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STATUTORY INSTRUMENTS

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**1991 No. 1220**

**The Planning(Northern Ireland) Order 1991**

**PART VI**

**ENFORCEMENT**

*Enforcement notices*

**Enforcement notices**

**68.**—(1) Where it appears to the Department that there has been a breach of planning control after 25th August 1974 then, subject to this Article, the Department, if it considers it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may issue a notice requiring the breach to be remedied and serve copies of the notice in accordance with paragraph (5).

(2) A notice under this Article is referred to in this Order as an “enforcement notice”.

(3) There is a breach of planning control—

- (a) if development has been carried out without the grant of the planning permission required in that behalf in accordance with Part IV; or
- (b) if any conditions or limitations subject to which planning permission was granted have not been complied with.

(4) Where an enforcement notice relates to a breach of planning control consisting in—

- (a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over, or under land; or
- (b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land; or
- (c) the making without planning permission of a change of use of any building to use as a single dwelling-house; or
- (d) the failure to comply with a condition which prohibits or has the effect of preventing a change of use of a building to use as a single dwelling-house;

it may be issued—

- (i) in the case of a failure to comply with any condition or limitation which relates to the carrying out of mining operations, only within the period of four years from the date on which that failure came to the knowledge of the Department;
- (ii) in any other case, only within the period of four years from the date of the breach.

(5) A copy of an enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in the notice as the date on which it is to take effect—

- (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 that land, being an estate which in the opinion of the Department is materially affected by the notice.
- (6) An enforcement notice shall specify the matters alleged to constitute a breach of planning control.
- (7) An enforcement notice shall also specify—
- (a) any steps which are required by the Department to be taken in order to remedy the breach;
  - (b) any such steps as are referred to in paragraph (10) and are required by the Department to be taken.
- (8) An enforcement notice shall specify the period within which any such step as is mentioned in paragraph (7) is to be taken and may specify different periods for the taking of different steps.
- (9) In this Article “steps to be taken in order to remedy the breach” means (according to the particular circumstances of the breach) steps for the purpose—
- (a) of restoring the land to its condition before the development took place; or
  - (b) of securing compliance with the conditions or limitations subject to which planning permission was granted, including—
    - (i) the demolition or alteration of any building or works;
    - (ii) the discontinuance of any use of land; and
    - (iii) the carrying out on land of any building or other operations.
- (10) The steps mentioned in paragraph (7)(b) are steps for the purpose—
- (a) of making the development comply with the terms of any planning permission which has been granted in respect of the land; or
  - (b) of removing or alleviating any injury to amenity which has been caused by the development.
- (11) Where the matters which an enforcement notice alleges to constitute a breach of planning control include development which has involved the making of a deposit of refuse or waste materials on land, the notice may require that the contour of the deposit shall be modified by altering the gradient or gradients of its sides in such manner as may be specified in the notice.
- (12) If on a complaint by the owner of any land, it appears to a court of summary jurisdiction that the occupier of that land prevents the owner from executing any work which he is required to execute under this Part, the court may order the occupier to permit the execution of the work.
- (13) Subject to Article 69, an enforcement notice shall take effect on a date specified in it.
- (14) The Department may withdraw an enforcement notice (without prejudice to its power to issue another) at any time before it takes effect.
- (15) If it does so the Department shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.
- (16) Where—
- (a) an enforcement notice has been issued in respect of development consisting of the erection of a building or the carrying out of works without the grant of planning permission; and
  - (b) the notice has required the taking of steps for a purpose mentioned in paragraph (10)(b); and
  - (c) the steps have been taken,

for the purposes of this Order planning permission for the retention of the building or works as they are as a result of compliance with the notice shall be deemed to have been granted on an application for such permission made to the Department.

### **Appeal against enforcement notice**

**69.**—(1) A person having an estate in the land to which an enforcement notice relates or a person to whom paragraph (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 him.

(2) This paragraph 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 in writing; 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 planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged;
- (b) that the matters alleged in the notice do not constitute a breach of planning control;
- (c) that the breach of planning control alleged in the notice has not taken place;
- (d) in the case of a notice which, by virtue of Article 68(4), may be issued only within the period of four years specified in that paragraph, that that period had elapsed at the date when the notice was issued;
- (e) in the case of a notice not falling within sub-paragraph (d), that the breach of planning control alleged by the notice occurred before 26th August 1974;
- (f) that copies of the enforcement notice were not served as required by Article 68(5);
- (g) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or to achieve a purpose specified in Article 68(10);
- (h) that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed.

(4) An appeal under this Article shall be made by notice in writing to the planning appeals commission, and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

(5) Where it receives a notice of appeal under this Article against an enforcement notice relating to any land, the planning appeals commission shall notify the district council for the district within which the land is situated and in exercising its powers under Article 71 the commission shall take into account any representations received by the commission from the district council.

(6) Before determining an appeal under this Article, the planning appeals commission shall, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(7) Articles 21 and 25(2) shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this Article as they apply to an application for planning permission to the Department.

(8) Where an appeal is brought under this Article, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(9) Subject to paragraph (10), the validity of an enforcement notice shall not, except by way of an appeal under this Article, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

(10) Paragraph (9) shall not apply to proceedings brought under Article 72(5) against a person who—

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

#### **Appeal against enforcement notice-general supplementary provisions**

**70.**—(1) On an appeal under Article 69 the planning appeals commission shall 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 informality, 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 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 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 him.

#### **Appeal against enforcement notice-supplementary provisions relating to planning permission**

**71.**—(1) On the determination of an appeal under Article 69, the planning appeals commission may—

- (a) grant planning permission for the development to which the enforcement notice relates or for part of that development or for the development of part of the land to which the enforcement notice relates;
- (b) discharge any condition or limitation subject to which planning permission was granted.

(2) In considering whether to grant planning permission under paragraph (1), the planning appeals commission shall have regard to the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations; and any planning permission granted under paragraph (1) may—

- (a) include permission to retain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;
- (b) be granted subject to such conditions as the planning appeals commission thinks fit;

and where under that paragraph the planning appeals commission discharges a condition or limitation, it may substitute another condition or limitation for it, whether more or less onerous.

(3) Where an appeal against an enforcement notice is brought under Article 69, the appellant shall be deemed to have made an application for planning permission for the development to which the notice relates and, in relation to any exercise by the planning appeals commission of its powers under paragraph (1)—

- (a) any planning permission granted under that paragraph shall be treated as granted on that application;
- (b) in relation to a grant of planning permission or a determination under that paragraph, the decision of the planning appeals commission shall be final; and
- (c) subject to sub-paragraph (b), any planning permission granted under that paragraph shall have the like effect as a permission granted under Part IV.

### **Penalties for non-compliance with enforcement notice**

72.—(1) Subject to this Article, where a copy of an enforcement notice has been served on the person who, at the time when the copy was served on him, was the owner of the land to which the notice relates, then, if any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken within the period allowed for compliance with the notice, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If a person against whom proceedings are brought under paragraph (1) has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of the land, he shall, upon complaint duly made by him and on giving to the prosecution not less than three days' notice of his intention, be entitled to have the person who then became the owner of the land (in this Article referred to as the "subsequent owner") brought before the court in the proceedings.

(3) If after it has been proved that any steps required by the enforcement notice have not been taken within the period allowed for compliance with the notice, the original defendant proves that the failure to take those steps was attributable, in whole or in part, to the default of the subsequent owner—

- (a) the subsequent owner may be convicted of the offence, and
- (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the enforcement notice, shall be acquitted of the offence.

(4) If, after a person has been convicted under paragraphs (1) to (3), he does not as soon as practicable do everything in his power to secure compliance with the enforcement notice, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day following his first conviction on which any of the requirements of the enforcement notice (other than the discontinuance of a use of land) remain unfulfilled.

(5) Where, by virtue of an enforcement notice, a use of land is required to be discontinued, or any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations thereon, then if any person uses the land or causes or permits it to be used or carries out those operations or causes or permits them to be carried out, in contravention of the notice—

- (a) he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) if the use is continued after the conviction, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the use is so continued.

(6) Any reference in this Article and Articles 73 and 74 to the period allowed for compliance with an enforcement notice is a reference to the period specified in the notice for compliance therewith or such extended period as may be allowed by the Department for compliance with the notice.

### **Power to stop further development pending proceedings on enforcement notice**

73.—(1) Where in respect of any land the Department—

- (a) has served a copy of an enforcement notice requiring a breach of planning control to be remedied; but
- (b) considers it expedient to prevent, before the expiry of the period allowed for compliance with the notice, the carrying out of any activity which is, or is included in, a matter alleged by the notice to constitute the breach,

then, subject to the provisions of this Article, it may at any time before the notice takes effect serve a notice (in this Order 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, or on any part of it specified in the stop notice.

(2) A stop notice shall not prohibit—

- (a) any person from continuing to use any building, caravan or other structure situated upon the land as his permanent residence whether as owner, occupier, tenant, patient, guest or otherwise;
- (b) any person from taking any steps necessary to comply or secure compliance with an enforcement notice.

(3) A stop notice shall not take effect (and so cannot be contravened) until such date as it may specify, being a date not earlier than 3 nor later than 28 days from the day on which it is first served on any person.

(4) 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 allowed for compliance with that enforcement notice expires; or
- (c) notice of withdrawal of the stop notice is first served under paragraph (6); 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 included in the matters alleged by the enforcement notice to constitute a breach of planning control.

(5) A stop notice may be served by the Department 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 Department may display there a notice (in this Article 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 Article, giving the date when the stop notice takes effect and indicating its requirements.

(6) The Department 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.

(7) If any person contravenes, or causes or permits the contravention of, a stop notice—

- (a) after a site notice has been displayed, or
- (b) after a stop notice has been served on him,

then, subject to paragraph (8), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; and if the offence is continued after conviction he shall be liable on summary conviction to a further fine not exceeding one-tenth of level 5 on the standard scale for each day on which it is continued.

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

(9) 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 Article 68(5) if it is shown that the Department took all such steps as were reasonably practicable to effect proper service.

### **Execution and cost of works required by enforcement notice**

74.—(1) If, within the period allowed for compliance with an enforcement notice, any steps which by virtue of Article 68(7)(a) are required by the notice to be taken (other than the discontinuance of a use of land) have not been taken, a person authorised in writing by the Department may enter upon the land and take those steps and the Department may recover from the person who is then the owner of the land any expenses reasonably incurred by it in that behalf 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 paragraph (1), in respect of expenses incurred by the Department 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 Department may sell any materials which have been removed by it from any land when carrying into effect this Part if, before the expiration of three days from their removal, they are not claimed by their owner and taken away by him.

(4) Where the Department sells any materials under paragraph (3), it shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by it from him.

(5) Paragraphs (3) and (4) do not apply to refuse removed by the Department.

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

- (a) 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 on him of a demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the Department,

his liability shall be limited to the total amount of the money which he has or has had in his hands as mentioned in sub-paragraph (b), but the Department where it is, or would be, debarred by this paragraph 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 Department under this Article 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 him.

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

### **Effect of planning permission on enforcement notice**

75.—(1) If, after the service of a copy of an enforcement notice, planning permission is granted for the retention on land of buildings or works, or for the continuance of the use of land, to which the enforcement notice relates, the enforcement notice shall cease to have effect in so far as it requires steps to be taken for the demolition or alteration of those buildings or works or the discontinuance of that use, as the case may be.

(2) If the planning permission granted as mentioned in paragraph

(1) is granted so as to permit the retention of buildings or works, or the continuance of a use of land, without complying with some condition subject to which a previous planning permission was granted, the enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.

(3) Paragraphs (1) and (2) shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the enforcement notice before the relevant provision of the enforcement notice ceased to have effect.

### **Enforcement notice to have effect against subsequent development**

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

- (a) the completion, demolition 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 paragraph (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 IV; 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 paragraph (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been demolished 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 demolished or altered; and, subject to paragraph (4), Article 74 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 demolished or altered in compliance with the notice, and
- (b) the Department proposes, under Article 74(1), to take any steps required by the enforcement notice for the demolition or alteration of the buildings or works in consequence of the reinstatement or restoration,

the Department shall, 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 demolished 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 level 5 on the standard scale; and no person shall be liable under Article 72(1) to (4) for failure to take any steps required to be taken by an enforcement notice by way of demolition or alteration of what has been so reinstated or restored.