



# Historic Environment (Wales) Act 2023

2023 asc 3

## PART 3

### BUILDINGS OF SPECIAL ARCHITECTURAL OR HISTORIC INTEREST

#### CHAPTER 4

##### ENFORCEMENT OF CONTROLS RELATING TO LISTED BUILDINGS

###### *Appeals and other proceedings relating to enforcement notices*

#### **127 Right to appeal against enforcement notice**

- (1) The following persons may appeal to the Welsh Ministers against an enforcement notice (whether or not a copy of the notice has been served on them)—
  - (a) any person who has an interest in the listed building to which the notice relates;
  - (b) any person who by virtue of a licence—
    - (i) occupies the building on the day the notice is issued, and
    - (ii) continues to occupy it when the appeal is made.
- (2) An appeal may be made on one or more of the following grounds—
  - (a) that the building is not of special architectural or historic interest;
  - (b) that the matters alleged to constitute a breach of section 88 or of a condition of listed building consent have not occurred;
  - (c) that those matters (if they occurred) do not constitute such a breach;
  - (d) that the following conditions are met—
    - (i) works to the building were urgently necessary in the interests of safety or health or for the preservation of the building,
    - (ii) it was not practicable to secure safety or health or the preservation of the building by carrying out works of repair or works to provide temporary support or shelter, and

- (iii) the works carried out were limited to the minimum measures immediately necessary;
  - (e) that listed building consent ought to be granted for the works to which the notice relates, or that any relevant condition of listed building consent which has been granted for the works ought to be removed or replaced with different conditions;
  - (f) that a copy of the notice was not served on a person as required by section 124;
  - (g) that steps which the notice requires under section 123(3)(a) would not serve the purpose of restoring the character of the building;
  - (h) that steps which the notice requires for any of the purposes set out in section 123(3) exceed what is necessary for the purpose in question;
  - (i) that the period within which the notice requires any step to be taken is unreasonably short.
- (3) An appeal must be made by—
- (a) serving a notice of appeal on the Welsh Ministers before the date specified in the enforcement notice as the date on which it is to take effect,
  - (b) sending a notice of appeal to the Welsh Ministers in a properly addressed and pre-paid letter posted to them at a time when, in the ordinary course of post, it would be delivered to them before that date, or
  - (c) sending a notice of appeal to the Welsh Ministers using electronic communications at a time when, in the ordinary course of transmission, it would be delivered to them before that date.
- (4) Where an appeal is made—
- (a) the enforcement notice has no effect until the appeal is finally determined or withdrawn; but this is subject to any order under section 184(5);
  - (b) neither the appellant nor any other person is entitled, in any other proceedings started after the making of the appeal, to claim that the enforcement notice was not served on the appellant in accordance with section 124.
- (5) An appellant must submit to the Welsh Ministers a statement in writing containing information required by regulations made by the Welsh Ministers.
- (6) The appellant must submit the statement either—
- (a) with the notice of appeal, or
  - (b) within the period specified in regulations made by the Welsh Ministers.
- (7) Where an appeal is made on more than one ground, if the appellant fails to give information required under subsection (5) in relation to a ground within the period specified under subsection (6)(b), the Welsh Ministers may determine the appeal without considering that ground.
- (8) Chapter 2 of Part 5 makes provision about the procedure for the consideration of appeals under this section (including provision for them to be determined by persons appointed by the Welsh Ministers).

## **128 Determination of appeal**

- (1) On an appeal under section 127, the Welsh Ministers may—
- (a) correct any defect, error or misdescription in the enforcement notice to which the appeal relates, or

- (b) vary the terms of the notice,  
if they are satisfied that the correction or variation will not cause injustice to the appellant or the planning authority.
- (2) Where the Welsh Ministers determine an appeal—
  - (a) if they allow the appeal, they may quash the enforcement notice;
  - (b) they must give any directions necessary to give effect to their determination.
- (3) On the determination of an appeal the Welsh Ministers may—
  - (a) grant listed building consent for any of the works to which the enforcement notice relates;
  - (b) remove any condition subject to which listed building consent was granted and replace it with any other condition, whether more or less onerous;
  - (c) exercise their power under section 76 to de-list the building to which the appeal relates.
- (4) Where it would otherwise be a ground for determining to allow an appeal that a copy of the enforcement notice was not served on a person who was required to be served, the Welsh Ministers may ignore that fact if neither the appellant nor that person has been substantially prejudiced by the failure.
- (5) The Welsh Ministers may—
  - (a) dismiss an appeal if the appellant fails to comply with section 127(6);
  - (b) allow an appeal and quash the enforcement notice if the planning authority fails, within the period specified in regulations made under section 175, to comply with a requirement of the regulations to—
    - (i) submit a statement of the representations the authority proposes to make on the appeal which includes the matters specified in the regulations, or
    - (ii) send the Welsh Ministers a copy of the enforcement notice and a list of the persons on whom copies of it were served.
- (6) The decision of the Welsh Ministers on the appeal (including any decision relating to the exercise of the powers conferred by subsection (3)) is final.

## **129 Grounds for appeal not to be raised in other proceedings**

The validity of an enforcement notice may not be questioned, on any of the grounds on which an appeal may be made under section 127, in any proceedings except an appeal under that section.