



# Planning (Wales) Act 2015

2015 anaw 4

## PART 7

### ENFORCEMENT, APPEALS ETC

#### *Enforcement*

#### **43 Breach of planning control: enforcement warning notice**

- (1) TCPA 1990 is amended as follows.
- (2) After section 173 insert—

##### **“173ZA Enforcement warning notice: Wales**

- (1) This section applies where it appears to the local planning authority that—
  - (a) there has been a breach of planning control in respect of any land in Wales, and
  - (b) there is a reasonable prospect that, if an application for planning permission in respect of the development concerned were made, planning permission would be granted.
- (2) The authority may issue a notice under this section (an “enforcement warning notice”).
- (3) A copy of an enforcement warning notice is to be served—
  - (a) on the owner and the occupier of the land to which the notice relates, and
  - (b) on any other person having an interest in the land, being an interest that, in the opinion of the authority, would be materially affected by the taking of any further enforcement action.
- (4) The notice must—

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- (a) state the matters that appear to the authority to constitute the breach of planning control, and
  - (b) state that, unless an application for planning permission is made within a period specified in the notice, further enforcement action may be taken.
- (5) The issue of an enforcement warning notice does not affect any other power exercisable in respect of any breach of planning control.”
- (3) In section 171A, in subsection (2) (steps that constitute taking enforcement action), before “or” insert—
- “(aa) the issue of an enforcement warning notice (defined in section 173ZA);”.
- (4) In section 188 (register of enforcement and stop notices etc)—
- (a) in subsection (1), after paragraph (a) insert—
    - “(aa) to enforcement warning notices;”;
  - (b) in subsection (2), in paragraph (a), after “enforcement notice” insert “, enforcement warning notice,”.

#### **44 Appeal against enforcement notice: deemed application for planning permission**

- (1) Section 177 of TCPA 1990 (grant or modification of planning permission on appeals against enforcement notices) is amended as follows.
- (2) In subsection (1C), for the words from the beginning to “subsection” substitute “Subsection”.
- (3) In subsection (5), for the words from the beginning to “in England and” substitute “Where—
- (a) an appeal against an enforcement notice is brought under section 174, and
  - (b)”.

#### *Appeals*

#### **45 Restrictions on right to appeal against planning decisions**

In section 78 of TCPA 1990 (right to appeal against planning decisions and failure to take such decisions), after subsection (4A) insert—

- “(4AA) An appeal under this section may not be brought or continued against the refusal of an application for planning permission if—
- (a) the land to which the application relates is in Wales,
  - (b) granting the application would involve granting planning permission in respect of matters specified in an enforcement notice as constituting a breach of planning control, and
  - (c) on the determination of an appeal against that notice under section 174, planning permission for those matters was not granted under section 177.

- (4AB) An appeal under this section may not be brought or continued against the grant of an application for planning permission subject to a condition, if—
- (a) the land to which the application relates is in Wales,
  - (b) an appeal against an enforcement notice has been brought under section 174 on the ground that the condition ought to be discharged, and
  - (c) on the determination of that appeal, the condition was not discharged under section 177.”

#### **46 Restrictions on right to appeal against enforcement notice**

In section 174 of TCPA 1990 (appeal against enforcement notice), after subsection (2C) insert—

- “(2D) An appeal against an enforcement notice may not be brought on the ground that planning permission ought to be granted in respect of a breach of planning control constituted by a matter stated in the notice, as specified in subsection (2) (a), if—
- (a) the land to which the enforcement notice relates is in Wales, and
  - (b) the enforcement notice was issued after a decision to refuse planning permission for a related development was upheld on an appeal under section 78 (and for this purpose development is “related” if granting planning permission for it would involve granting planning permission in respect of the matter concerned).
- (2E) An appeal may not be brought on the ground that a condition or limitation ought to be discharged, as specified in subsection (2)(a), if—
- (a) the land to which the enforcement notice relates is in Wales, and
  - (b) the enforcement notice was issued after a decision to grant planning permission subject to the condition or limitation was upheld on an appeal under section 78.
- (2F) For the purposes of subsections (2D) and (2E), references to a decision that has been upheld on an appeal include references to a decision in respect of which—
- (a) the Welsh Ministers have, under section 79(6), declined to determine an appeal or to proceed with the determination of an appeal;
  - (b) an appeal has been dismissed under section 79(6A).”

#### **47 No variation of application after service of notice of appeal against planning decision etc**

- (1) In section 78 of TCPA 1990 (right to appeal against planning decisions and failure to take such decisions), after subsection (4B) insert—
- “(4BA) Once notice of an appeal under this section to the Welsh Ministers has been served, the application to which it relates may not be varied, except in such circumstances as may be prescribed by a development order.
- (4BB) A development order which makes provision under subsection (4BA) must provide for an application which is varied to be subject to such further consultation as the Welsh Ministers consider appropriate.”

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(2) In section 195 of TCPA 1990 (appeals against refusal or failure to give decision on application for certificate of lawfulness), after subsection (1D) insert—

“(1DA) Once notice of an appeal under this section to the Welsh Ministers has been served, the application to which it relates may not be varied, except in such circumstances as may be prescribed by a development order.

(1DB) A development order which makes provision under subsection (1DA) must provide for an application which is varied to be subject to such further consultation as the Welsh Ministers consider appropriate.”

(3) In section 21 of the [Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(c. 9\)](#) (appeals against listed buildings decisions or failure to take such decisions), after subsection (4) insert—

“(4A) Once notice of an appeal under section 20 to the Welsh Ministers has been served, the application to which it relates may not be varied, except in such circumstances as may be prescribed.

(4B) Regulations which make provision under subsection (4A) must provide for an application which is varied to be subject to such further consultation as the Welsh Ministers consider appropriate.”

(4) In section 21 of the [Planning \(Hazardous Substances\) Act 1990 \(c. 10\)](#) (appeals against decisions or failure to take decisions relating to hazardous substances), after subsection (3D) insert—

“(3E) Once notice of an appeal under this section to the Welsh Ministers has been served, the application to which it relates may not be varied, except in such circumstances as may be prescribed.

(3F) Regulations which make provision under subsection (3E) must provide for an application which is varied to be subject to such further consultation as the Welsh Ministers consider appropriate.”

#### **48 Appeal against notice in respect of land adversely affecting amenity**

(1) Section 217 of TCPA 1990 (the title of which becomes “Appeal against a section 215 notice”) is amended as follows.

(2) In subsection (2), after “made” insert “—

(a) in the case of a notice relating to land in Wales, to the Welsh Ministers;

(b) in the case of a notice relating to land in England.”.

(3) In subsection (4), after “appeal” insert “the Welsh Ministers or (as the case may be)”.

(4) In subsection (5) after “appeal” insert “the Welsh Ministers or (as the case may be)”.

(5) In subsection (6), omit “to a magistrates’ court”.

(6) After subsection (6) insert—

“(7) The Welsh Ministers may by regulations make provision, in respect of appeals made to them under this section—

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- (a) as to steps to be taken in connection with bringing an appeal (including as to the form and content of any notice required to be given, and persons to whom copies of it are to be provided);
  - (b) about information to be provided to the Welsh Ministers in connection with an appeal;
  - (c) as to the procedure by which an appeal under this section is to be considered (including provision about circumstances in which the appellant or the local planning authority must be given the opportunity of appearing before and being heard by a person appointed by the Welsh Ministers for the purpose).”
- (7) In section 218 of TCPA 1990 (the title of which becomes “Further appeal to the Crown Court: England”), after “been brought” insert “to a magistrates’ court”.
- (8) In section 289 of TCPA 1990 (the title of which becomes “Appeals to High Court relating to enforcement notices and notices under sections 207 and 215”)—
- (a) after subsection (2) insert—

“(2A) Where the Welsh Ministers give a decision in proceedings on an appeal under Part 8 against a notice under section 215, the appellant or the local planning authority or any other person having an interest in the land to which the notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Welsh Ministers to sign and state a case for the opinion of the High Court.”;
  - (b) in subsection (4B), after “207” insert “or 215”;
  - (c) in subsection (5), after “the Secretary of State”, in each place where those words occur, insert “or the Welsh Ministers”.

#### *Appeals etc: costs and procedure*

### **49 Costs on applications, appeals and references**

In TCPA 1990, after section 322B insert—

#### **“322C Costs: Wales**

- (1) This section applies in relation to any application, appeal or reference under this Act to the Welsh Ministers (whether it is considered at an inquiry or hearing or on the basis of written representations).
- (2) The costs incurred by the Welsh Ministers in relation to the application, appeal or reference (or so much of them as the Welsh Ministers may direct) are to be paid by the applicant, appellant or person making the reference, or such local planning authority or other party to the application, appeal or reference, as the Welsh Ministers may direct.
- (3) Costs incurred by the Welsh Ministers in relation to an application, appeal or reference include the entire administrative cost incurred in connection with it so that, in particular, there shall be treated as costs incurred by the Welsh Ministers such reasonable sum as the Welsh Ministers may determine in respect of general staff costs and overheads of the Welsh Government.

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- (4) The costs to which subsection (2) applies include costs in respect of an inquiry or hearing that does not in the event take place and costs incurred in reviewing planning obligations (within the meaning of section 106).
- (5) The Welsh Ministers may by regulations prescribe a standard daily amount for cases involving an inquiry or hearing of any description or cases of any description considered on the basis of representations in writing; and where an inquiry or hearing of that description takes place or a case of that description is considered on the basis of representations in writing, the costs incurred by the Welsh Ministers are to be taken to be—
  - (a) the prescribed standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which a prescribed person is engaged in dealing with the case;
  - (b) costs actually incurred in connection with dealing with the case on travelling or subsistence allowances or the provision of accommodation or other facilities;
  - (c) any costs attributable to the appointment of prescribed persons to assist in dealing with the case;
  - (d) any legal costs or disbursements incurred or made by or on behalf of the Welsh Ministers in connection with the case.
- (6) The Welsh Ministers may make orders as to the costs of the applicant or appellant or any other party to the application, appeal or reference, and as to the person or persons by whom the costs are to be paid.”

## 50 Procedure for certain proceedings

In TCPA 1990, after section 323 insert—

### “323A Procedure for certain proceedings: Wales

- (1) The Welsh Ministers may by regulations prescribe the procedure to be followed in connection with—
  - (a) an inquiry or hearing held or to be held by or on behalf of the Welsh Ministers under or by virtue of any provision of this Act;
  - (b) proceedings on an application, appeal or reference that, under or by virtue of any provision of this Act, is to be considered by or on behalf of the Welsh Ministers on the basis of representations in writing.
- (2) The regulations may include provision—
  - (a) about the procedure to be followed in connection with matters preparatory or subsequent to an inquiry or hearing or to the making of representations in writing;
  - (b) about the conduct of proceedings.
- (3) The regulations may include provision about the procedure to be followed—
  - (a) where steps have been taken with a view to the holding of an inquiry or hearing which does not take place,
  - (b) where steps have been taken with a view to the determination of any matter by a person appointed by the Welsh Ministers and the

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- proceedings are the subject of a direction that the matter must instead be determined by the Welsh Ministers, or
- (c) where steps have been taken in pursuance of such a direction and a further direction is made revoking that direction,
- and may provide that such steps are to be treated as compliance, in whole or in part, with the requirements of the regulations.
- (4) The regulations may—
- (a) provide for a time limit within which any party to the proceedings must submit representations in writing and any supporting documents,
  - (b) prescribe the time limit (which may be different for different classes of proceedings) or enable the Welsh Ministers to give directions setting the time limit in a particular case or class of case,
  - (c) enable the Welsh Ministers to proceed to a decision taking into account only such written representations and supporting documents as were submitted within the time limit, and
  - (d) enable the Welsh Ministers, after giving the parties written notice of their intention to do so, to proceed to a decision even though no written representations were made within the time limit, if it appears to them that they have sufficient material before them to enable them to reach a decision on the merits of the case.
- (5) The regulations may also make provision as to the circumstances in which—
- (a) a direction under section 322C(2) may be given;
  - (b) an order for costs under section 322C(4) may be made.
- (6) The Welsh Ministers may by regulations provide that in prescribed circumstances a matter may not be raised in proceedings on an appeal made under or by virtue of this Act to the Welsh Ministers unless it has been previously raised before a prescribed time or it is shown that it could not have been raised before that time.”

## **51 Costs and procedure on appeals etc: further amendments**

For further amendments relating to costs and procedure on appeals etc, see Schedule 5.