



# Town and Country Planning Act 1971

## 1971 CHAPTER 78

### PART V

#### ENFORCEMENT OF CONTROL UNDER PARTS III AND IV

##### *Development requiring planning permission*

#### **87 Power to serve enforcement notice**

- (1) Where it appears to the local planning authority that there has been a breach of planning control after the end of 1963, then, subject to any directions given by the Secretary of State and to the following provisions of this section, the authority, if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may serve a notice under this section (in this Act referred to as an "enforcement notice") requiring the breach to be remedied.
- (2) There is a breach of planning control if development has been carried out, whether before or after the commencement of this Act, without the grant of planning permission required in that behalf in accordance with Part III of the Act of 1962 or Part III of this Act, or if any conditions or limitations subject to which planning permission was granted have not been complied with.
- (3) Where an enforcement notice relates to a breach of planning control consisting in—
  - (a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land ; or
  - (b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land ; or
  - (c) the making without planning permission of a change of use of any building to use as a single dwellinghouse,

it may be served only within the period of four years from the date of the breach.

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- (4) An enforcement notice shall be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in that land, being an interest which in the opinion of the authority is materially affected by the notice.
- (5) Where planning permission has effect subject to a condition to which section 82 of this Act applies, and by reason of anything done in a particular part of a building that condition is contravened, any enforcement notice relating to the contravention shall be taken to be served on the owner and on the occupier of the land to which it relates if it is served on the owner and on the occupier of that part of the building, whether it is also served on any other person or not.
- (6) An enforcement notice shall specify—
  - (a) the matters alleged to constitute a breach of planning control;
  - (b) the steps required by the authority to be taken in order to remedy the breach, that is to say steps for the purpose of restoring the land to its condition before the development took place or (according to the particular circumstances of the breach) of securing compliance with the conditions or limitations subject to which planning permission was granted; and
  - (c) the period for compliance with the notice, that is to say the period (beginning with the date when the notice takes effect) within which those steps are required to be taken.
- (7) The steps which may be required by an enforcement notice to be taken include the demolition or alteration of any buildings or works, the discontinuance of any use of land, or the carrying out on land of any building or other operations.
- (8) Subject to section 88 of this Act, an enforcement notice shall take effect at the end of such period, not being less than twenty-eight days after the service of the notice, as may be specified in the notice.
- (9) The local planning authority may withdraw an enforcement notice (without prejudice to their power to serve another) at any time before it takes effect; and, if they do so, they shall forthwith give notice of the withdrawal to every person who was served with the notice.

## **88 Appeal against enforcement notice**

- (1) A person on whom an enforcement notice is served, or any other person having an interest in the land may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds—
  - (a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged ;
  - (b) that the matters alleged in the notice do not constitute a breach of planning control;
  - (c) in the case of a notice which, by virtue of section 87(3) of this Act, may be served only within the period of four years from the date of the breach of planning control to which the notice relates, that that period has elapsed at the date of service ;

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- (d) in the case of a notice not falling within paragraph (c) of this subsection, that the breach of planning control alleged by the notice occurred before the beginning of 1964;
  - (e) that the enforcement notice was not served as required by section 87(4) of this Act;
  - (f) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control;
  - (g) that the specified period for compliance with the notice falls short of what should reasonably be allowed.
- (2) An appeal under this section shall be made by notice in writing to the Secretary of State, which shall indicate the grounds of the appeal and state the facts on which it is based; and on any such appeal the Secretary of State shall, if either the appellant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (3) Where an appeal is brought under this section, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (4) On an appeal under this section—
- (a) the Secretary of State may correct any informality, defect or error in the enforcement notice if he is satisfied that the informality, defect or error is not material;
  - (b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 87(4) of this Act to be served with the notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
- (5) On the determination of an appeal under this section, the Secretary of State shall give directions for giving effect to his determination, including, where appropriate, directions for quashing the enforcement notice or for varying the terms of the notice in favour of the appellant; and the Secretary of State may—
- (a) grant planning permission for the development to which the enforcement notice relates or, as the case may be, discharge any condition or limitation subject to which planning permission for that development was granted;
  - (b) determine any purpose for which the land may, in the circumstances obtaining at the time of the determination, be lawfully used having regard to any past use thereof and to any planning permission relating to the land.
- (6) In considering whether to grant planning permission under subsection (5) of this section, the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject-matter of the enforcement notice, and to any other material considerations; and any planning permission granted by him under that subsection may—
- (a) include permission to retain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;
  - (b) be granted subject to such conditions as the Secretary of State thinks fit;
- and where under that subsection he discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

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- (7) Where an appeal against an enforcement notice is brought under this section, the appellant shall be deemed to have made an application for planning permission for the development to which the notice relates and, in relation to any exercise by the Secretary of State of his powers under subsection (5) of this section, the following provisions shall have effect—
- (a) any planning permission granted thereunder shall be treated as granted on the said application ;
  - (b) in relation to a grant of planning permission or a determination under that subsection, the Secretary of State's decision shall be final; and
  - (c) for the purposes of section 34 of this Act, the decision shall be treated as having been given by the Secretary of State in dealing with an application for planning permission made to the local planning authority.
- (8) On an appeal under this section against an enforcement notice relating to anything done in contravention of a condition to which section 71 or 82 of this Act applies, the Secretary of State shall not be required to entertain the appeal in so far as the appellant claims that planning permission free from that condition ought to be granted.
- (9) Schedule 9 to this Act applies to appeals under this section, including appeals under this section as applied by regulations under any other provision of this Act.

## **89 Penalties for non-compliance with enforcement notice**

- (1) Subject to the provisions of this section, where an enforcement notice has been served on the person who, at the time when the notice was served on him, was the owner of the land to which it relates, then, if any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken within the period allowed for compliance with the notice, that person shall be liable on summary conviction to a fine not exceeding £400 or on conviction on indictment to a fine.
- (2) If a person against whom proceedings are brought under subsection (1) of this section has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of the land, he shall, upon information duly laid by him, and on giving to the prosecution not less than three clear days' notice of his intention, be entitled to have the person who then became the owner of the land (in this section referred to as "the subsequent owner") brought before the court in the proceedings.
- (3) If, after it has been proved that any steps required by the enforcement notice have not been taken within the period allowed for compliance with the notice, the original defendant proves that the failure to take those steps were attributable, in whole or in part, to the default of the subsequent owner—
- (a) the subsequent owner may be convicted of the offence; and
  - (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the enforcement notice, shall be acquitted of the offence.
- (4) If, after a person has been convicted under the preceding provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the enforcement notice, he shall be guilty of a further offence and liable—
- (a) on summary conviction to a fine not exceeding £50 for each day following his first conviction on which any of the requirements of the enforcement notice (other than the discontinuance of the use of land) remain unfulfilled; or

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- (b) on conviction on indictment to a fine.
- (5) Where, by virtue of an enforcement notice, a use of land is required to be discontinued, or any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations thereon, then if any person uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, in contravention of the notice, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £400, or on conviction on indictment to a fine; and if the use is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £50 for each day on which the use is so continued, or on conviction on indictment to a fine.
- (6) Any reference in this section to the period allowed for compliance with an enforcement notice is a reference to the period specified in the notice for compliance therewith or such extended period as the local planning authority may allow for compliance with the notice.

## **90 Power to stop further development pending proceedings on enforcement notice**

- (1) Where in respect of any land the local planning authority have served an enforcement notice, they may at any time before the notice takes effect serve a further notice (in this Act referred to as a "stop notice") referring to, and having annexed to it a copy of, the enforcement notice and prohibiting any person on whom the stop notice is served from carrying out or continuing any specified operations on the land, being operations either alleged in the enforcement notice to constitute a breach of planning control or so closely associated therewith as to constitute substantially the same operations.
- (2) The operations which may be the subject of a stop notice shall include the deposit of refuse or waste materials on land where that is a breach of planning control alleged in the enforcement notice.
- (3) A stop notice may be served by the local planning authority on any person who appears to them to have an interest in the land or to be concerned with the carrying out or continuance of any operations thereon.
- (4) A stop notice—
  - (a) shall specify the date (not being earlier than three nor later than fourteen days from the day on which the notice is first served on any person) when it is to take effect;
  - (b) in relation to any person served with it, shall have effect as from that date or the third day after the date of service on him, whichever is the later; and
  - (c) shall, without prejudice to subsection (7) of this section, cease to have effect when the enforcement notice takes effect or is withdrawn or quashed.
- (5) If while a stop notice has effect in relation to him a person carries out, or causes or permits to be carried out, any operations prohibited by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400, or on conviction on indictment to a fine; and if the offence is continued after conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £50 for each day on which the offence is continued, or on conviction on indictment to a fine.

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- (6) A stop notice shall not be invalid by reason that the enforcement notice to which it relates was not served as required by section 87(4) of this Act if it is shown that the local planning authority took all such steps as were reasonably practicable to effect proper service.
- (7) The local planning authority may at any time withdraw a stop notice (without prejudice to their power to serve another) by serving notice to that effect on persons who were served with the stop notice; and the stop notice shall cease to have effect as from the date of service of the notice under this subsection.
- (8) Where a person (in this subsection called " the contractor ") is under contract to another person (in this subsection called " the developer ") to carry out any operations on land and—
  - (a) a stop notice takes effect (whether in relation to the developer or the contractor, or both) prohibiting the carrying out or continuance of those operations; and
  - (b) the operations are countermanded, or discontinued by the contractor accordingly,

then, unless and in so far as the contract makes, provision explicitly to the contrary of this subsection, the developer shall be under the same liability in contract as if the operations had been countermanded or discontinued on instructions given by him in breach of the contract.

This subsection applies only to contracts entered into before the end of 1969.

## **91 Execution and cost of works required by enforcement notice**

- (1) If, within the period specified in an enforcement notice for compliance therewith, or within such extended period as the local planning authority may allow, any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken, the local planning authority may enter the land and take those steps, and may recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.
- (2) Any expenses incurred by the owner or occupier of any land for the purpose of complying with an enforcement notice served in respect of any breach of planning control (as defined in section 87(2) of this Act) and any sums paid by the owner of any land under subsection (1) of this section in respect of expenses incurred by the local planning authority in taking steps required by such a notice to be taken, shall be deemed to be incurred or paid for the use and at the request of the person by whom the breach of planning control was committed.
- (3) Regulations made under this Act may provide that, in relation to any steps required to be taken by an enforcement notice, all or any of the enactments specified in subsection (4) of this section shall apply, subject to such adaptations and modifications as may be specified in the regulations, including, in the case of the enactment specified in paragraph (b) of that subsection, adaptations and modifications for the purpose of affording to the owner of land to which an enforcement notice relates the right, as against all other persons interested in the land, to comply with the requirements of the enforcement notice.
- (4) The said enactments are the following provisions of the Public Health Act 1936, that is to say—

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- (a) section 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);
  - (b) section 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises);
  - (c) section 292 (power of local authorities to include a sum in respect of establishment charges in their expenses in executing works); and
  - (d) section 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act).
- (5) Any regulations made in accordance with subsection (3) of this section may provide for the charging on the land of any expenses recoverable by a local authority under subsection (1) of this section.

## **92 Effect of planning permission on enforcement notice**

- (1) If, after the service of an enforcement notice, planning permission is granted for the retention on land of buildings or works, or for the continuance of a use of land, to which the enforcement notice relates, the enforcement notice shall cease to have effect in so far as it requires steps to be taken for the demolition or alteration of those buildings or works, or the discontinuance of that use, as the case may be.
- (2) If the planning permission granted as mentioned in sub section (1) of this section is granted so as to permit the retention of buildings or works, or the continuance of a use of land, without complying with some condition subject to which a previous planning permission was granted, the enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.
- (3) The preceding provisions of this section shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the enforcement notice before the relevant provision of the enforcement notice ceased to have effect.

## **93 Enforcement notice to have effect against subsequent development**

- (1) Compliance with an enforcement notice, whether in respect of—
  - (a) the demolition or alteration of any buildings or works; or
  - (b) the discontinuance of any use of land,or in respect of any other requirements contained in the enforcement notice, shall not discharge the enforcement notice.
- (2) Without prejudice to subsection (1) of this section, any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III of this Act; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.
- (3) Without prejudice to subsection (1) of this section, if any development is carried out on land by way of reinstating or restoring buildings or works which have been demolished or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were demolished or altered; and, subject to subsection (4) of this section, the provisions of section 91(1) and (2) of this Act, shall apply accordingly.

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- (4) Where, at any time after an enforcement notice takes effect—
- (a) any development is carried out on land by way of reinstating or restoring buildings or works which have been demolished or altered in compliance with the notice; and
  - (b) the local planning authority propose, under section 91(1) of this Act, to take any steps required by the enforcement notice for the demolition or alteration of the buildings or works in consequence of the reinstatement or restoration, the local planning authority shall, not less than twenty-eight days before taking any such steps, serve on the owner and occupier of the land a notice of their intention to do so.
- (5) A person who, without the grant of planning permission in that' behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been demolished or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £400; and no person shall be liable under any of the provisions of section 89(1) to (4) of this Act for failure to take any steps required to be taken by an enforcement notice by way of demolition or alteration of what has been so reinstated or restored.

#### **94 Certification of established use**

- (1) For the purposes of this Part of this Act, a use of land is established if—
- (a) it was begun before the beginning of 1964 without planning permission in that behalf and has continued since the end of 1963 ; or
  - (b) it was begun before the beginning of 1964 under a planning permission in that behalf granted subject to conditions or limitations, which either have never been complied with or have not been complied with since the end of 1963 ; or
  - (c) it was begun after the end of 1963 as the result of a change of use not requiring planning permission and there has been, since the end of 1963, no change of use requiring planning permission.
- (2) Where a person having an interest in land claims that a particular use of it has become established, he may apply to the local planning authority for a certificate (in this Act referred to as an " established use certificate ") to that effect:
- Provided that no such application may be made in respect of the use of land as a single dwellinghouse, or of any use not subsisting at the time of the application.
- (3) An established use certificate may be granted (either by the local planning authority or, under section 95 of this Act, by the Secretary of State)—
- (a) either for the whole of the land specified in the application, or for a part of it;
  - (b) in the case of an application specifying two or more uses, either for all those uses or for some one or more of them.
- (4) On an application to them under this section, the local planning authority shall, if and so far as they are satisfied that the applicant's claim is made out, grant to him an established use certificate accordingly; and if and so far as they are not so satisfied, they shall refuse the application.
- (5) Where an application is made to a local planning authority for an established use certificate, then unless within such period as may be prescribed by a development order, or within such extended period as may at any time be agreed upon in writing between the applicant and the local planning authority, the authority give notice to the



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applicant of their decision on the application, then, for the purposes of section 95(2) of this Act, the application shall be deemed to be refused.

- (6) Schedule 14 to this Act shall have effect with respect to established use certificates and applications therefor and to appeals under section 95 of this Act.
- (7) An established use certificate shall, as respects any matters stated therein, be conclusive for the purposes of an appeal to the Secretary of State against an enforcement notice served in respect of any land to which the certificate relates, but only where the notice is served after the date of the application on which the certificate was granted.
- (8) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for an established use certificate or on an appeal arising out of such an application—
  - (a) knowingly or recklessly makes a statement which is false in a material particular; or
  - (b) with intent to deceive, produces, furnishes, sends or otherwise makes use of any document which is false in a material particular; or
  - (c) with intent to deceive, withholds any material information,he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

## **95 Grant of certificate by Secretary of State on referred application or appeal against refusal**

- (1) The Secretary of State may give directions requiring applications for established use certificates to be referred to him instead of being dealt with by local planning authorities; and, on any such application being referred to him in accordance with such directions, section 94(4) of this Act shall apply in relation to the Secretary of State as it applies in relation to the local planning authority in the case of an application determined by them.
- (2) Where an application is made to a local planning authority for an established use certificate and is refused, or is refused in part, the applicant may by notice under this subsection appeal to the Secretary of State; and on any such appeal the Secretary of State shall—
  - (a) if and so far as he is satisfied that the authority's refusal is not well-founded, grant to the appellant an established use certificate accordingly or, as the case may be, modify the certificate granted by the authority on the application; and
  - (b) if and so far as he is satisfied that the authority's refusal is well-founded, dismiss the appeal.
- (3) On an application referred to him under subsection (1) of this section or on an appeal to him under subsection (2) of this section, the Secretary of State may, in respect of any use of land for which an established use certificate is not granted (either by him or by the local planning authority), grant planning permission for that use or, as the case may be, for the continuance of that use without complying with some condition subject to which a previous planning permission was granted.
- (4) Before determining an application or appeal under this section the Secretary of State shall, if either the applicant or appellant (as the case may be) or the local planning

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authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

- (5) The decision of the Secretary of State on an application referred to him, or on an appeal, under this section shall be final.
- (6) In the case of any use of land for which the Secretary of State Has power to grant planning permission under this section, the applicant or appellant shall be deemed to have made an application for such planning permission; and any planning permission so granted shall be treated as granted on the said application.
- (7) Schedule 9 to this Act applies to appeals under this section.