



Town and Country Planning (Scotland) Act 1972

1972 CHAPTER 52

PART V

ENFORCEMENT OF CONTROL UNDER PARTS III AND IV

Listed buildings

92 Power to serve listed building enforcement notice

- (1) Where it appears to the local planning authority that any works have been, or are being, executed to a listed building in their district and are such as to involve a contravention of section 53(1) or (4) of this Act, then, subject to any directions given by the Secretary of State, they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, serve a notice—
 - (a) specifying the alleged contravention; and
 - (b) requiring such steps as may be specified in the notice for restoring that building to its former state or, as the case may be, for bringing it to the state it would have been in if the terms and conditions of any listed building consent for the works had been complied with, to be taken within such period as may be so specified.
- (2) A notice under this section is in this Act referred to as a " listed building enforcement notice ".
- (3) A listed building enforcement notice shall be served on the owner, on the lessee and on the occupier of the building to which it relates and on any other person having an interest in the building, being an interest which in the opinion of the authority is materially affected by the notice.

- (4) Subject to section 93 of this Act, a listed building 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.
- (5) The local planning authority may withdraw a listed building 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.
- (6) Every local planning authority shall keep available for public inspection free of charge at reasonable hours and at a convenient place a list containing particulars of any building in their district in respect of which a listed building enforcement notice has been served.

93 Appeal against listed building enforcement notice

- (1) A person on whom a listed building enforcement notice is served, or any other person having an interest in the building to which it relates, 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 the building is not of special architectural or historic interest;
 - (b) that the matters alleged to constitute a contravention of section 53 of this Act do not involve such a contravention ;
 - (c) that the works were urgently necessary in the interests of safety or health, or for the preservation of the building;
 - (d) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
 - (e) that the notice was not served as required by section 92(3) of this Act;
 - (f) that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
 - (g) that the period specified in the notice as the period within which any steps required thereby are to be taken falls short of what should reasonably be allowed;
 - (h) that the steps required by the notice to be taken would not serve the purpose of restoring the character of the building to its former state.
- (2) An appeal under this section shall be made by notice in writing to the Secretary of State, which shall indicate the grounds of 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 notice shall be of no effect pending the final determination or 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 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 92(3) of this Act to be served with the notice was not served, the Secretary of State may disregard

that fact if he is satisfied that the person has not 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 listed building enforcement notice or for varying the terms of the notice in favour of the appellant, and the Secretary of State may—
- (a) grant listed building consent for the works to which the notice relates or, as the case may be, discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous;
 - (b) in so far as any works already executed constitute development for which planning permission is required, grant such permission in respect of the works;
 - (c) if he thinks fit, exercise his power under section 52 of this Act to amend any list compiled or approved thereunder by removing from it the building to which the appeal relates or his power under subsection (8) of that section to direct that that subsection shall no longer apply to the building.
- (6) Any planning permission granted by the Secretary of State under subsection (5) of this section shall be treated as granted on an application for the like permission under Part III of this Act, and any listed building consent granted by him thereunder shall be treated as granted on an application for the like consent under Part I of Schedule 10 to this Act; and—
- (a) in relation to the grant thereunder either of planning permission or of listed building consent, the Secretary of State's decision shall be final;
 - (b) for the purposes of section 31 of this Act a decision of the Secretary of State to grant planning permission shall be treated as having been given by him in dealing with an application for planning permission made to the local planning authority.
- (7) The validity of a listed building enforcement notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds specified in paragraphs (b) or (e) of subsection (1) of this section.
- (8) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section.

94 Penalties for non-compliance with listed building enforcement notice

- (1) Subject to the provisions of this section, where a listed building enforcement notice has been served in respect of any building and any steps required by the notice to be taken have not been taken within the period allowed for compliance with the notice, the person responsible for the contravention mentioned in section 92(1) of this Act 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.
- (2) 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 notice, he shall be guilty of a further offence and be 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 notice remain unfulfilled ; or
 - (b) on conviction on indictment to a fine.

- (3) Any reference in this or the next following section to the period allowed for compliance with a listed building enforcement notice is a reference to the period specified in the notice as that within which the steps specified in the notice are required thereby to be taken, or such extended period as the local planning authority may allow for taking them.

95 Execution and cost of works required by listed building enforcement notice

- (1) If, within the period allowed for compliance with a listed building enforcement notice, any steps required by the notice to be taken have not been taken, the authority may enter on the land and take those steps, and may recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
- (2) Any expenses incurred by the owner, lessee or occupier of a building for the purpose of complying with a listed building enforcement notice, and any sums paid by the owner or lessee of a building 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 who carried out the works to which the notice relates.
- (3) The provisions of section 88(3) and (4) of this Act shall apply in relation to a listed building enforcement notice as they apply in relation to an enforcement notice; and any regulations made by virtue of this subsection may provide for the charging on the land on which the building stands of any expenses recoverable by a local planning authority under subsection (1) of this section.

96 Enforcement by, or by direction of, the Secretary of State

- (1) If it appears to the Secretary of State, after consultation with the local planning authority, to be expedient that a listed building enforcement notice should be served in respect of any land, he may give directions to the local planning authority requiring them to serve such a notice, or may himself serve such a notice; and any notice so served by the Secretary of State shall have the like effect as a notice served by the local planning authority.
- (2) In relation to a listed building enforcement notice served by the Secretary of State, the provisions of sections 94(3) and 95 of this Act shall apply as if for any reference therein to the local planning authority there were substituted a reference to the Secretary of State.

97 Works for preservation of unoccupied listed building in cases of urgency

If it appears to a local planning authority that any works are urgently necessary for the preservation of any unoccupied building situated in their district which—

- (a) is included in a list compiled or approved under section 52 of this Act; and
(b) is not an excepted building as defined in section 56(2) of this Act,

they may, after giving to the owner of the building not less than seven days' notice in writing of the proposed execution of the works, take such steps as they consider appropriate for executing the works.