



2011 CHAPTER 25

PART 5

ENFORCEMENT

*Listed buildings*

**Issue of listed building enforcement notices by councils**

**157.**—(1) Where it appears to a council that any works have been or are being executed to a listed building in its district and are such as to involve a contravention of section 85(1) or (5), then, subject to subsection (3), the council may, if it considers 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—

- (a) specifying the alleged contravention; and
- (b) requiring such steps as may be specified in the notice to be taken—
  - (i) for restoring the building to its former state; or
  - (ii) where the council considers that such restoration would not be reasonably practicable, or would be undesirable, for executing such further works specified in the notice as it considers necessary to alleviate the effect of the works which were carried out without listed building consent; or
  - (iii) 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.

(2) A notice under this section is referred to in this Act as a “listed building enforcement notice”.

(3) A listed building enforcement notice shall not be served in relation to a contravention of section 85(1) or (5) which occurred before 9th December 1978.

(4) A listed building enforcement notice—

(a) must specify the date on which it is to take effect and, subject to section 159, shall take effect on that date; and

(b) must specify the period within which any steps are required to be taken and may specify different periods for different steps,

and where different periods apply to different steps, references in this Part to the period for compliance with a listed building enforcement notice, in relation to any steps, are to the period within which the step is required to be taken.

(5) Where a listed building enforcement notice imposes any such requirement as is mentioned in subsection (1)(b)(ii), 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.

(6) Sections 138(2) and (3), 141, 146 and 147 shall, with any necessary modifications, apply to a listed building enforcement notice issued by a council as those sections apply to an enforcement notice issued by a council.

### **Issue of listed buildings enforcement notices by Department**

**158.**—(1) If it appears to the Department to be expedient that a listed building enforcement notice should be issued in respect of any land, it may issue such a notice.

(2) Before the Department issues such a notice under subsection (1), it must consult the appropriate council.

(3) A listed building enforcement notice issued by the Department shall have the same effect as a notice issued by a council.

(4) Sections 139(2) to (4), 142, 146 and 147 shall, with any necessary modifications apply to a listed building enforcement notice issued by the Department as they apply to an enforcement notice issued by the Department.

### **Appeal against listed building enforcement notice**

**159.**—(1) A person having an estate in the building to which a listed building 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 on any of the following grounds—

(a) that the matters alleged to constitute a contravention of section 85 have not occurred;

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

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- (b) that those matters (if they occurred) do not constitute such a contravention;
  - (c) that the contravention of that section alleged in the notice occurred before 9th December 1978;
  - (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 138(2) and (3), as applied by section 157(6), or, as the case may be, section 139(2) to (4), as applied by section 158(4);
  - (g) that the period specified in the notice as the period within which any step required thereby is to be taken falls short of what should reasonably be allowed;
  - (h) except in relation to such a requirement as is mentioned in section 157(1)(b)(ii) or (iii), the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
  - (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 157(1)(b)(ii) 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 157(1)(b)(iii) 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) This subsection applies to a person who—
- (a) on the date on which the listed building enforcement notice is issued occupies the building to which it relates by virtue of a licence; and
  - (b) continues to occupy the building when the appeal is brought.
- (3) Subsections (4) to (7) of section 143 and section 144 shall, with any necessary modifications, apply to an appeal under this section against a listed building enforcement notice as they apply to an appeal under section 143 against an enforcement notice.
- (4) On the determination of an appeal under this section, the planning appeals commission 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.

(5) Any listed building consent granted by the planning appeals commission under subsection (4) shall, subject to subsection (6), have the like effect as a listed building consent granted under Part 4.

(6) The decision of the commission in relation to the grant of listed building consent under subsection (4) shall be final.

(7) The validity of a listed building 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.

#### **Effect of listed building consent on listed building enforcement notice**

**160.**—(1) If, after the issue of a listed building enforcement notice, consent is granted under section 85(3) for the retention of any work to which the listed building enforcement notice relates, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken which would involve the works not being retained in accordance with the consent.

(2) If the consent is granted so as to permit the retention of works without complying with some condition subject to which a previous listed building consent was granted, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.

(3) The preceding provisions of this section shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the listed building enforcement notice before the relevant provisions of that notice ceased to have effect.

#### **Urgent works to preserve building**

**161.**—(1) Where it appears to a council that works are urgently necessary for the preservation of—

- (a) a listed building in its district, or
- (b) a building in respect of which a direction has been given by the Department that this section shall apply,

the council may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.

(2) The ground on which the Department may give a direction that this section shall apply to a building is that the building is in a conservation area and it

appears to the Department that its preservation is important for maintaining the character or appearance of the conservation area.

(3) If it appears to the Department that any works are urgently necessary for the preservation of—

- (a) a listed building, or
- (b) a building in respect of which a direction has been given by the Department that this section shall apply,

it may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.

(4) If the building is occupied works may be carried out only to those parts which are not in use.

(5) The owner of the building must be given not less than 7 days' notice in writing of the intention to carry out the works and the notice must describe the works proposed to be carried out.

(6) Subsections (7) to (11) have effect for enabling the expenses of works executed under this section to be recovered by the council or, as the case may be, the Department.

(7) The council or, as the case may be, the Department may give notice to the owner of the building requiring the owner to pay the expenses of the works.

(8) Where the works consist of or include works for affording temporary support or shelter for the building—

- (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used; and
- (b) notices under subsection (7) in respect of any such continuing expenses may be given from time to time.

(9) The owner may within 28 days of the service of the notice appeal to the planning appeals commission against the notice on any of the following grounds—

- (a) that some or all of the works were unnecessary for the preservation of the building;
- (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time;
- (c) that the amount specified in the notice is unreasonable or that the recovery of it would cause the owner hardship.

(10) The planning appeals commission must give notice of its determination, the reasons for it and the amount recoverable to the owner of the building and

to the council or, as the case may be, the Department and the determination of the appeals commission shall be final.

(11) Any expenses recoverable by the council or the Department under this section shall be a civil debt recoverable summarily.