

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 — Buildings of special architectural or historic interest

Chapter 4 — Enforcement of controls relating to listed buildings

Section 127 — Right to appeal against enforcement notice

476. **Section 127** permits anyone who has an interest in the listed building to which an enforcement notice relates to appeal to the Welsh Ministers against the notice. This includes owners, lessees and tenants, official receivers and mortgagees and other lenders.
477. Subsection (1)(b) also provides that any person, who by virtue of a licence occupies the building on the day on which the notice is issued and continues to occupy it when the appeal is made, may appeal to the Welsh Ministers against an enforcement notice.
478. Subsection (2) lists the permissible grounds for an appeal.
479. Ground (a) allows the listing of the building to be challenged. An appellant resorting to ground (a) would need to demonstrate that the building is not of special architectural or historic interest. In making the case, consideration must be given not only to the building itself, in its condition prior to any unauthorised works taking place, but also to any contribution made by associated structures or artificial objects in the curtilage of the building. If an appeal on this ground is successful, the Welsh Ministers will delist the building (see section 128(3)(c)).
480. Ground (b) permits an appellant to challenge an enforcement notice by contending that the matters alleged to have constituted a breach of section 88 or a condition of a listed building consent never took place.
481. Ground (c), on the other hand, allows an appellant to argue that those matters, if they occurred, did not constitute a breach. An appeal could be made, for example, if works took place, but they did not affect the character of the building as one of special architectural or historic interest. Ground (c) will also accommodate appeals arguing that a breach did not occur because the building in question is not listed or that what has been listed is not a building. Such situations were considered and recognised as legitimate grounds for appeal in *Dill v Secretary of State for Housing, Communities and Local Government and another* [2020] 1 WLR 2206.
482. Ground (d) allows an appeal on the basis that the works to which the enforcement notice relates were urgently necessary for health and safety or the preservation of the building, those objectives could not be secured by works of repair or to provide temporary support or shelter and the works undertaken were limited to the minimum measures necessary.
483. Ground (e) provides for circumstances in which the appellant maintains that listed building consent should be granted for the unauthorised works to which an enforcement notice relates or a condition of a granted consent should be removed or replaced. Such

an appeal might be made if the works in question had a neutral or beneficial effect on the character of the listed building.

484. Ground (f) permits an appeal if a notice was not served on a person as required under section 124. That section requires service on every owner and occupier and any other person with an interest in the building whom the planning authority considers will be materially affected by the notice. However, section 128(4) establishes that if the failure to serve an enforcement notice on a person is a ground for an appeal, the Welsh Ministers may ignore the fact if neither the appellant nor that person has been substantially prejudiced by the failure.
485. Ground (g) provides for an appeal on the ground that steps required in an enforcement notice would not serve the purpose of restoring the character of a building. This would allow an appellant to challenge, for example, an enforcement notice that required the reconstruction of a demolished feature using all of the broken pieces with resulting joins and cracks. The appellant might argue that a faithful replica of the feature, without the distracting joins and cracks, would more fully restore the character of the building.
486. Ground (h) provides that an appeal can argue that remedial steps detailed in the notice under section 123(3) exceed what is necessary to restore the listed building, alleviate the effect of the breach, or put the building into the condition it would have been in if conditions attached to a consent had been fulfilled.
487. Ground (i) allows for an appeal on the basis that the period within which the notice requires any step to be taken is unreasonably short. Successful appeals on ground (i) almost invariably lead to enforcement notices being varied to allow for longer periods in which to carry out the specified works and are unlikely to result in notices being quashed.