



# Planning (Listed Buildings and Conservation Areas) Act 1990

## 1990 CHAPTER 9

### PART I **E+W**

#### LISTED BUILDINGS

### CHAPTER IV **E+W**

#### ENFORCEMENT

##### **Modifications etc. (not altering text)**

**C1** Chs. I, II (ss. 1-26) and IV (ss. 38-44) of Pt. I, ss. 54-56, 59-61, 66, 68-72, 74-76 and 88: power to apply conferred (10.11.1993) by 1993 c. 28, s. 171(4)(b); S.I. 1993/2762, art.3.

### **38 Power to issue listed building enforcement notice. **E+W****

- (1) Where it appears to the local planning authority—
  - (a) that any works have been or are being executed to a listed building in their area; and
  - (b) that the works are such as to involve a contravention of section 9(1) or (2), 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, issue a notice under this section (in this Act referred to as a “listed building enforcement notice”).
- (2) A listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken within such period as may be so specified—
  - (a) for restoring the building to its former state; or

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- (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent; or
  - (c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.
- (3) A listed building enforcement notice shall specify the date on which it is to take effect (in this section referred to as “the specified date”).
- (4) A copy of a listed building enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the specified date—
- (a) on the owner and on the occupier of the building to which it relates; and
  - (b) on any other person having an interest in that building which in the opinion of the authority is materially affected by the notice.
- (5) The local planning authority may withdraw a listed building enforcement notice (without prejudice to their power to issue another) at any time before it takes effect.
- (6) If they do so, they shall immediately give notice of the withdrawal to every person who was served with a copy of the notice.
- (7) Where a listed building enforcement notice imposes any such requirement as is mentioned in subsection (2)(b), listed building consent shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice.

**Modifications etc. (not altering text)**

**C2** S. 38 modified by S.I. 1990/1519, reg. 13(1); applied (with modifications) by S.I. 1990/1519, reg. 12, Sch. 3

**39 Appeal against listed building enforcement notice. E+W**

- (1) A person having an interest in the building to which a listed building enforcement notice relates or a relevant occupier may 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 9(1) or (2) do not involve such a contravention;
  - (c) that the contravention of that section alleged in the notice has not taken place;
  - (d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
  - (e) 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;
  - (f) that copies of the notice were not served as required by section 38(4);

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- (g) except in relation to such a requirement as is mentioned in section 38(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
  - (h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
  - (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
  - (j) that steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building;
  - (k) that steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.
- (2) An appeal under this section must be made by notice in writing to the Secretary of State before the date specified in the listed building enforcement notice as that on which it is to take effect.
- (3) Where such an appeal is brought the listed building enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (4) A person who gives notice of appeal under this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed, a statement in writing—
- (a) specifying the grounds on which he is appealing against the listed building enforcement notice; and
  - (b) giving such further information as may be prescribed.
- (5) If, where more than one ground is specified in the statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.
- (6) Where any person has appealed to the Secretary of State under this section against a notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.
- (7) In this section “relevant occupier” means a person who—
- (a) on the date on which the listed building enforcement notice is issued occupies the building to which the notice relates by virtue of a licence in writing; and
  - (b) continues so to occupy the building when the appeal is brought.

**Modifications etc. (not altering text)**

C3 S. 39 applied (with modifications) by S.I. 1990/1519, reg. 12, Sch. 3

C4 S. 39(1)–(5)(7) modified by S.I. 1990/1519, reg. 13(1)

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#### 40 Appeals: supplementary provisions. **E+W**

- (1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 39, and in particular, but without prejudice to the generality of this subsection may—
  - (a) require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
  - (b) specify the matters to be included in such a statement;
  - (c) require the authority or the appellant to give such notice of such an appeal as may be prescribed, being notice which in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the building in question is situated;
  - (d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.
- (2) Subject to section 41(4), the Secretary of State shall, if either the appellant or the local planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (3) Schedule 3 applies to appeals under section 39.

#### Modifications etc. (not altering text)

- C5** [S. 40](#) modified by [S.I. 1990/1519](#), [reg. 13\(1\)](#); applied (with modifications) by [S.I. 1990/1519](#), [reg. 12](#), [Sch. 3](#)

#### 41 Determination of appeals under s. 39. **E+W**

- (1) On the determination of an appeal under section 39, the Secretary of State shall give directions for giving effect to the determination, including where appropriate directions for quashing the listed building enforcement notice or for varying its terms.
- (2) On such an appeal if the Secretary of State is satisfied that to do so will not cause injustice to the appellant or to the local planning authority, he may—
  - (a) correct any informality, defect or error in the listed building enforcement notice, or
  - (b) give directions for varying its terms.
- (3) The Secretary of State—
  - (a) may dismiss such an appeal if the appellant fails to comply with section 39(4) within the prescribed time; and
  - (b) may allow such an appeal and quash the listed building enforcement notice if the local planning authority fail to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 40(1)(a), (b) or (d).
- (4) If the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) or to allow an appeal and quash the listed building enforcement notice under paragraph (b) of that subsection he need not comply with section 40(2).

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- (5) Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required to be served with a copy of the listed building enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
- (6) On the determination of an appeal the Secretary of State may—
- (a) grant listed building consent for the works to which the listed building enforcement notice relates or for part only of those works;
  - (b) discharge any condition or limitation subject to which listed building consent was granted and substitute any other condition, whether more or less onerous;
  - (c) if he thinks fit, exercise his power under section 1 to amend any list compiled or approved under that section by removing from it the building to which the appeal relates.
- (7) Any listed building consent granted by the Secretary of State under subsection (6) shall be treated as granted on an application for the same consent under section 10 and the Secretary of State's decision in relation to the grant shall be final.
- [<sup>F1</sup>(8) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on an appeal under section 39 as if those proceedings were an inquiry held by the Secretary of State under section 250.]

#### Textual Amendments

- F1** S. 41(8) inserted (*temp.* subject to S.I. 1991/2698, **arts. 3, 4**) by virtue of [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 6, Sch. 4 paras. 1, **9**

#### Modifications etc. (not altering text)

- C6** S. 41 modified by [S.I. 1990/1519, reg. 13\(1\)](#); applied (with modifications) by [S.I. 1990/1519, reg. 12, Sch. 3](#)

## 42 Execution of works required by listed building enforcement notice. **E+W**

- (1) If any of the steps specified in the listed building enforcement notice have not been taken within the compliance period, the authority may—
- (a) enter the land and take those steps, and
  - (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.
- (2) Where a listed building enforcement notice has been served in respect of a building—
- (a) any expenses incurred by the owner or occupier of the building for the purpose of complying with it, and
  - (b) any sums paid by the owner of the building under subsection (1) in respect of expenses incurred by the local planning authority in taking steps required by it,
- 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.

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- (3) Regulations under this Act may provide that all or any of the following sections of the <sup>M1</sup>Public Health Act 1936, namely—
- (a) section 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);
  - (b) section 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises);
  - (c) section 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act),
- shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a listed building enforcement notice.
- (4) Regulations under subsection (3) applying all or any of section 289 of that Act may include adaptations and modifications for the purpose of giving the owner of land to which such a notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice.
- (5) Regulations under subsection (3) may also provide for the charging on the land on which the building stands of any expenses recoverable by a local planning authority under subsection (1).
- (6) Where any expenses are recoverable by a local planning authority by virtue of this section, those expenses shall be recoverable as a simple contract debt in any court of competent jurisdiction.
- (7) In this section and in section 43 references to “the compliance period”, in relation to a listed building enforcement notice, are references to the period specified in the notice as that within which the steps specified in it are to be taken, or such extended period as the local planning authority may allow for the taking of those steps.

**Modifications etc. (not altering text)**

**C7** S. 42 applied (with modifications) by S.I. 1990/1519, reg. 12, Sch. 3

**C8** S. 42 (1)–(5), (7) modified by S.I. 1990/1519, reg. 13(1)

**Marginal Citations**

**M1** 1936 c. 49.

**43 Penalties for non-compliance with listed building enforcement notice. E+W**

- (1) Where a listed building enforcement notice has been served on the person who at the time when the notice was served was the owner of the building to which it relates, and any steps required by the notice have not been taken within the compliance period, then subject to the provisions of this section, that person shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.
- (2) Where proceedings have been brought under subsection (1) against a person (“the original owner”) who ceased to be the owner of the building before the end of the compliance period, if he—

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- (a) duly lays information to that effect; and
  - (b) gives the prosecution not less than three clear days' notice of his intention,
- he shall be entitled to have the person who then became the owner of the building (“the subsequent owner”) brought before the court in the proceedings.
- (3) Where in such proceedings—
- (a) it is proved that any steps required by the notice have not been taken within the compliance period; and
  - (b) the original owner proves that the failure to take those steps was attributable, in whole or in part, to the default of the subsequent owner,
- then—
- (i) the subsequent owner may be convicted of the offence; and
  - (ii) if the original owner also proves that he took all reasonable steps to secure compliance with the notice, he shall be acquitted of the offence.
- (4) If, after a person has been convicted under the previous 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 liable—
- (a) on summary conviction, to a fine not exceeding £200 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.

**Modifications etc. (not altering text)**

**C9** Ss. 43–46 modified by S.I. 1990/1519, reg. 13(1); applied (with modifications) by S.I. 1990/1519, reg. 12, Sch. 3

**44 Effect of listed building consent on listed building enforcement notice. E+W**

- (1) If, after the issue of a listed building enforcement notice, consent is granted under section 8(3)—
- (a) for the retention of any work to which the notice relates; or
  - (b) permitting the retention of works without compliance with some condition subject to which a previous listed building consent was granted,
- the notice shall cease to have effect in so far as it requires steps to be taken involving the works not being retained or, as the case may be, for complying with that condition.
- (2) The fact that such a notice has wholly or partly ceased to have effect under subsection (1) shall not affect the liability of any person for an offence in respect of a previous failure to comply with that notice.

**Modifications etc. (not altering text)**

**C10** Ss. 43–46 modified by S.I. 1990/1519, reg. 13(1); applied (with modifications) by S.I. 1990/1519, reg. 12, Sch. 3

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#### [44A] <sup>F2</sup>**Injunctions.** **E+W**

- (1) Where a local planning authority consider it necessary or expedient for any actual or apprehended contravention of section 9(1) or (2) to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
- (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the contravention.
- (3) Rules of court may, in particular, provide for such an injunction to be issued against a person whose identity is unknown.
- (4) The references in subsection (1) to a local planning authority include, as respects England, the Commission.
- (5) In this section “the court” means the High Court or the county court.]

#### Textual Amendments

**F2** S. 44A inserted (25.11.1991 for the purposes specified in S.I. 1991/2728, **art. 2**) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. I para.7**; S.I. 1991/2728, **art.2**

#### Modifications etc. (not altering text)

**C11** S. 44A: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, **reg. 2(1)**, **Sch. 1** Table A26

#### 45 **Commission to have concurrent enforcement functions in London.** **E+W**

The Commission shall, as respects any London borough, have concurrently with the council of that borough the functions of a local planning authority under sections 38 to 43; and references to the local planning authority in those provisions shall be construed accordingly.

#### Modifications etc. (not altering text)

**C12** Ss. 43–46 modified by S.I. 1990/1519, **reg. 13(1)**; applied (with modifications) by S.I. 1990/1519, **reg. 12**, **Sch. 3**

#### 46 **Enforcement by the Secretary of State.** **E+W**

- (1) If it appears to the Secretary of State to be expedient that a listed building enforcement notice should be issued in respect of any land, he may issue such a notice.
- (2) Before the Secretary of State serves a notice under subsection (1) he shall consult—
  - (a) the local planning authority; and
  - (b) if the land is situated in England, the Commission.
- (3) A listed building enforcement notice issued by the Secretary of State shall have the same effect as a notice issued by the local planning authority.



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- (4) In relation to a listed building enforcement notice issued by the Secretary of State, sections 42 and 43 shall apply as if for any reference in those sections to the local planning authority there were substituted a reference to the Secretary of State.
- (5) References in this section to the local planning authority shall in the case of an authority for an area outside Greater London be construed as references to the district planning authority.

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**Modifications etc. (not altering text)**

**C13** Ss. 43–46 modified by S.I. 1990/1519, reg. 13(1); applied (with modifications) by S.I. 1990/1519, reg. 12, Sch. 3

**Status:**

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**Changes to legislation:**

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