a lle bo'r cais yn pennu dau neu ragor o faterion, mewn perthynas â phob un, neu ryw un, neu fwy ohonynt; ac i fod yn y cyfryw ffurf ag a bennir gan orchymyn datblygu. Bwriad hyn, ynghyd â phwer yr ACLl o dan adran 191(4) i roi tystysgrif o ddisgrifiad gwahanol i'r hyn y gwnaed cais amdani, yw rhoi graddfa resymol o hyblygrwydd i'r ACLl mewn achosion lle byddai'n ddefnyddiol i'r ceisydd gael tystysgrif mewn telerau sydd ychydig yn wahanol i delerau ei gais, a gwneud hynny yn lle gwrthod tystysgrif yn gyfan gwbl. Er enghraifft, mae'n bosibl cynnwys arwynebedd llai o dir. Mae'r GDPO yn cynnwys ffurf benodedig ar dystysgrif datblygu cyfreithlon i'w defnyddio o dan adran 191 ac adran 192. Mae'r ffurf benodedig yn esbonio ei heffaith. Lle bo angen, dylai'r ACLl gynnwys yn y ffurflen, ar gyfer pob math o dystysgrif, raddfa'r manylion disgrifiadol y sonnir amdanynt ym mharagraff 8.17 uchod. Lle bo'n briodol, gellid cydategu hyn drwy gynnwys cyfeiriad at delerau'r cais a'r planiau neu'r lluniadau sydd ynghlwm wrtho, er enghraifft drwy roi tystysgrif mewn perthynas â defnydd tir "fel a ddisgrifir yn fwy penodol yn" neu "yn unol â" thelerau'r cais a gyflwynwyd. Neu, gall y disgrifiad yn y dystysgrif fod yn fanylach nag yn y cais.

8.36 Mae is-adran (5) o adran 193 yn darparu na fydd tystysgrif datblygu cyfreithlon a roddir o dan adran 191 neu 192 yn effeithio ar unrhyw fater sy'n gyfystyr â methiant i gydymffurfio ag unrhyw amod neu gyfyngiad y rhoddwyd y caniatâd cynllunio yn ddarostyngedig iddo, oni bai fod y mater hwnnw yn cael ei ddisgrifio yn y dystysgrif. Mewn

achos lle rhoddir TDC ar y sail bod caniatâd cynllunio yn bodoli ar gyfer y datblygiad, mae hynny'n golygu nad yw'r ffaith bod y TDC yn ardystio bod y datblygiad yn gyfreithlon yn golygu y gall ddigwydd yn gyfreithlon heb gydymffurfio yn y dyfodol ag unrhyw amodau neu gyfyngiadau a osodir ar y caniatâd hwnnw, ac eithrio i'r graddau a ddisgrifir yn benodol yn y TDC. Ni fydd toriadau amhenodol ar hyn o bryd neu yn y dyfodol yn cael eu cynnwys gan y TDC. Er enghraifft, os oedd y caniatâd cynllunio'n ddarostyngedig i nifer o amodau, ni ellid ystyried bod TDC-a roddid mewn perthynas ag un ohonynt yn cyfreithloni unrhyw un arall. Yn ogystal, mae'n bosibl torri rhai amodau unigol mewn ffyrdd gwahanol. Y *mater* sy'n gyfystyr â methiant i gydymffurfio â'r amod, yn hytrach na'r amod ei hun, y dylai'r TDC ei ddisgrifio, lle bo'n briodol. Os oes amod yn gwahardd storio awyr agored ar safle wedi bod yn cael ei dorri ers mwy na deng mlynedd, er enghraifft drwy storio deunyddiau yn yr awyr agored ar ran benodol o'r safle, dylai'r TDC ddisgrifio graddfa'r toriad sydd wedi dod yn gyfreithlon. Wedyn ni fyddai tystysgrif o'r fath yn cynnwys toriad ar yr amod yn y dyfodol mewn perthynas â storio yn yr awyr agored ar ran wahanol o'r safle i'r hyn a ddisgrifir yn y TDC.

Cofnod yn y gofrestr gynllunio

8.37 Yn rhinwedd is-adran (6) o adran 193, gwnaed darpariaeth yn Erthygl 25 o'r GDPO i geisiadau am dystysgrifau datblygu cyfreithlon a phenderfyniadau gael eu cofnodi yn y gofrestr gynllunio yn unol ag adran 69 o Ddeddf 1990.

Diddymu tystysgrifau

8.38 Mae is-adrannau (7) ac (8) o Adran 193 yn darparu y gall ACLl ddiddymu TDC a roddwyd o dan adran 191 neu 192 os gwnaed datganiad ar y cãis, neu os defnyddiwyd dogfen, a oedd yn ffug o ran manylion penodol, neu os daliwyd unrhyw wybodaeth berthnasol yn ôl; ac y gall y gorchymyn datblygu darparu ar gyfer rheoli dull diddymu'r TDC a'r hysbysiad sydd i'w roi o ddiddymiad o'r fath.

8.39 Mae'r pwerau hyn ar gael i'w defnyddio pan ddaw'n glir bod TDC wedi'i seilio'n anghywir ar ddatganiad ffug, neu y daliwyd gwybodaeth berthnasol yn ôl o'r ACLl wrth iddynt ystyried y cais. Am ei bod yn amlwg yn fater difrifol i'r ceisydd fod TDC wedi'i diddymu, mae erthygl 24 (12) i (14) o'r GDPO yn darparu gweithdrefn statudol y dylai ACLl ei dilyn wrth roi hysbysiad am ddiddymu ac wrth gyflawni'r diddymiad. Nid oes dim iawndal yn daladwy yn achos diddymiad. Mater i'r ACLl yn gyfan gwbl yw'r penderfyniad i ddiddymu TDC, hyd yn oed lle rhoddwyd honno gan yr Ysgrifennydd Gwladol. Os ydynt yn bwriadu diddymu tystysgrif, rhaid iddynt roi hysbysiad am eu bwriad, ac felly ddarparu cyfle i'r derbynwyr gyflwyno sylwadau cyn i'r ACLl wneud eu penderfyniad. Er y cyfyngir yn statudol gan adran 193 (7) ar yr amgylchiadau lle y gall TDC gael ei diddymu, i'r amgylchiadau hynny a esbonnir ym mharagraff 8.38 uchod, nid yw diddymu o reidrwydd yn dibynnu ar gyflawni trosedd, fel a ddisgrifir ym mharagraff 8.40 isod, am fod y darpariaethau ynglŷn â throsedd hefyd yn ei gwneud yn ofynnol sicrhau tystiolaeth bod rhywun wedi gweithredu'n fwriadol, yn ddi-hid neu gyda bwriad i dwyllo. Er nad oes hawl i apelio i'r Ysgrifennydd Gwladol yn erbyn penderfyniad ACLl i ddiddymu tystysgrif, gall dilysrwydd y penderfyniad gael ei herio drwy wneud cais i'r Uchel Lys am arolwg barnwrol yn unol â darpariaethau Gorchymyn 53 Rheolau'r Goruchaf Lys. Yn ogystal, nid oes dim i rwystro gwneud cais pellach am TDC, yn sgil diddymu tystysgrif gynharach. Os bydd yr ACLl yn ymddwyn yn "afresymol" wrth ddiddymu tystysgrif ac yn gwrthod rhoi TDC newydd pan gyflwynir ail gais, mae'n bosibl y byddant mewn perygl o gais llwyddiannus am gostau yn eu herbyn os ceir apêl ddilynol i'r Ysgrifennydd Gwladol, o dan adran 195 (gweler paragraffau 8.432 i 8.48 isod).

Troseddau

8.40 Os bydd unrhyw berson yn fwriadol neu'n ddi-hid yn gwneud datganiad sy'n ffug neu'n gamarweiniol o ran manylyn perthnasol; neu, gyda'r bwriad i dwyllo, yn defnyddio unrhyw ddogfen sy'n ffug neu'n gamarweiniol o ran manylyn perthnasol, neu yn dal yn ôl unrhyw wybodaeth berthnasol, er mwyn sicrhau penderfyniad arbennig ar gais (boed gan y ceisydd neu berson arall) am TDC o dan adran 191 neu 192. Mae adran 194 yn darparu bod y person hwnnw'n euog o drosedd a fydd yn "agored i dreial y naill ffordd neu'r llall". Ar gollfarn ddiannod yn y Llys Ynadon, y gosb fydd dirwy heb fod yn fwy na'r uchafswm

statudol (£5,000 ar hyn o bryd). Ar gollfarn ar dditiad yn Llys y Goron, mae'r person a gollfarnir yn agored i'w garcharu am dymor heb fod yn fwy na dwy flynedd, i ddirwy ddiderfyn, neu'r ddau.

Rhybuddio troseddwyr honedig

8.41 Wrth ymchwilio i'r ffeithiau cyn cychwyn unrhyw achos, dylai ACLl roi sylw i'r ddarpariaethau adrannau 66 a 67(9) o Ddeddf Heddlu a Thystiolaeth Droseddol 1984 o ran rhybuddio tramgwyddwyr honedig.

Yr hawl i apelio at yr Ysgrifennydd Gwladol

8.42 Mae adrannau 195 a 196 o Ddeddf 1990 yn darparu hawl i apelio i'r Ysgrifennydd Gwladol, yn sgil cais aflwyddiannus o dan adran 191 neu 192. Dim ond y ceisydd a all apelio.

8.43 Gellir apelio yn erbyn gwrthodiad, gwrthodiad rhannol neu wrthodiad tybiedig yr ACLl i roi TDC. Yn rhinwedd yr adran 195 (4) a fewnosodwyd, mae gwrthod cais yn rhannol yn cynnwys diwygio neu ddisodli'r disgrifiad yn y cais (gweler yr adran 191 (4) a fewnosodwyd a ddisgrifir ym mharagraff 8.14 uchod).

8.44 Mae ffurflenni apêl ar gael, drwy wneud cais, oddi wrth Adran yr Arolygwyr Cynllunio yn y cyfeiriad a roddir yn llyfryn y Swyddfa Gymreig ac Adran yr Amgylchedd o dan y teitl "Lawful Development Certificates - a user's guide" sy'n cynnwys canllawiau penodol ar gyflwyno ceisiadau i'r ACLl ac apelau i'r Ysgrifennydd Gwladol. Mae'r llyfryn ar gael o swyddfeydd yr ACLl.

8.45 Nid yw'r darpariaethau apêl ynglŷn â TDC yn cynnwys unrhyw "gais tybiedig" am ganiatâd cynllunio na phŵer i'r Ysgrifennydd Gwladol roi caniatâd cynllunio mewn perthynas ag unrhyw fater na roddir tystysgrif ar ei gyfer. Mae hyn yn golygu nad yw'r gweithdrefnau tystysgrifau yn cynnwys ystyriaeth o ragoriaethau cynllunio'r mater o dan sylw. Serch hynny, mae'n agored i ymgeiswyr wneud cais am ganiatâd cynllunio yn y ffordd arferol, heb ragfarn i'w cais am dystysgrif, ac i apelio i'r Ysgrifennydd Gwladol yn erbyn unrhyw benderfyniad andwyol, neu fethiant i roi penderfyniad o fewn y terfyn amser, ar yr un pryd â chyflwyno apêl yngln â thystysgrif o dan yr adran 195 ddiwygiedig. Os bydd yr ACLl o'r farn nad yw caniatâd cynllunio yn ofynnol, dylid dychwelyd y ffi am y cais cynllunio (ond nid unrhyw ffi am gais am TDC), gan esbonio i'r ymgeisydd nad oedd y ffi yn daladwy mewn gwirionedd. Serch hynny, er y gellir ad-dalu'r ffioedd a dalwyd am gais y cafwyd ei fod yn annilys ar unrhyw adeg, nid yw'r Rheoliadau Ffioedd yn darparu ar gyfer ad-dalu ffioedd a dalwyd yn gywir am geisiadau dilys am ganiatâd cynllunio ar ôl i'r rhain gael eu derbyn (ac ni fyddai cais am ganiatâd cynllunio yn annilys os rhoddir TDC).

8.46 Mae apelau TDC a ddaeth i law ar ôl 24 Mawrth 1997 wedi'u cynnwys ymhlith dosbarthiadau apel sy'n cael eu penderfynu gan bersonau a benodir gan yr Ysgrifennydd Gwladol, yn hytrach na chan yr Ysgrifennydd Gwladol ei hun (OS 1997/420).

8.47 Mewn unrhyw apêl ynglŷn â TDC lle ceir amheuaeth neu anghydfod ynghylch tystiolaeth o ran y ffeithiau, fel rheol bydd yr Ysgrifennydd Gwladol yn cyfarwyddo cynnal ymchwiliad lleol, er mwyn i dystiolaeth gael ei chymryd ar lw, os oes angen, ac er mwyn croesholi tystion ynghylch union natur a graddfa defnydd blaenorol, presennol neu arfaethedig y tir a, lle bo'n berthnasol, ei hanes cynllunio. Serch hynny, lle bydd yr apêl yn ymwneud yn unig â dehongli ffeithiau y cytunwyd arnynt a'r Gyfraith Gynllunio neu awdurdod barnwrol perthnasol, fel rheol bydd y weithdrefn sylwadau ysgrifenedig yn ddigonol. Ac, am nad yw'r rhagoriaethau cynllunio o dan ystyriaeth oni bai fod apêl gynllunio yn cael ei hystyried ar yr un pryd, yn aml nid oes angen trefnu bod swyddog o'r Swyddfa Gymreig (neu Adran yr Amgylchedd) yn archwilio'r safle cyn i'r Ysgrifennydd Gwladol benderfynu ar yr apêl.

8.48 Mae'r Rheolau Cynllunio Gwlad a Thref (Gorfodi) (Gweithdrefn Ymchwiliadau) 1992 yn gymwys i ymchwiliadau lleol i mewn i apelau ynglŷn â TDC.

Y gost wrth wneud apêl TDC

8.49 Fel rheol disgwylir i'r partïon i apêl TDC dalu eu costau eu hunain. Yn wahanol i

ymgyfreitha, fel rheol nid yw costau'n "dilyn digwyddiad" yr apêl ac ni chânt eu dyfarnu, ar gais, ond yn erbyn parti sydd wedi ymddwyn "yn afresymol" yn y broses apêl. Mae cylchlythyr 23/93 y Swyddfa Gymreig yn rhoi canllawiau cynhwysfawr ar y polisi a'r gweithdrefnau ar gyfer dyfarnu costau i bartïon mewn apêl. Yn yr un modd ag apelau hysbysiadau gorfodi, yn rhinwedd adran 196(8) Deddf 1990 (a fewnosodwyd gan baragraff 4 o Atodlen i Ddeddf Cynllunio (Darpariaethau Canlynol) 1990), gellir dyfarnu costau mewn apêl tystysgrif datblygu cyfreithlon ni waeth a yw'r apêl wedi digwydd drwy sylwadau ysgrifenedig neu drwy ymchwiliad lleol.

Apêl i'r Uchel Lys

8.50 Gall penderfyniad yr Ysgrifennydd Gwladol ar apêl TDC gael ei herio o dan adran 288 Deddf 1990, drwy gyflwyno apêl bellach, ar bwynt cyfraith, i'r Uchel Lys.

Pŵer yr Ysgrifennydd Gwladol o dan adran 177(1)(c) i roi TDC o dan adran 191

8.51 Mae adran 177(1) o Ddeddf 1990 yn rhoi rhai pwerau dewisol i'r Ysgrifennydd Gwladol ar benderfynu apêl hysbysiad gorfodi o dan adran 174(2). Mae adran 177(1)(c), yn ei alluogi i benderfynu a oedd unrhyw ddefnydd presennol ar y tir, ar ddyddiad yr apêl, yn gyfreithlon, a oedd unrhyw weithrediadau a oedd wedi'u cynnal yn gyfreithlon, neu unrhyw fater yn gyfystyr â methiant i gydymffurfio â chyfyngiad y rhoddwyd y caniatâd cynllunio yn ddarostyngedig iddo yn gyfreithlon; ac os felly, i roi tystysgrif o dan adran 191. Gall y per dewisol hwn gael ei ymarfer lle bydd yr apêl orfodi yn llwyddo ar seiliau (c) neu (d) yn adran 174(2) Deddf 1990, fel y'i diwygiwyd. Serch hynny, mae ffi yn daladwy i'r ACLl am gais am TDC, ac mae Rheoliad 10(12) o Reoliadau Ffioedd 1989, fel y'i diwygiwyd gan Reoliadau Diwygio 1992, yn darparu na fydd ffi "cais tybiedig" yn cael ei ad-dalu lle rhoddir tystysgrif o dan adran 177(1)(c).

8.52 Er hynny, pŵer disgresiynol yw hwn ac nid yw'n cael ei ymarfer ond o dan amgylchiadau eithriadol. Ni chaiff ei ymarfer lle bo'r apelydd yn gofyn yn benodol i'w ffi "cais tybiedig" gael ei ad-dalu os bydd ei apêl yn llwyddo ar unrhyw rai o seiliau (b) i (e) yn adran 174(2). Hwyrach y bydd yn well gan apelwyr sydd wedi talu "ffi cais tybiedig" i'r Ysgrifennydd Gwladol ac i'r ACLl, mewn perthynas â chais o'r fath sy'n deillio o apêl yn erbyn hysbysiad gorfodi, gael y ddwy ffi wedi'u had-dalu o dan yr amgylchiadau hyn, ac wedyn talu un ffi drwy'r ACLl am gais canlynol am TDC. Neu, hwyrach y byddant yn penderfynu nad oes angen tystysgrif arnynt, pan fydd eu hapêl orfodi wedi llwyddo. N i chaiff y pŵer ei ymarfer ychwaith mewn perthynas â defnydd presennol sydd y tu allan i gwmpas y materion y dywedir yn yr hysbysiad gorfodi eu bod yn torri rheol gynllunio.

8.53 Felly ni roddir TDC, o dan adran 177(1)(c), oni bai fod yr apelydd wedi gofyn yn benodol am hynny, ac os bydd ei apêl yn llwyddo ar seiliau (c) neu (d) yn adran 174(2) cyn dyddiad penderfynu'r apêl. Hyd yn oed wedyn, gall yr Ysgrifennydd Gwladol neu'r Arolygydd Cynllunio ymatal rhag ymarfer y pŵer dewisol hwn o hyd. Bwriedir i'r weithdrefn TDC gael ei gweinyddu gan yr ACLl yn bennaf. Hwy fel rheol sydd yn sefyllfa orau i adnabod yr holl fanylion perthnasol ynghylch defnydd, gweithrediad neu weithgarwch y gall fod angen eu pennu mewn TDC, fel yr esbonnir ym mharagraffau 8.16 i 8.22 uchod. Hwyrach na fydd y manylion hyn, gan gynnwys planiau addas i'w cynnwys yn y dystysgrif ar gael yn rhwydd i'r Ysgrifennydd Gwladol neu i Arolygydd Gynllunio, hyd yn oed adeg penderfyniad apêl hysbysiad gorfodi. Yn y mwyafrif o achosion lle bydd apêl orfodi yn llwyddo ar seiliau (c) neu (d) yn adran 174 (2), caiff hysbysiad ei ddiddymu, caiff "y ffi am y cais tybiedig" ei ad-dalu gan yr Ysgrifennydd Gwladol (a lle bo'n gymwys, gan yr ACLl) a dywedir wrth yr apelydd ei fod yn agored iddo wneud cais i'r ACLl am dystysgrif datblygu cyfreithlon o dan adran 191.

Ffurf TDC a ffurflenni cais enghreifftiol

8.54 Pennir y ffurf ar gyfer rhoi TDC, o dan adran 191 neu 192, yn Atodlen 6 o'r GPDO. Rhaid cyflwyno ceisiadau am TDC yn ysgrifenedig, ond mae ffurflenni cais enghreifftiol, y bydd ACLl hwyrach am eu defnyddio, ynghlwm wrth yr Atodiad hwn.

Ychwanegiad 1 i Atodiad 8

Ar gyfer y Cyngor yn unig	
Rhif y cais	.....
Dyddiad y daeth i law	.....

Cyngor .....

Deddf Cynllunio Gwlad a Thref 1990: Adran 191
(fel y'i diwygiwyd gan adran 10 o Ddeddf Cynllunio ac Iawndal 1991)

Gorchymyn Cynllunio Gwlad a Thref (Gorchymyn Datblygu Cyffredinol) 1995

CAIS AM DYSTYSGRIF CYFREITHLONDEB AR GYFER DEFNYDD NEU WEITHREDIAD NEU WEITHGARWCH *PRESENNOL* SY'N TORRI AMOD CYNLLUNIO

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1. Ceisydd (mewn priflythrennau)

Enw .....
Cyfeiriad .....
.....
.....
Cod Post .....

Rhif ffôn .....

---

2. Asiant (os oes un)

Enw .....
Cyfeiriad .....
.....
.....
Cod Post .....

Rhif ffôn .....

---

3. (1) Natur buddiant y ceisydd yn y tir, ee perchennog, prydlesai, deiliad.

(2) Os nad oes gennych fuddiant:-

(a) rhowch enw(au) a chyfeiriad(au) unrhyw un yr ydych yn ei adnabod sydd â buddiant yn y tir;

(b) nodwch natur eu buddiant (os yw'n hysbys);

(c) nodwch a ddywedwyd wrthynt am y cais hwn.

DO/NADDO

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4. Cyfeiriad neu union leoliad y tir y mae'r cais hwn yn ymwneud ag ef:

Disgrifiwch yma ac amgaewch [ ] copi o blan ar sail yr Arolwg Ordnans yn dangos ffin y tir ag ymylon coch.

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5 Mae'r cais hwn yn gais am:

☐ defnydd presennol;

☐ gweithrediad presennol;

☐ defnydd, gweithrediad neu weithgarwch presennol sy'n torri amod;

sef defnydd, gweithrediad neu weithgarwch sy'n bodoli ar ddyddiad y cais hwn. *(Ticiwch y blwch sy'n gymwys)*

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6. Disgrifiad llawn o'r defnydd, y gweithrediad neu'r gweithgarwch presennol y mae'r cais hwn yn ymwneud ag ef:

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7. Os oes mwy nag un defnydd, gweithrediad neu weithgarwch presennol ar y tir ar ddyddiad y cais hwn, disgrifiwch bob un yn llawn, a lle bo'n briodol, dangoswch ba ran o'r tir y mae pob defnydd, gweithrediad neu weithgarwch yn ymwneud ag ef.

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8. Os yw'r cais yn ymwneud â defnydd presennol sydd yn eich barn chi o fewn un o "Ddosbarthiadau Defnydd" Atodlen y Gorchymyn Cynllunio Gwlad a Thref (Dosbarthiadau Defnydd) cyfredol, nodwch ba un:

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9. Pryd y dechreuwyd y defnydd neu'r gweithgarwch, neu bryd y cwblhawyd y gweithrediad yn sylweddol?

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10. Ar ba sail y mae'r dystysgrif yn cael ei cheisio? *(Dilëir y rhai nad ydynt yn gymwys)*

(1) Dechreuodd y defnydd fwy na deng mlynedd cyn dyddiad y cais hwn; neu

(2) Dechreuodd y defnydd, y gweithrediad neu'r gweithgarwch sy'n torri'r amod fwy na deng mlynedd cyn dyddiad y cais hwn; neu

(3) Dechreuodd y defnydd o fewn y deng mlynedd diwethaf, o ganlyniad i newid defnydd nad oedd angen caniatâd cynllunio ar ei gyfer, ac ni chafwyd newid defnydd yr oedd yn ofynnol sicrhau caniatâd cynllunio ar ei gyfer yn ystod y deng mlynedd diwethaf; neu

(4) Cwblhawyd y gweithrediadau yn sylweddol fwy na phedair blynedd cyn dyddiad y cais hwn; neu

(5) Dechreuodd y defnydd fel un t annedd mwy na phedair blynedd cyn dyddiad y cais hwn.

(6) Arall - rhowch y manylion (gallai hyn gynnwys honiadau nad datblygiad oedd y newid defnydd neu'r gweithrediad, neu ei fod wedi manteisio ar ganiatâd cynllunio a roddwyd o dan y Ddeddf neu gan y Gorchymyn Datblygu Cyffredinol).

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11. Os ceisir y dystysgrif am ddefnydd, gweithrediad neu weithgarwch sy'n torri amod neu gyfyngiad, rhowch fanylion yr amod neu'r cyfyngiad na chydymffurfiwyd ag ef, ac amgaewch gopi o'r caniatâd cynllunio perthnasol:

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12. Rhowch unrhyw wybodaeth ychwanegol sydd yn eich barn chi yn angenrheidiol i ategu'ch cais.

(Parhewch ar ddalen ar wahân os oes angen)

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13. Rhestrwch yma yr holl ddogfennau, lluniadau neu blaniau sydd ynghlwm wrth y cais hwn.

Yr wyf/ydym drwy hyn yn gwneud cais am dystysgrif defnydd neu ddatblygu cyfreithlon o dan adran 191 o Ddeddf 1990 mewn perthynas â'r defnydd, y gweithrediad neu'r gweithgarwch presennol a ddisgrifir yn y cais hwn ac yn y dogfennau, y lluniadau a'r planiau sydd ynghlwm wrtho. Yr wyf/ydym yn amgáu'r ffi briodol o £ .....

Llofnod:

Dyddiad:

Ar ran: *(rhowch enw'r ceisydd os llofnodir gan asiant)*

Rhybudd: Mae Adran 194 o Ddeddf 1990 yn darparu ei bod yn drosedd rhoi gwybodaeth ffug neu gamarweiniol neu ddal gwybodaeth berthnasol yn ôl gyda'r bwriad o dwyllo. Mae adran 193(7) yn galluogi'r Cyngor i ddiddymu, ar unrhyw adeg, dystysgrif a roddwyd ganddynt o ganlyniad i wybodaeth ffug neu gamarweiniol o'r fath.

Ychwanegiad 2 i Atodiad 8

Ar gyfer y Cyngor yn unig	
Rhif y cais	.....
Dyddiad y daeth i law	.....

Cyngor .....

Deddf Cynllunio Gwlad a Thref 1990: Adran 192
(fel y'i diwygiwyd gan adran 10 o Ddeddf Cynllunio ac Iawndal 1991)

Gorchymyn Cynllunio Gwlad a Thref (Gweithdrefn Ddatblygu Gyffredinol) 1995

CAIS AM DYSTYSGRIF CYFREITHLONDEB AR GYFER DEFNYDD NEU WEITHREDIAD NEU WEITHGARWCH *ARFAETHEDIG* SY'N TORRI AMOD CYNLLUNIO

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1. Ceisydd (mewn priflythrennau)

Enw .....
Cyfeiriad .....
.....
.....
Cod Post .....

Rhif ffôn .....

---

2. Asiant (os oes un)

Enw .....
Cyfeiriad .....
.....
.....
Cod Post .....

Rhif ffôn .....

---

3. (1) Natur buddiant y ceisydd yn y tir, ee perchennog, prydlesai, deiliad.

(2) Os nad oes gennych fuddiant:-

(a) rhowch enw(au) a chyfeiriad(au) unrhyw un yr ydych yn ei adnabod sydd â buddiant yn y tir;

(b) nodwch natur eu buddiant (os yw'n hysbys);

(c) nodwch a ddywedwyd wrthynt am y cais hwn.

DO/NADDO

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4. Cyfeiriad neu union leoliad y tir y mae'r cais hwn yn ymwneud ag ef:

Disgrifiwch yma ac amgaewch [ ] copi o blan ar sail yr Arolwg Ordnans sy'n dangos ffin y tir ag ymylon coch.

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5. A ddechreuwyd y cynnig?

DO/NADDO

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6. Os yw'r cynnig yn gyfystyr â chynnwys, neu'n gwneud gwaith adeiladu neu weithrediadau eraill rhowch ddisgrifiad manwl o'r holl* weithrediadau o'r fath a chynhwyswch y cyfryw blaniau neu luniadau ag sy'n angenrheidiol i ddangos eu hunion natur.

(Yn achos adeilad arfaethedig dylai'r cynlluniau nodi eu hunion leoliad a dimensiynau manwl-gywir).

* yn cynnwys yr angen i ddisgrifio unrhyw gynnig i addasu neu greu mynedfa newydd, gosod unrhyw stryd newydd, adeiladu unrhyw fannau caled cysylltiedig, dulliau amgáu neu ddulliau traenio'r tir/adeiladau.

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7. Os yw'r cynnig yn ymwneud â newid defnydd ar y tir neu'r adeilad(au); -

(1) rhowch ddisgrifiad llawn o raddfa a natur y defnydd arfaethedig, gan gynnwys y prosesau sydd i'w cyflawni, unrhyw beiriannau sydd i'w gosod, a'r oriau pryd y cyflawnir y defnydd arfaethedig;

(2) disgrifiwch yn llawn defnydd presennol a'r defnydd diweddaraf sy'n hysbys, gyda'r dyddiad pan ddaeth y defnydd hwn i ben.

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8. Esboniwch yn fyr pam yr ydych o'r farn bod y defnydd presennol, neu'r defnydd diweddaraf, ar y tir yn gyfreithlon, neu pam yr ydych o'r farn bod unrhyw adeiladau presennol y bwriedir eu haddasu neu eu hymestyn yn gyfreithlon. (Gallwch ddefnyddio adran 12 o'r cais hwn i ddatgan eich achos yn llawnach). Rhowch fanylion y dystiolaeth ddogfennol ategol (megis caniatâd cynllunio) sydd ynghlwm wrth y cais hwn.

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9. Os ydych o'r farn bod y defnydd presennol, neu'r defnydd diweddaraf, o fewn "dosbarth defnydd" yn y Gorchymyn Cynllunio Gwlad a Thref (Dosbarthiadau Defnydd) 1987, nodwch ba un.

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10. Os ydych o'r farn bod y defnydd arfaethedig o fewn"dosbarth defnydd" yn y Gorchymyn Cynllunio Gwlad a Thref (Dosbarthiadau Defnydd) 1987, nodwch ba un.

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11. A yw'r gweithrediad arfaethedig neu'r defnydd arfaethedig yn un dros dro neu barhaol? Os dros dro, rhowch y manylion.

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12. Dywedwch pam yr ydych o'r farn y dylid rhoi Tystysgrif Datblygu Cyfreithlon ar gyfer y cynnig hwn.

(Parhewch ar ddalen ar wahân os oes angen)

Yr wyf/ydym drwy hyn yn gwneud cais am dystysgrif defnydd neu ddatblygiad cyfreithlon o dan adran 192 o Ddeddf 1990 mewn perthynas â'r defnydd, y gweithrediad neu'r gweithgarwch arfaethedig a ddisgrifir yn y cais hwn ac yn y dogfennau, y lluniadau a'r planiau sydd ynghlwm wrtho.

Yr wyf/ydym yn amgáu'r ffi briodol o £ ....

Llofnod:

Dyddiad:

ar ran: *(rhowch enw'r ceisydd os llofnodir gan asiant)*

Rhybudd: Mae Adran 194 o Ddeddf 1990 yn darparu ei bod yn drosedd rhoi gwybodaeth ffug neu gamarweiniol neu ddal gwybodaeth berthnasol yn ôl gyda'r bwriad o dwyllo. Mae adran 193(7) yn galluogi'r Cyngor i ddiddymu, ar unrhyw adeg, dystysgrif a roddwyd ganddynt o ganlyniad i wybodaeth ffug neu gamarweiniol o'r fath.

RHEOLAU CYNLLUNIO GWLAD A THREF (GORFODI) (GWEITHDREFN YMCHWILIADAU) 1992

Cwmpas y Rheolau

9.1. Disodlodd Rheolau Cynllunio Gwlad a Thref (Gorfodi) (Gweithdrefn Ymchwiliadau) 1992 (OS 1992/1903) ("y Rheolau Gorfodi") Reolau Cynllunio Gwlad a Thref (Gorfodi) (Gweithdrefn Ymchwiliadau) 1981 (OS 1981/1743). Mae'r Rheolau Gorfodi yn gymwys, p'un a yw'r apêl i'w phenderfynu gan yr Ysgrifennydd Gwladol neu gan Arolygydd a benodir ganddo, i ymchwiliadau lleol a gynhelir ynghylch y canlynol -

(1) apelau hysbysiadau gorfodi o dan adran 174 o Ddeddf Cynllunio Gwlad a Thref 1990 ("Deddf 1990");

(2) apelau o dan adran 195 o Ddeddf 1990 yn erbyn penderfyniad i wrthod rhoi tystysgrif defnydd neu ddatblygiad cyfreithlon, neu wrthodiad tybiedig cais am dystysgrif a wnaed o dan adran 191 neu 192 o Ddeddf 1990 (fel y'i diwygiwyd); a

(3) apelau hysbysiadau gorfodi adeilad rhestredig o dan adran 39 o Ddeddf Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) 1990 (fel y'i diwygiwyd), gan gynnwys apelau gorfodi caniatâd Ardal Gadwraeth.

Amcanion

9.2. Bwriedir y Rheolau Gorfodi i wella effeithlonrwydd ac effeithiolrwydd proses ymchwiliadau lleol, heb leihau gallu'r cyfranwyr i gyflwyno sylwadau perthnasol yn unol â gofynion cyfiawnder naturiol. Fel gyda Rheolau Cynllunio Gwlad a Thref (Gweithdrefn Ymchwiliadau) 1992 (OS 1992/2038) ("y Rheolau Cynllunio"), y nod yw gwneud y defnydd gorau posibl o'r cyfnod cyn i'r ymchwiliad agor, cyfnewid gwybodaeth er mwyn i'r cyfranwyr eraill allu rhoi sylw llawn i gymaint â phosibl o achos pob parti cyn i'r ymchwiliad agor. Bydd hynny'n caniatáu i Arolygydd yr ymchwiliad ganolbwyntio ar y materion hanfodol, gan gadw yr amser a dreuir mewn ymchwiliad i'r lleiaf posibl.

Penodi asesydd a chyfarfod cyn yr ymchwiliad

9.3. Mae Rheolau 1992 yn darparu ar gyfer hysbysu penodiad asesydd (rheol 10) ac i'r Arolygydd gynnal cyfarfod cyn yr ymchwiliad (rheol 6), er y gall y darpariaethau hyn beidio â bod yn addas yn aml ar gyfer ymchwiliadau apelau gorfodi. Mae rheol 7 yn caniatáu i'r Arolygydd (neu'r Ysgrifennydd Gwladol mewn apêl sydd heb ei throsglwyddo) gyflwyno datganiad i'r partïon mewn apêl ynglŷn â'r materion y mae'n dymuno'n arbennig gael ei gadw'n hysbys amdanynt.

Terfynau amser y broses apelio

9.4. Yn gyffredinol, mae'r terfynau amser a bennir gan Reolau 1992 yn dechrau rhedeg o'r "dyddiad perthnasol" - hynny yw, y dyddiad pan fydd yr Ysgrifennydd Gwladol yn hysbysu partïon yr apêl ynglŷn â'i *fwriad* i beri bod ymchwiliad yn cael ei gynnal, yn unol â'r Rheolau Cynllunio. Ceir rhai gwahaniaethau yn yr amserlenni sy'n adlewyrchu amgylchiadau penodol apelau gorfodi ac apelau cysylltiedig eraill. Er hynny, y bwriad yw prosesu apelau cynllunio ac apelau gorfodi gyda'i gilydd pan fônt yn ymwneud â'r un tir. Bydd yr apêl orfodi "ar y blaen" pan fydd wedi'i chysylltu'n weinyddol ag eraill.

Datganiad a phroflenni tystiolaeth

9.5. Mae rheol 8 yn ei gwneud yn ofynnol i'r awdurdod cynllunio lleol gyflwyno'u datganiad o achos cyn yr apelydd (a fydd wedi dangos datganiad o ffeithiau gyda'i apêl). Lle bwriedir rhoi tystiolaeth, o dan reol 14, drwy ddarllen proflen dystiolaeth *sy'n ymwneud â chais tybiedig am ganiatâd cynllunio* o dan Adran 177(5) o Ddeddf 1990, rhaid anfon copi o'r broflen a chrynodeb (os yw'r broflen yn fwy na 1,500 o eiriau) at yr Arolygydd 3 wythnos cyn amserlen yr ymchwiliad a drefnir o dan reol 9. Dylai'r crynodeb fod mor gryno â phosibl. Lle bo angen proflen a chrynodeb, dim ond y crynodeb a all gael ei ddarllen yn yr ymchwiliad, oni bai i'r Arolygydd ganiatáu neu ofyn fel arall. Ond byddai croesholiad yn cael ei gynnal ynglŷn â'r broflen yn ei chyfanrwydd.

Canfyddiadau ffeithiau yr Arolygydd

9.6. Gan fod y penderfyniad ar apêl yn erbyn gwrthodiad, neu wrthodiad tybiedig, i roi tystysgrif defnydd neu ddatblygiad cyfreithlon wedi'i seilio'n gyfan gwbl ar gymhwyso'r Gyfraith Gynllunio at ffaith dystiolaethol (gan nad yw rhagoriaethau cynllunio'r defnydd neu'r datblygiad yn berthnasol), mae rheol 17 yn ei gwneud yn ofynnol yn benodol i'r Arolygydd gynnwys "canfyddiadau ffeithiau" yn ei adroddiad ar yr ymchwiliad. Nid yw hynny'n ei gwneud yn ofynnol i ganfyddiadau ffeithiau gael eu datgan ar wahân yn yr adroddiad, er i hynny fod yn arferol. Os yw'r Ysgrifennydd Gwladol yn bwriadu anghytuno ag argymhelliad yr Arolygydd am ei fod o farn wahanol i'r Arolygydd ynghylch unrhyw ffaith berthnasol, neu os yw'n rhoi sylw i unrhyw dystiolaeth newydd, mae'r rheol hon yn ei gwneud yn ofynnol iddo roi tair wythnos i'r rhai sydd â'r hawl i ymddangos yn yr ymchwiliad, ac a ymddangosodd ynddo, gyflwyno sylwadau ar y materion hynny, neu ofyn am ailagor yr ymchwiliad. Mae trefniadau tebyg yn gymwys, o dan reol 18, i apêl a drosglwyddir.

Darpariaethau ar gyfer achosion sy'n cael eu "hailgyfeirio" at yr Ysgrifennydd Gwladol gan y Llys

9.7. Mae Paragraff 2.48 o Atodiad 2 i'r Cylchlythyr hwn yn esbonio adrannau 288 a 289 o Ddeddf 1990. Yn dilyn apêl lwyddiannus i'r Llys, ailgyfeirir achos at yr Ysgrifennydd Gwladol ar gyfer ail-wrandawiad a phenderfyniad. Mae rheol 21 yn darparu bod rhaid i'r Ysgrifennydd Gwladol anfon datganiad i bartïon yr apêl ynghylch y materion y gwahoddir sylwadau ysgrifenedig pellach arnynt cyn i'r apêl gael ei hystyried ymhellach ganddo. Tair wythnos yw'r cyfnod ar gyfer cyflwyno sylwadau o'r fath, neu ofyn am i'r ymchwiliad gael ei ailagor. Os yw'r Ysgrifennydd Gwladol o'r farn y dylid ailagor yr ymchwiliad, bydd paragraffau (3) i (8) rheol 11 yn gymwys.

Apelau gorfodi ac apelau cynllunio "cysylltiedig"

9.8. O dan reol 22, gall yr Ysgrifennydd Gwladol ymestyn y cyfnod y mae unrhyw reol arall yn ei ganiatáu neu yn ei wneud yn ofynnol. Fel y mae paragraff 9.4 uchod yn ei esbonio, mewn achosion lle mae apêl adran 78 ac apêl adran 174 yn ymwneud â'r un tir, cânt eu "cysylltu" yn weinyddol. Mewn achosion o'r fath bydd terfynau amser Rheolau'r Weithdrefn Ymchwiliadau Gorfodi yn gymwys i'r weithdrefn sydd i'w dilyn, am y bydd yr Ysgrifennydd Gwladol yn galw ar ddarpariaethau'r Rheolau Cynllunio sy'n cyfateb i reol 22. Bydd gofynion eraill y Rheolau Cynllunio (megis cyflwyno proflenni tystiolaeth) yn parhau i fod yn gymwys i'r apêl gynllunio.

Trefnu'r ymchwiliad

9.9. Bydd y trefniadau ar gyfer pennu dyddiad ymchwiliad o dan y Rheolau hyn yn dilyn y trefniadau arferol ar gyfer apêl gynllunio. Yn gyffredinol caniateir i bob prif barti i'r apêl wrthod un dyddiad yn unig a gynigir ar gyfer yr ymchwiliad cyn y bydd y Swyddfa'n bwrw ymlaen â phennu dyddiad, amser a lleoliad ar ei gyfer. Fel rheol, un mis fydd y cyfnod a ganiateir ar gyfer negodi dyddiad, gan ddechrau o'r amser pan roddir y cynnig cyntaf o ddyddiad ymchwiliad. Os bydd un o'r partïon neu'r ddau yn gwrthod y dyddiad cyntaf a gynigir, a'i bod yn glir nad ydynt yn fodlon negodi rhyngddynt ar ddyddiad derbyniol, gall y Swyddfa fwrw ymlaen â phennu dyddiad yr ymchwiliad cyn i'r cyfnod negodi dod i ben. Ar ôl i ddyddiad gael ei bennu, ni chaiff ei newid ond am resymau eithriadol.