
STATUTORY INSTRUMENTS

2003 No. 430

The Planning (Amendment) (Northern Ireland) Order 2003

Other changes relating to enforcement

Appeal against enforcement notice

8.—(1) For Article 69(3) and (4) of the principal Order (grounds of appeal and notice) there is substituted—

“(3) An appeal may be brought on any of the following grounds—

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the enforcement notice were not served as required by Article 68;
- (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 Article 68A(9) falls short of what should reasonably be allowed.

(4) An appeal under this Article shall be made by serving written notice of the appeal on the planning appeals commission before the date specified in the enforcement notice as the date on which it is to take effect and such notice shall indicate the grounds of the appeal and state the facts on which it is based.”

(2) For Article 71 of that Order (appeal against enforcement notice – supplementary provisions relating to planning permission) there is substituted—

“Appeal against enforcement notice – supplementary provisions relating to planning permission

71.—(1) On the determination of an appeal under Article 69, the planning appeals commission may—

- (a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;

- (b) discharge any condition or limitation subject to which planning permission was granted;
- (c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under Article 83A.

(2) The provisions of Articles 83A to 83D mentioned in paragraph (3) shall apply for the purposes of paragraph (1)(c) as they apply for the purposes of Article 83A, but as if—

- (a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and
- (b) references to the Department were references to the planning appeals commission.

(3) Those provisions are Articles 83A(5) to (7), 83C(4) (so far as it relates to the form of the certificate), (6) and (7) and 83D.

(4) In considering whether to grant planning permission under paragraph (1), the planning appeals commission shall have regard to the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations; and planning permission that may be granted under paragraph (1) is any planning permission that might be granted on an application under Part IV; and where under that paragraph the planning appeals commission discharges a condition or limitation, it may substitute another condition or limitation for it, whether more or less onerous.

(5) Where an appeal against an enforcement notice is brought under Article 69, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control and, in relation to any exercise by the planning appeals commission of its powers under paragraph (1)—

- (a) any planning permission granted under that paragraph shall be treated as granted on that application;
- (b) in relation to a grant of planning permission or a determination under that paragraph, the decision of the planning appeals commission shall be final; and
- (c) subject to sub-paragraph (b), any planning permission granted under that paragraph shall have the like effect as a permission granted under Part IV.

(6) Where—

- (a) the notice under paragraph (4) of Article 69 indicates the ground mentioned in paragraph (3)(a) of that Article;
- (b) any fee is payable under regulations made by virtue of Article 127 in respect of the application deemed to be made by virtue of the appeal; and
- (c) the planning appeals commission gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.”