



2011 CHAPTER 25

PART 5

ENFORCEMENT

Enforcement notices

Issue of enforcement notice by councils

138.—(1) The council may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to the council—

- (a) that there has been a breach of planning control in relation to any land in its district; and
 - (b) that it is expedient to issue the notice, having regard to the provisions of the local development plan and to any other material considerations.
- (2) A copy of an enforcement notice must be served—
- (a) on the owner and on the occupier of the land to which it relates; and
 - (b) on any other person having an estate in the land, being an estate which, in the opinion of the council, is materially affected by the notice.
- (3) The service of the notice must take place—
- (a) not more than 28 days after its date of issue; and
 - (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

Issue of enforcement notice by Department

139.—(1) The Department may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to the Department—

- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the provisions of the local development plan and to any other material considerations.

(2) The Department must not issue an enforcement notice without consulting the appropriate council.

(3) A copy of an enforcement notice must be served—

- (a) on the owner and on the occupier of the land to which it relates; and
- (b) on any other person having an estate in the land, being an estate which, in the opinion of the Department, is materially affected by the notice.

(4) The service of the notice must take place—

- (a) not more than 28 days after its date of issue; and
- (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

(5) In relation to an enforcement notice issued by the Department, sections 146 and 149 shall apply as if for any reference in those sections to the council there were substituted a reference to the Department.

Contents and effect of enforcement notice

140.—(1) An enforcement notice must state—

- (a) the matters which appear to the council or, as the case may be, the Department to constitute the breach of planning control; and
- (b) the paragraph of section 131(1) within which, in the opinion of the council or Department, the breach falls.

(2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.

(3) An enforcement notice must specify the steps which the council or, as the case may be, the Department requires to be taken, or the activities which the council or the Department requires to cease, in order to achieve, wholly or partly, any of the following purposes.

(4) Those purposes are—

- (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
- (b) remedying any injury to amenity which has been caused by the breach.

- (5) An enforcement notice may, for example, require—
- (a) the alteration or removal of any buildings or works;
 - (b) the carrying out of any building or other operations;
 - (c) any activity on the land not to be carried on except to the extent specified in the notice; or
 - (d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.

(6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7), is as similar as possible to the demolished building.

- (7) A replacement building—
- (a) must comply with any requirement imposed by any statutory provision applicable to the construction of buildings;
 - (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;
 - (c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b)).

(8) An enforcement notice must specify the date on which it is to take effect and, subject to section 143(7), shall take effect on that date.

(9) An enforcement notice must specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

(10) An enforcement notice must specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 138 or 139 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 143.

- (11) Where—
- (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and
 - (b) all the requirements of the notice have been complied with,

then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 55 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

(12) Where—

- (a) an enforcement notice requires the construction of a replacement building; and
- (b) all the requirements of the notice with respect to that construction have been complied with,

planning permission shall be treated as having been granted by virtue of section 55 in respect of development consisting of that construction.

Variation and withdrawal of enforcement notices by councils

141.—(1) The council may—

- (a) withdraw an enforcement notice issued by it; or
- (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 140(9).

(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

(3) The council must, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not affect the power of the council to issue a further enforcement notice.

Variation and withdrawal of enforcement notices by Department

142.—(1) The Department may—

- (a) withdraw an enforcement notice issued by it; or
- (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 140(9).

(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

(3) The Department must, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not affect the power of the Department to issue a further enforcement notice.

Appeal against enforcement notice

143.—(1) A person having an estate in the land to which an enforcement notice relates or a person to whom subsection (2) applies may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the planning appeals commission against the notice, whether or not a copy of it has been served on that person.

(2) This subsection applies to a person who—

- (a) on the date on which the enforcement notice is issued occupies the land to which it relates by virtue of a licence; and
- (b) continues to occupy the land as aforesaid when the appeal is brought.

(3) An appeal may be brought on any of the following grounds—

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the enforcement notice were not served as required by section 138 or, as the case may be, section 139;
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) that any period specified in the notice in accordance with section 140(9) falls short of what should reasonably be allowed.

(4) An appeal under this section must be made by serving written notice of the appeal on the planning appeals commission before the date specified in the enforcement notice as the date on which it is to take effect and such notice must indicate the grounds of the appeal and state the facts on which it is based.

(5) Before determining an appeal under this section, the planning appeals commission must, if either—

- (a) the appellant; or

(b) the council or, as the case may be, Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(6) Sections 41 and 45(2) shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this section as they apply to an application for planning permission to the council or the Department.

(7) 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.

(8) Subject to subsection (9), the validity of an enforcement notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

(9) Subsection (8) shall not apply to proceedings brought under section 147 against a person who—

- (a) has held an estate in the land since before the enforcement notice was issued;
- (b) was not served with a copy of the enforcement notice; and
- (c) satisfies the court that—
 - (i) that person did not know and could not reasonably have been expected to know that the enforcement notice had been issued; and
 - (ii) that person's interests have been substantially prejudiced by the failure to serve him or her with a copy of it.

Appeal against enforcement notice - general supplementary provisions

144.—(1) On an appeal under section 143 the planning appeals commission must quash the enforcement notice, vary the terms of the notice or uphold the notice.

(2) On such an appeal the planning appeals commission may correct any misdescription, defect or error in the enforcement notice, or vary its terms if it is satisfied that the correction or variation can be made without injustice to the appellant or to the council or, as the case may be, the Department.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the enforcement notice was not so served, the planning appeals commission may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve the copy of the enforcement notice.

Appeal against enforcement notice - supplementary provisions relating to planning permission

145.—(1) On the determination of an appeal under section 143, the planning appeals commission may—

- (a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;
- (b) discharge any condition or limitation subject to which planning permission was granted;
- (c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 169.

(2) The provisions of sections 169 to 172 mentioned in subsection (3) shall apply for the purposes of subsection (1)(c) as they apply for the purposes of section 169, but as if—

- (a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and
- (b) references to the council were references to the planning appeals commission.

(3) Those provisions are sections 169(5) to (7), 171(4) (so far as it relates to the form of the certificate), (6) and (7) and 172.

(4) In considering whether to grant planning permission under subsection (1), the planning appeals commission must have regard to the local development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations; and planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part 3; and where under that subsection the planning appeals commission discharges a condition or limitation, it may substitute another condition or limitation for it, whether more or less onerous.

(5) Where an appeal against an enforcement notice is brought under section 143, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control and, in relation to any exercise by the planning appeals commission of its powers under subsection (1)—

- (a) any planning permission granted under that subsection shall be treated as granted on that application;

- (b) in relation to a grant of planning permission or a determination under that subsection, the decision of the planning appeals commission shall be final; and
 - (c) subject to paragraph (b), any planning permission granted under that subsection shall have the like effect as a permission granted under Part 3.
- (6) Where—
- (a) the notice under subsection (4) of section 143 indicates the ground mentioned in subsection (3)(a) of that section;
 - (b) any fee is payable under regulations made by virtue of section 223 in respect of the application deemed to be made by virtue of the appeal; and
 - (c) the planning appeals commission gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application, shall lapse at the end of that period.

Execution and cost of works required by enforcement notice

146.—(1) Where any steps required by an enforcement notice to be taken are not taken within the period allowed for compliance with the notice, a person authorised in writing by the council may—

- (a) enter the land and take the steps; and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(2) Any expenses incurred by the owner or occupier of any land for the purposes of complying with an enforcement notice in respect of any breach of planning control, and any sums paid by the owner of any land under subsection (1), in respect of expenses incurred by the council in taking steps required to be taken by such a notice, shall be deemed to be incurred for the use and at the request of the person by whom the breach of planning control was committed.

(3) The council may sell any materials which have been removed by it from any land when taking steps under subsection (1) if, before the expiration of 3 days from their removal, they are not claimed and taken away by their owner.

(4) Where the council sells any materials under subsection (3), it must pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by it from that person.

(5) Subsections (3) and (4) do not apply to refuse removed by the council.

(6) Where the council claims to recover any expenses under this section from a person as being the owner of the land in respect of which the expenses were incurred and that person proves that—

Status: This is the original version (as it was originally enacted).

- (a) that person is receiving the rent of that land merely as agent or trustee for some other person; and
- (b) has not, and since the date of the service of a demand for payment has not had, on behalf of that other person sufficient money to discharge the whole demand of the council,

that person's liability shall be limited to the total amount of the money which that person has or has had as mentioned in paragraph (b), but the council where it is, or would be, debarred by this subsection from recovering the whole of any such expenses from an agent or trustee may recover the whole of any unpaid balance thereof from the person on whose behalf the agent or trustee receives the rent.

(7) Any expenses recoverable by the council under this section shall, until recovered, be deemed to be charged on and payable out of the estate in the land in relation to which they have been incurred, of the owner of the land and of any person deriving title from the owner.

(8) The charge created by subsection (7) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the council by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the council may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 (c. 41) on mortgagees by deed accordingly.

(9) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offence where enforcement notice not complied with

147.—(1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.

(2) Where the owner of the land is in breach of an enforcement notice that person shall be guilty of an offence.

(3) In proceedings against any person for an offence under subsection (2), it shall be a defence to show that that person did everything that person could be expected to do to secure compliance with the notice.

(4) A person who has control of or an estate in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.

(5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.

(6) An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.

(7) Where—

- (a) a person charged with an offence under this section has not been served with a copy of the enforcement notice; and
- (b) the notice is not contained in the appropriate register kept under section 242,

it shall be a defence for that person to show that that person was not aware of the existence of the notice.

(8) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine not exceeding £100,000;
- (b) on conviction on indictment, to a fine.

(9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

Effect of planning permission, etc., on enforcement or breach of condition notice

148.—(1) Where, after the service of—

- (a) a copy of an enforcement notice; or
- (b) a breach of condition notice,

planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

(2) Where after a breach of condition notice has been served any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.

(3) The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section does not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.

Enforcement notice to have effect against subsequent development

149.—(1) Compliance with an enforcement notice whether in respect of—

- (a) the completion, removal or alteration of any buildings or works; or

(b) the discontinuance of any use of land, or in respect of any other requirement contained in the enforcement notice, shall not discharge the enforcement notice.

(2) Without prejudice to subsection (1), 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 3; 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), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed 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 removed or altered; and, subject to subsection (4), section 146 shall apply accordingly.

(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 removed or altered in compliance with the notice, and
- (b) the council proposes, under section 146(1), to take any steps required by the enforcement notice for the removal or alteration of the buildings or works in consequence of the reinstatement or restoration,

the council must, not less than 28 days before taking any such steps, serve on the owner and occupier of the land a notice of its 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 removed 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 £7,500; and no person shall be liable under section 147(2) for failure to take any steps required to be taken by an enforcement notice by way of removal or alteration of what has been so reinstated or restored.

Service of stop notices by councils

150.—(1) Where the council considers it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, it may, when it serves the copy of the enforcement notice or afterwards, serve a 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 the carrying out

of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.

(2) In this section and section 185 “relevant activity” means any activity specified in the enforcement notice as an activity which the council requires to cease and any activity carried out as part of that activity or associated with that activity.

(3) A stop notice may not be served where the enforcement notice has taken effect.

(4) A stop notice shall not prohibit any person from continuing to use any building, caravan or other structure situated upon the land as that person’s permanent residence whether as owner, occupier, tenant, patient, guest or otherwise.

(5) A stop notice shall not take effect until such date as it may specify (and it cannot be contravened until that date).

(6) The date specified in a stop notice must be the date when the notice is served, unless the council considers that there are special reasons for specifying a later date, but the date specified in the notice must, in any case, be a date not later than 28 days from the date when the notice is first served on any person.

(7) A stop notice shall not prohibit the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than 5 years ending with the service of the notice; and for the purposes of this subsection no account is to be taken of any period during which the activity was authorised by planning permission.

(8) Subsection (7) does not prevent a stop notice prohibiting any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.

(9) A stop notice shall cease to have effect when—

- (a) the enforcement notice referred to in it is withdrawn or quashed; or
- (b) the period for compliance with the enforcement notice expires; or
- (c) notice of withdrawal of the stop notice is first served under subsection (11);
or
- (d) if or to the extent that the activities prohibited by it cease, on a variation of the enforcement notice referred to in it, to be relevant activities.

(10) A stop notice may be served by the council on any person who appears to it to have an estate in the land or to be engaged in any activity prohibited by the notice; and where a stop notice has been served in respect of any land, the council may display there a notice (in this section referred to as a “site notice”) stating—

- (a) that a stop notice has been served; and

(b) that any person contravening the stop notice may be prosecuted for an offence under this section, giving the date when the stop notice takes effect and indicating its requirements.

(11) The council may at any time withdraw a stop notice (without prejudice to its power to serve another)—

(a) by serving notice to that effect on persons served with the stop notice; and

(b) if a site notice was displayed in respect of the stop notice, displaying a notice of the withdrawal in place of the site notice.

(12) A person who contravenes a stop notice after a site notice has been displayed or the stop notice has been served on that person shall be guilty of an offence.

(13) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.

(14) References in this section to contravening a stop notice include causing or permitting its contravention.

(15) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding £100,000;

(b) on conviction on indictment, to a fine.

(16) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

(17) In proceedings for an offence under this section it is a defence for the accused to prove that the stop notice was not served on the accused and that the accused did not know, and could not reasonably have been expected to know, of its existence.

(18) A stop notice shall not be invalid by reason that a copy of the enforcement notice to which it relates was not served as required by section 138 or, as the case may be, 139 if it is shown that the council took all such steps as were reasonably practicable to effect proper service.

Service of stop notices by Department

151.—(1) The Department may serve a stop notice.

(2) The Department must not serve a stop notice without consulting the appropriate council.

(3) A notice served by the Department under subsection (1) shall have the same effect as if it had been served by a council.

(4) The provisions of section 150 shall apply, with any necessary modifications, to the service of a stop notice by the Department as they apply to the service of a stop notice by a council.