



2011 CHAPTER 25

PART 5

ENFORCEMENT

*Enforcement notices*

**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

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**Status:** *This is the original version (as it was originally enacted).*

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(ii) that person's interests have been substantially prejudiced by the failure to serve him or her with a copy of it.