



Joint Circular from the
Department of the Environment
Tollgate House Houlton Street Bristol BS2 9DJ

Welsh Office
Cathays Park Cardiff CF1 3NQ

Sir,

27 April 1983

Purchase Notices

1. The Memorandum annexed to this Circular brings up to date, by reference to current legislation, and revises previous advice and guidance given to local authorities about the statutory provisions governing purchase notices and listed building purchase notices. The provisions are contained in Part IX of, and Schedule 19 to, the Town and Country Planning Act 1971, as amended by Part II of Schedule 29 to the Local Government, Planning and Land Act 1980.

2. The revisions and advice contained in this Circular are not considered to require any additional local authority manpower or increased expenditure.

3. Ministry of Housing and Local Government Circular 26/69 (Welsh Office Circular 26/69) is hereby cancelled.

We are, Sir, your obedient Servants,

D N DONALDSON *Assistant Secretary*

F E BREWER *Assistant Secretary*

The Chief Executive
County Councils } in England and Wales
District Councils }
London Borough Councils
Urban Development Corporations

The Town Clerk, City of London

The Director General, Greater London Council

The National Park Officer
Peak District National Park
Lake District National Park

[DOE/PLUP 2/267/38]

[WO/PG/1450/13]

MEMORANDUM

This Memorandum is arranged in three parts, as indexed below. References to purchase notices apply also to listed building purchase notices, except where stated otherwise. References to "the 1971 Act" are to the Town and Country Planning Act 1971.

Part I—General advice and information on the service of a purchase notice

This Part contains advice on the general statutory provisions for the service of a purchase notice, with particular regard to validity, and certain matters of fundamental importance to be considered by any Council served with a purchase notice, or by the Secretary of State when a purchase notice is transmitted to him, as follows:—

- (1) statutory provisions for the service of a purchase notice;
- (2) date of service;
- (3) service and form of notice;
- (4) land and owner;
- (5) "reasonably beneficial use"; and
- (6) effect of notice.

Part II—Action by Council on whom notice is served

This Part contains advice on action by a Council following their receipt of a purchase notice. Failure by a Council to take any action on a purchase notice will result in that notice being deemed to be confirmed on them, under the provisions of section 186 of the 1971 Act. This Part also emphasises the need for any statement of reasons why an authority is not willing to comply with a purchase notice to be explicit. Subjects are as follows:—

- (1) validity of purchase notice;
- (2) response under section 181(1)(a) of the 1971 Act;
- (3) response under section 181(1)(b) of the 1971 Act;
- (4) response under section 181(1)(c) of the 1971 Act;
- (5) statement of reasons for not complying with the purchase notice; and
- (6) transmission of purchase notice to Secretary of State.

Part III—Action following transmission of purchase notice to Secretary of State

This Part explains the action which the Secretary of State must take, following the transmission of a purchase notice to him, and relates primarily to sections 182, 183 and 184 of the 1971 Act. It also covers circumstances where an owner of land may wish both to appeal against a refusal of planning permission and to serve a purchase notice. Subjects are as follows:—

- (1) action by Secretary of State;
- (2) hearing or local inquiry;
- (3) concurrent appeal to Secretary of State; and
- (4) Secretary of State's decision.

PART I
GENERAL ADVICE AND INFORMATION ON THE SERVICE OF A PURCHASE
NOTICE

Statutory provisions for the service of a purchase notice

1. The service of a purchase notice may be based upon:—
 - i. a refusal or conditional grant of planning permission (section 180 of the 1971 Act);
 - ii. a refusal or conditional grant of listed building consent (section 190 of the 1971 Act—listed building purchase notices);
 - iii. a revocation or modification order (section 188, or in the case of a listed building, section 190, of the 1971 Act);
 - iv. a discontinuance, alteration or removal order (section 189 of the 1971 Act).
2. The service of a purchase notice may *not* be based upon:—
 - i. a failure of the local planning authority to give notice of their decision on an application for planning permission (or listed building consent) within the requisite period;
 - ii. a refusal of an application for approval of details or of reserved matters;
 - iii. a refusal of an application for express consent for an advertisement display;
 - iv. a refusal by the Secretary of State of a deemed application for planning permission under section 95(6) of the 1971 Act.
3. Section 277A of the 1971 Act (as inserted by the Town and Country Amenities Act 1974) states that buildings in Conservation Areas require listed building consent for demolition: it therefore follows that, in such cases, the right to serve a purchase notice arises under section 190 and not section 180 of the 1971 Act.

Date of service

4. The time within which a purchase notice may be served is, in the case of notices served under sections 180 and 190, twelve months from the date of the local planning authority's or Secretary of State's decision; and, in the case of notices served under section 188 and 189, twelve months from the date of the Secretary of State's confirmation of the relevant order, giving rise to the purchase notice (see Regulation 14 of the Town and Country Planning General Regulations 1976, SI 1976, No. 1419; or Regulation 7 of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) Regulations 1977, SI 1977, No. 228, and section 290(4) of the 1971 Act). The Secretary of State has power to extend this time-limit and he is normally prepared to grant an extension where the service of a notice is delayed for good reasons (eg awaiting a decision on a related planning appeal to the Secretary of State, or negotiations with the local planning authority). Councils have no power to extend the period for the service of a purchase notice. (See also Part III, paragraph 37 below).

Service and form of notice

5. A purchase notice must be served upon the Council of the county district or London Borough in which the land is situated (or the Common Council in the case of land in the City of London); it cannot be served on a county council, or a new town or urban development corporation, or a Government Department. There is no official form required for the serving of a purchase notice, although a model form is given in Appendix 1 to this Memorandum. However, a letter addressed to the Council in whose area

the land is situated will suffice. The letter should state that the relevant conditions, in section 180(1) of the 1971 Act, are fulfilled; require the Council to purchase the owner's or owners' interest(s) in the land, giving the owner's or owners' name(s); refer to the relevant planning application and decision on which the requirement is based; and accurately identify the land concerned. It should be signed by the owner or owners, if possible.

6. Where a purchase notice is accepted by the Council or confirmed by the Secretary of State the Council is deemed to have compulsory purchase powers and to have served notice to treat, so the price to be paid for the land is determined as if it were being compulsorily acquired.

Land and owner

7. Except in the case of a listed building purchase notice (see paragraph 11 below), the land to which a purchase notice relates must be the *identical* area of land which was the subject of the relevant decision or the relevant order. If the notice relates to more land, it is regarded as invalid. However, if permission has been granted for part of the land to which an application related and refused for the remainder, a purchase notice relating to that remainder can be served.

8. A purchase notice may be served only by an "owner" of the land, as defined in section 290 of the 1971 Act. By virtue of that definition the server must be a person who is entitled, at the time of service of the purchase notice, to receive the rack rent of the land or, if the land is not let at a rack rent, would be so entitled if it were so let.

9. Where land which is the subject of a planning decision, or an order under Part III of the 1971 Act, comprises parcels of land in different ownerships, the owners of those parcels may combine to serve a purchase notice relating to their separate interests, provided that the notice (as served) relates to the whole of the land covered by the planning decision or the order.

10. Where there is more than one site, each the subject of a separate planning decision or order, a separate purchase notice should be served for each individual site.

11. The expression "the land" in section 190 of, and Schedule 19 to, the 1971 Act is defined, in section 190(3), as meaning the building in respect of which listed building consent has been refused, or granted subject to conditions, or modified by the imposition of conditions, and in respect of which its owner serves a notice under section 190, together with any land comprising the building, or contiguous or adjacent to it, and owned with it; being land whose owner claims that its use is substantially inseparable from that of the building, and that it ought to be treated, together with the building, as a single holding. It follows, therefore, that the relevant application site and the listed building purchase notice site need not necessarily be identical.

"Reasonably beneficial use"

12. The question to be considered in every case is whether the land in its existing state, taking into account operations and uses for which planning permission (or listed building consent) is not required, is "incapable of reasonably beneficial use". The onus is on the server of the notice to show that this is so. No account is taken of any prospective use of the land which would involve the carrying-out of new development (see section 22 of the

1971 Act) or (in the case of a notice served under section 180 of the 1971 Act) would contravene the condition, which is contained in Schedule 18 to the 1971 Act, regarding the creation of floor space in buildings. In the case of a listed building purchase notice, no account is taken of any prospective use of the land which would involve the carrying out of new development or of any works which require listed building consent, other than works for which the local planning authority or the Secretary of State have undertaken to grant such consent.

13. In considering what capacity for use the land has, relevant factors are the physical state of the land, its size, shape and surroundings, and the general pattern of land-uses in the area; a use of relatively low value may be regarded as reasonably beneficial if such a use is common for similar land in the vicinity. It may sometimes be possible for an area of land to be rendered capable of reasonably beneficial use by being used in conjunction with neighbouring or adjoining land, provided that a sufficient interest in that land is held by the server of the notice, or by a prospective owner of the purchase notice land. Use by a prospective owner cannot be taken into account unless there is a reasonably firm indication that there is in fact a prospective owner of the purchase notice site. (In this paragraph the word "owner" is used to include a person who has a tenancy of the land or some other interest which is sufficient to enable him to use the land.) Profit *may* be a useful comparison in certain circumstances, but the absence of profit (however calculated) is not necessarily material: the concept of reasonably beneficial use is not synonymous with profit.

14. In determining whether the land has become incapable of reasonably beneficial use in its existing state, it may be relevant, where appropriate, to consider the difference (if any) between the annual value of the land in its existing state and the annual value of the land if development of a class specified in Part I or Part II of Schedule 8 to the 1971 Act were carried out on the land. Development of any class not specified in Schedule 8 must not be taken into account. The reason is that the remedy by way of a purchase notice is not intended to be available where the owner shows merely that he is unable to realise the full development value of his land. Compensation for the loss of value for "new development" (ie. development outside Schedule 8) is dealt with in Part VII of the 1971 Act.

15. For the purposes of section 180(1)(c) (or section 190(1)(c)) of the 1971 Act, any permission (or consent) granted, or deemed to be granted, and undertakings given up to the date of the Secretary of State's determination of the purchase notice, may be taken into account. To be capable of being taken into account, an undertaking should be in unequivocal language, and so worded as to be binding on the local planning authority. The Secretary of State would not regard a promise "to give favourable consideration" to an application for permission to develop, as a binding undertaking. If no undertaking has been given, and the council consider that development of a kind not included in the original application ought to be permitted, and that the carrying-out of such development would render the land capable of reasonably beneficial use, their proper course is to suggest that the Secretary of State should issue a direction under section 183(3) of the 1971 Act, or paragraph 2(5) or (6) of Schedule 19 to the 1971 Act.

16. The Secretary of State considers that, in seeking to satisfy himself whether conditions (a) to (c) in section 180(1) of the 1971 Act have been fulfilled, he may take into account, among other things, whether there is a

reasonable prospect of the server's selling or letting the land for any purpose, were its availability to be made known locally. He would normally expect to see some evidence to show that the server has attempted to dispose of his interest in the land before he could be satisfied that the land had become incapable of reasonably beneficial use.

17. Where an owner of land claims that his land has become incapable of reasonably beneficial use, he is regarded as making that claim in respect of *the whole of the land* in question. Therefore, if a part of the land is found to be capable of reasonably beneficial use, it follows that the server of the notice has not substantiated his claim. Consequently, the Secretary of State cannot be satisfied that the condition specified in section 180(1)(a) has been fulfilled in respect of the whole of the land.

18. In section 180(1)(a) of the 1971 Act, the expression "has become" is taken to mean "is" in the context of purchase notices. The Secretary of State is only required to consider whether the land is incapable of reasonably beneficial use in its existing state; he is not required to compare the present state of the land with its state at some earlier time, since there is no period for comparison laid down within the provisions of the Act. The only circumstances in which the Secretary of State would be concerned with what brought about the existing state of the land are where that state is due to activities having been carried out on it in breach of planning control or listed building control.

19. When considering whether a listed building has reasonably beneficial use, a pertinent factor to be taken into account may be the estimated cost of any renovations believed to be necessary. It is therefore helpful if estimated figures for such renovations, and an indication of the likely return on the relevant expenditure can be provided, although they will not, by themselves, be considered conclusive.

Effect of notice

20. A purchase notice does not oblige the Council to purchase the land in question, unless (a) they state a willingness to comply with it; or (b) it is confirmed on the Council by the Secretary of State; or (c), it is deemed to have been confirmed on them under the provisions of section 186. It is also possible, in some circumstances, that the Council will be able to find another local authority, or a statutory undertaker, or a new town or urban development corporation willing to comply with the purchase notice in their place; or that the Secretary of State will confirm the notice on one of these alternative authorities. (See also Part III, paragraph 33 and 38).

PART II

ACTION BY COUNCIL ON WHOM NOTICE IS SERVED

Validity of purchase notice

21. The Council should first consider the validity of the notice; an invalid notice should not be transmitted to the Secretary of State. Instead, the Council should inform the server of the notice that in their view, for reasons stated, the purchase notice is invalid and they do not propose to take any further action on it. (For points to be examined, please note paragraphs 2 to 11 in Part I of this Memorandum.) If the purchase notice is regarded as valid, the Council should consider whether the conditions set out in sections 180(1) or 190(1) of the 1971 Act are satisfied. (For appropriate criteria,

please see paragraphs 12 to 19 in Part I of this Memorandum.) If the Council regard the purchase notice as valid, they are required by section 181 of the 1971 Act, or paragraph 1 of Schedule 19 to the 1971 Act, to serve a counter-notice on the server of the purchase notice, within three months from the date of service of the purchase notice. The provisions of section 181 have been applied to purchase notices served under sections 188 and 189 of the 1971 Act in respect of orders made under Part III of the 1971 Act.

Response under section 181(1)(a) of the 1971 Act

22. If the Council conclude that the land has become incapable of reasonably beneficial use in its existing state, they may properly accept the purchase notice. If they decide on this course, they are required to serve on the owner by whom the purchase notice was served, a notice stating that they are willing to comply with the purchase notice (section 181(1)(a) of, or paragraph 1(1)(a) of Schedule 19 to, the 1971 Act).

23. If the Council intend to seek a contribution from a Government Department, under section 254 of the 1971 Act, it is advisable for them to consult that Department at once and, in any case, before a notice under section 181(1)(a) of, or paragraph 1(1)(a) of Schedule 19 to, the 1971 Act is served.

Response under section 181(1)(b) of the 1971 Act

24. Another local authority, or a statutory undertaker, or a new town or urban development corporation may be willing to comply with the notice in place of the Council on whom it is served (if, for example, permission to develop the land was refused because it was required for their purposes). In that event, the Council on whom the notice was served should serve a notice to that effect on the owner by whom the purchase notice was served, giving the name of the other authority or the body concerned (section 181(1)(b) of, or paragraph 1(1)(b) of Schedule 19 to, the 1971 Act). The other authority or the body concerned will then be deemed to have served notice to treat on the owner concerned. The advice given in paragraph 23 above applies to a local authority specified in a notice served under section 181(1)(b) or paragraph 1(1)(b) of Schedule 19, as it applies to the Council on whom the purchase notice was served.

Response under section 181(1)(c) of the 1971 Act

25. If neither the Council on whom the purchase notice was served nor another local authority, a statutory undertaker, or a new town or urban development corporation are willing to comply with the purchase notice, the Council are required to serve on the owner by whom the purchase notice was served, a notice to that effect. The counter-notice must specify the Council's reasons for not being willing to comply with the purchase notice and state that they have transmitted a copy of the notice to the Secretary of State, together with the statement of their reasons for being unwilling to comply with the purchase notice, on a specified date (sections 181(1)(c) and (3), or paragraphs 1(1)(c) and (3) of Schedule 19). The Council will find that the most convenient way of transmitting the statement of their reasons to the Secretary of State is to send him a copy of the counter-notice which they propose to serve. The specified reasons should be one or more of the following:—

- i. that the requirements of section 180(1)(a) to (c) (or section 190(1)(a) to (c)) of the 1971 Act are not fulfilled. The Council should specify the use to which, in their view, the land in its existing state could be put (see paragraph 26 below);

ii. that, notwithstanding that the Council are satisfied that the land has become incapable of reasonably beneficial use, it appears to them that the land ought, in accordance with a previous planning permission, to remain undeveloped; or, as the case may be, be preserved or laid out as amenity land in relation to the larger area for which that planning permission was granted (see Part III, paragraph 31);

iii. that another local authority, statutory undertaker, or new town or urban development corporation, who have not expressed willingness to comply with the notice, should be substituted as acquiring authority for all or part of the land;

iv. that, instead of confirming the notice, the Secretary of State should:—

(a) grant the planning permission or listed building consent sought by the application which gave rise to the purchase notice, or revoke or amend specified conditions that were imposed; or

(b) direct the grant of planning permission, or listed building consent, in relation to all or part of the land for some other form of development or works which would render the land capable of reasonably beneficial use within a reasonable time (See Part I, paragraph 15); or

(c) in the case of a purchase notice served under sections 188 or 189 of the 1971 Act, cancel or revoke the order or amend it so far as is necessary to render the land capable of reasonably beneficial use.

Statement of reasons for not complying with the purchase notice

26. It is not sufficient for a Council merely to state that the site has a reasonably beneficial use. In preparing their statement of the reasons why they are not willing to comply with the notice, Councils should bear in mind the principles underlying paragraphs 7 and 8 of MHLG Circular No. 9/58 (which deals with certain recommendations of the Committee on Administrative Tribunals and Inquiries). The statement of reasons should be full and clear, and it will help everyone if it is made sufficiently explicit to serve as a statement of the Council's case for any hearing that may later be required, in accordance with section 182(3) of the 1971 Act. The server of the notice should not, for example, merely be told that the Council do not consider that his land has become incapable of reasonably beneficial use in its existing state; he should be given their full reasons for that conclusion. Similarly, if the Council consider that the Secretary of State should adopt one of the courses open to him, under section 183(2) to (4) of (or paragraph 2(2) to (7) of Schedule 19 to) the 1971 Act, they should state why they regard the grant of planning permission (or listed building consent) or the cancellation, revocation or modification of the order (as the case may be) as desirable; or specify the likely ultimate use of the land which would justify the substitution of another local authority, or statutory undertaker, or new town or urban development corporation as acquiring authority.

Transmission of purchase notice to Secretary of State

27. It is important that a Council who have decided to transmit a purchase notice should quickly send the Secretary of State the information and documents he requires to deal with the notice. He cannot begin consideration of a notice without copies of the purchase notice, any accompanying plan, the counter-notice, the planning application with plans, and the decision on which the purchase notice was based; and, if necessary, a plan to enable him to identify the subject site in its surroundings. These

documents should, if possible, accompany the transmission of the notice; but transmission of the notice should *not* be delayed because all the information cannot be provided at the same time. *Any information not immediately available should be sent as soon as possible afterwards.* It must be remembered that failure to supply all the relevant particulars within a reasonable time could lead to deemed confirmation of the notice if, as a result of delay, the Secretary of State is unable to complete his action within the statutory time-limit.

28. Additional particulars and documents are also required as follows:—
- i. copies of any planning permissions relevant to the provisions of section 184 of the 1971 Act; and accompanying plans;
 - ii. copies of any orders made under section 45 or 51 of the Act (or under Part II of Schedule 11 to the 1971 Act) and accompanying plans;
 - iii. particulars of the location, acreage, present condition of the land to which the notice relates and the nature of the surrounding land;
 - iv. particulars of any permission or undertaking relevant to section 180(1)(c) or section 190(1)(c) of the 1971 Act;
 - v. statements whether the land, or any part of it, falls within an area which is:—
 - (a) defined in a development plan as an area of comprehensive development, or included in an action area local plan;
 - (b) the subject of a compulsory purchase order; or
 - (c) the subject of a direction (made under the Town and Country Planning (General Interim Development) Order 1946, or any of the Town and Country Planning General Development Orders) which restricts permitted development, or restricts the grant of planning permission;
 - vi. the nature of the local planning authority's intentions for the land, and the probable timing of any development involved.

Copies of the documents submitted to the Secretary of State should be sent to both the server of the notice and the county council. The Secretary of State should be told that this has been done.

PART III

ACTION FOLLOWING TRANSMISSION OF PURCHASE NOTICE TO SECRETARY OF STATE

Action by Secretary of State

29. Under section 182 of the 1971 Act, the Secretary of State is required to give notice of his proposed action on the purchase notice, and to specify a period, of not less than 28 days, within which the parties may ask for an opportunity of being heard by a person (normally a Planning Inspector) appointed by the Secretary of State before any final determination is made. The period cannot be extended once it has been specified in the formal notification. It is important to note that, where a hearing has been requested and held, and dependent upon the evidence presented, the Secretary of State may depart from his previously stated proposal and reach a different decision on the notice, based on the new evidence. An Inspector conducting a hearing will therefore be prepared to hear, and report, representations made by the parties on any alternative course of action open to the

Secretary of State. If there is no request by either party to be heard, the Secretary of State must issue his formal decision in accordance with the proposed course of action previously notified, under section 182(2) of the 1971 Act.

30. Under section 182(1), the Secretary of State must consider whether to confirm the notice, or to take other action under section 183 of the 1971 Act (or under that section as applied by section 188(3) or 189(3)). If, on the evidence before him, the Secretary of State is not satisfied that the relevant conditions in section 180(1), 188(1) or 189(1) (as the case may be) of the 1971 Act are fulfilled, he will not confirm the purchase notice. If he is satisfied that those conditions are fulfilled, he will either confirm the notice or, dependent upon the evidence before him, take such other action as may be appropriate under section 183(2) or (3) of the 1971 Act. (See paragraphs 12-19 in Part I of this Memorandum for some of the considerations he must take into account).

31. By virtue of the provisions of section 184 of the 1971 Act, the Secretary of State is not required to confirm a purchase notice served under section 180 of the Act if it appears to him that, even though the land has become incapable of reasonably beneficial use in its existing state, it ought, in accordance with a previous planning permission, to remain undeveloped or be preserved or laid out as amenity land in relation to the remainder of the larger area for which that planning permission was granted. This provision is considered to have effect *only* when the whole of the purchase notice site is comprised in the area required to be left undeveloped in the previous planning permission.

32. The Secretary of State's powers in regard to listed building purchase notices are in paragraph 2 of Schedule 19 to the 1971 Act. In contrast to the powers available to him in respect of purchase notices served under sections 180, 188 and 189, the Secretary of State:—

(a) is required to confirm a listed building purchase notice only in respect of part of the land to which it relates, if he is satisfied that the relevant conditions are fulfilled only in regard to that part of the land; and

(b) may not confirm a listed building purchase notice unless he is satisfied that the land covered by the notice comprises such land as is required for preserving the building or its amenities, or for affording access to it, or for its proper control or management.

33. If it falls to be considered whether another local authority or a statutory undertaker, or a new town or urban development corporation should acquire the land, in place of the Council on whom the purchase notice was served, the Secretary of State is required to have regard to the "probable ultimate use" of the land or building or site of the building (as the case may be). He will accordingly exercise his power of substitution only where it is shown that the land or building is to be used in the reasonably near future for purposes related to the exercise of the functions of the other authority or body, eg where the land is needed for the building of a school, he will require the county council to acquire the land. The Secretary of State will not (as he is sometimes asked to do) require another local planning authority to acquire land solely on the grounds that they refused permission for development in the normal exercise of their planning powers. There is no provision for confirmation of a purchase notice on a Government Department.

Hearing or local inquiry

34. It is usual to hold a local inquiry, which interested members of the public may attend, rather than hold a hearing, which is confined to the parties directly concerned. This practice has regard, primarily, to the alternative action open to the Secretary of State and the powers contained in section 183(2) and (3) of the 1971 Act. Local residents thus have an opportunity to express a view on any such alternative action, in the light of the evidence presented by the parties directly concerned at the inquiry.

35. If a request to be heard is made, the Department will follow the relevant procedure specified in the Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974, No. 419, as far as is practicable; though the Rules do not formally apply to purchase notices. The parties will also be expected to observe the spirit of the Rules. Because of the statutory time-limits for determining purchase notices laid down in section 186(3) of the 1971 Act, it will not normally be possible for the Department to comply with Rule 5(1) of the Inquiries Procedure Rules (which requires that the parties be given at least 42 days' written notice of the date, time, and place for the holding of the inquiry).

36. Any statement equivalent to that required by Rule 6(2) of the Inquiries Procedure Rules (which requires the local planning authority to make available a written statement of any submission which they propose to put forward at the inquiry not later than 28 days before the date of the inquiry) will normally have been provided in accordance with paragraph 26 in Part II of this Memorandum. The Department will expect any further statement considered necessary by the Council to be made available as nearly as possible in accordance with the time-limit specified in Rule 6(2).

Concurrent appeals

37. There is nothing to prevent a landowner from lodging an appeal against a refusal of planning permission as well as serving a purchase notice. But it is considered sensible to delay serving a purchase notice until the result of the appeal is known, if this is practicable, because, by virtue of section 290(4)(a) and (d) of the 1971 Act, any decision by the Secretary of State to grant planning permission for the development which is the subject of the appeal dates from the date when the original planning decision was taken by the local planning authority. Since the granting of planning permission would normally be regarded as rendering the land capable of reasonably beneficial use, it is unlikely that the landowner could substantiate a claim that the conditions set out in subsections (a) to (c) of section 180(1) of the 1971 Act are fulfilled. In considering whether to appeal as well as to serve a purchase notice, an aggrieved applicant for planning permission should bear in mind the advice given in Part I, paragraph 4 above. The Secretary of State's attention should be drawn to any appeal which has been made to him, or any other matter which is before him for determination, relating to the purchase notice site or any part of it.

Secretary of State's decision

38. Once the Secretary of State has issued his decision on the purchase notice, he has no further jurisdiction in the matter; and any appeal against his decision is to the High Court, under section 245 of the 1971 Act. If the purchase notice has been confirmed, he has no power to compel either of the parties to conclude the transfer of the land, as he is sometimes asked to do. Matters related to the transfer of the land are for the parties themselves to settle, with, if necessary, reference to the Lands Tribunal if the amount of compensation to be paid cannot be agreed.

Appendix 1

Model form of Purchase Notice

(name of Council)

Town and Country Planning Act 1971

Purchase Notice (section 180)

Insert name of Council on whom notice is served

Insert address or other identifying particulars of land

Insert reference, name of authority and date of decision. If decision was subject to an appeal to the Secretary of State, also insert Departmental number and date of decision

Delete what is not applicable

Delete (b) if permission was refused

Insert nature of interest, including, if leasehold, the terms of the lease and rent payable.

To the Chief Executive and Clerk of

With reference to land at....., subject of a planning decision, reference by dated (subject to an appeal to the Secretary of State, reference, the decision on which was dated, refusing planning permission or granting planning permission subject to conditions.

I/We serve notice, under section 180 of the Town and Country Planning Act 1971, on the Council of.....; and I/we claim that—

(a) the land has become incapable of reasonably beneficial use in its existing state, and

(b) it cannot be rendered capable of reasonably beneficial use by the carrying out of the development for which permission was granted in accordance with the conditions imposed, and

(c) it cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which permission has been granted or is deemed to be granted, or for which the local planning authority or the Secretary of State have undertaken to grant permission; and

I/We hereby require the Council to purchase my/our interest in the said land, namely

.....

Full name(s) and address(es) of owner(s)

.....

.....

Signature(s).....

.....

Date

If correspondence to be sent to agent, insert name and address of agent, with his reference Agents
.....
Telephone No.
Reference

Note: This form can be adapted for use in connection with notices served under the provisions of sections 188, 189, 190 and 191 of the 1971 Act. It may be freely reproduced for the purpose described in this Circular, provided that the following legend appears on each copy:—

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