2011 CHAPTER 25

PART 5

ENFORCEMENT

Discontinuance orders

Enforcement of orders under section 73

168.—(1) Any person who, without the grant of planning permission in that behalf, uses land, or causes or permits land to be used—

(a) after the expiry of the period allowed for compliance with an order under section 73, for any purpose for which an order under that section has required that its use shall be discontinued; or

(b) in contravention of any condition imposed by such an order by virtue of subsection (1)(a) of that section,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If the use is continued after the conviction of a person of an offence under subsection (1), that person shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the use is so continued.

(3) It shall be a defence for a person charged with an offence under subsection (1) or (2) to prove that that person took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or herself or by any person under his or her control.

(4) If in any case the defence provided by subsection (3) involves an allegation that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending 7 days before the hearing, that person has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in the first mentioned person's possession.

(5) If any steps required by an order under section 73 to be taken for the alteration or removal of any buildings or works have not been taken within the period allowed for compliance with the order, a person authorised in writing by the council may enter the land and take those steps, and the council may recover from the person who is then the owner of the land any expenses reasonably incurred by it in that behalf; and those expenses shall be a civil debt recoverable summarily.

(6) Where a copy of an order under section 73 has been served on the person who, at the time when the copy was served on that person, was the owner of the land to which the order relates, then, if any steps required by the order to be taken for the alteration or removal of any buildings or works have not been taken within the period allowed for compliance with the order, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) If a person against whom proceedings are brought under subsection (6) has, at some time before the end of the period allowed for compliance with the order, ceased to be the owner of the land, that person shall, upon a complaint duly made and on giving to the prosecution not less than 3 days' notice of his or her intention, be entitled to have the person who then became the owner of the land (in subsection (8) referred to as "the subsequent owner") brought before the court in the proceedings.

(8) If after it has been proved, in a case to which subsection (7) applies, that any steps required by the order under section 73 have not been taken within the period allowed for compliance with the order, the original defendant proves that the failure to take those steps was 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 that person further proves that he or she took all reasonable steps to secure compliance with the order, shall be acquitted of the offence.

(9) If after a person has been convicted of an offence under subsections (6) to (8) that person does not as soon as practicable do everything in his or her power to secure compliance with the order under section 73 in so far as it requires steps to be taken for the alteration or removal of any buildings or works, that person

shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day following the first conviction on which any requirements of the order remain unfulfilled.

(10) Any reference in this section to the period allowed for compliance with an order under section 73 is a reference to the period specified in the order for compliance with it or such extended period as may be allowed by the council or, as the case may be, by the Department for compliance with the order.