



# Town and Country Planning Act 1968

## 1968 CHAPTER 72

### PART II

#### ENFORCEMENT OF PLANNING CONTROL

##### *Enforcement notices*

#### **15 New provision as to enforcement notices.**

- (1) Where it appears to the local planning authority that there has been a breach of planning control after the end of 1963, then, subject to any directions given by the Minister and to the following provisions of this section, the authority, if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may serve a notice under this section (in this Act and the principal Act referred to as an "enforcement notice") requiring the breach to be remedied.
- (2) There is a breach of planning control if development has been carried out, whether before or after the commencement of this Part of this Act, without the grant of planning permission required in that behalf in accordance with Part III of the principal Act, or if any conditions or limitations subject to which planning permission was granted have not been complied with.
- (3) 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,

it may be served only within the period of four years from the date of the breach.

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- (4) An enforcement notice shall be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in that land, being an interest which in the opinion of the authority is materially affected by the notice.
- (5) An enforcement notice shall specify—
  - (a) the matters alleged to constitute a breach of planning control;
  - (b) the steps required by the authority to be taken in order to remedy the breach, that is to say steps for the purpose of restoring the land to its condition before the development took place or (according to the particular circumstances of the breach) of securing compliance with the conditions or limitations subject to which planning permission was granted ; and
  - (c) the period for compliance with the notice, that is to say the period (beginning with the date when the notice takes effect) within which those steps are required to be taken.
- (6) The steps which may be required by an enforcement notice to be taken include the demolition or alteration of any buildings or works, the discontinuance of any use of land, or the carrying out on land of any building or other operations.
- (7) Subject to section 16 below, an enforcement notice shall take effect at the end of such period, not less than twenty-eight days after the service of the notice, as may be specified in the notice.
- (8) The local planning authority may withdraw an enforcement notice (without prejudice to their power to serve another) at any time before it takes effect; and, if they do so, they shall forthwith give notice of the withdrawal to every person who was served with the notice.

## **16 Appeal against enforcement notice.**

- (1) A person on whom an enforcement notice is served or any other person having an interest in the land may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal to the Minister against the notice 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) in the case of a notice which, by virtue of section 15(3) above, may be served only within the period of four years from the date of the breach of planning control to which the notice relates, that that period has elapsed at the date of service ;
  - (d) in the case of a notice not falling within paragraph (c) above, that the breach of planning control alleged by the notice occurred before the beginning of 1964 ;
  - (e) that the enforcement notice was not served as required by section 15(4) of this Act;
  - (f) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control;
  - (g) that the specified period for compliance with the notice falls short of what should reasonably be allowed.

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- (2) An appeal under this section shall be made by notice in writing to the Minister, which shall indicate the grounds of the appeal and state the facts on which it is based; and on any such appeal the Minister shall, if either the appellant or the local planning authority so desire, afford to each of them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.
- (3) 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.
- (4) On an appeal under this section—
  - (a) the Minister may correct any informality, defect or error in the enforcement notice if he is satisfied that the informality, defect or error is not material;
  - (b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 15(4) of this Act to be served with the notice was not served, the Minister may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
- (5) On the determination of an appeal under this section, the Minister shall give directions for giving effect to his determination, including, where appropriate, directions for quashing the enforcement notice or for varying the terms of the notice in favour of the appellant; and the Minister may—
  - (a) grant planning permission for the development to which the enforcement notice relates or, as the case may be, discharge any condition or limitation subject to which planning permission for that development was granted;
  - (b) determine any purpose for which the land may, in the circumstances obtaining at the time of the determination, be lawfully used having regard to any past use thereof and to any planning permission relating to the land.
- (6) In considering whether to grant planning permission under subsection (5) above, the Minister shall have regard to the provisions of 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 by him under that subsection 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 Minister thinks fit;and where under that subsection he discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.
- (7) Where an appeal against an enforcement notice is brought under this section, 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 Minister of his powers under subsection (5) above, the following provisions shall have effect:—
  - (a) any planning permission granted thereunder shall be treated as granted on the said application ;
  - (b) in relation to a grant of planning permission or a determination under that subsection, the Minister's decision shall be final; and
  - (c) for the purposes of section 19(4) of the principal Act (local planning authority's register of planning applications), the decision shall be treated as

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having been given by the Minister in dealing with an application for planning permission made to the local planning authority.

*Established use*

**17 Certification of established use.**

- (1) For the purposes of this Part of this Act, a use of land is established if—
  - (a) it was begun before the beginning of 1964 without planning permission in that behalf and has continued since the end of 1963 ; or
  - (b) it was begun before the beginning of 1964 under a planning permission in that behalf granted subject to conditions or limitations, which either have never been complied with or have not been complied with since the end of 1963 ; or
  - (c) it was begun after the end of 1963 as the result of a change of use not requiring planning permission and there has been, since the end of 1963, no change of use requiring planning permission.
- (2) Where a person having an interest in land claims that a particular use of it has become established, he may apply to the local planning authority for a certificate (in this Act referred to as an " established use certificate ") to that effect:
 

Provided that no such application may be made in respect of the use of land as a single dwelling-house, or of any use not subsisting at the time of the application.
- (3) An established use certificate may be granted (either by the local planning authority or, under section 18 below, by the Minister)—
  - (a) either for the whole of the land specified in the application, or for a part of it; or
  - (b) in the case of an application specifying two or more uses, either for all those uses or for some one or more of them.
- (4) On an application to them under this section., the local planning authority shall, if and so far as they are satisfied that the applicant's claim is made out, grant to him an established use certificate accordingly; and if and so far as they are not so satisfied, they shall refuse the application.
- (5) Where an application is made to a local planning authority for an established use certificate, then unless within such period as may be prescribed by a development order, or within such extended period as may at any time be agreed upon in writing between the applicant and the local planning authority, the authority give notice to the applicant of their decision on the application, then, for the purposes of section 18(2) below, the application shall be deemed to be refused.
- (6) Schedule 2 to this Act shall have effect with respect to established use certificates and applications therefor and to appeals under section 18 below.
- (7) An established use certificate shall, as respects any matters stated therein, be conclusive for the purposes of an appeal to the Minister against an enforcement notice served in respect of any land to which the certificate relates, but only where the notice is served after the date of the application on which the certificate was granted.
- (8) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for an established use certificate or on an appeal arising out of such an application,—

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- (a) knowingly or recklessly makes a statement which is false in a material particular ; or
- (b) with intent to deceive, produces, furnishes, sends or otherwise makes use of any document which is false in a material particular ; or
- (c) with intent to deceive, withholds any material information,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

## **18 Grant of certificate by Minister on referred application or appeal against refusal.**

- (1) The Minister may give directions requiring applications for established use certificates to be referred to him instead of being dealt with by local planning authorities; and, on any such application being referred to him in accordance with such directions, section 17(4) above shall apply in relation to the Minister as it applies in relation to the local planning authority in the case of an application determined by them.
- (2) Where an application is made to a local planning authority for an established use certificate and is refused, or is refused in part, the applicant may by notice under this subsection appeal to the Minister; and on any such appeal the Minister shall—
  - (a) if and so far as he is satisfied that the authority's refusal is not well-founded, grant to the appellant an established use certificate accordingly or, as the case may be, modify the certificate granted by the authority on the application; and
  - (b) if and so far as he is satisfied that the authority's refusal is well-founded, dismiss the appeal.
- (3) On an application referred to him under subsection (1) above or on an appeal to him under subsection (2) above, the Minister may, in respect of any use of land for which an established use certificate is not granted (either by him or by the local planning authority), grant planning permission for that use or, as the case may be, for the continuance of that use without complying with some condition subject to which a previous planning permission was granted.
- (4) Before determining an application or appeal under this section the Minister shall, if either the applicant or appellant (as the case may be) or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.
- (5) The decision of the Minister on an application referred to him, or on an appeal, under this section shall be final.
- (6) In the case of any use of land for which the Minister has power to grant planning permission under this section, the applicant or appellant shall be deemed to have made an application for such planning permission; and any planning permission so granted shall be treated as granted on the said application.

### *Stop notices*

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

- (1) Where in respect of any land the local planning authority have served an enforcement notice, they may at any time before the notice takes effect serve a further notice (in

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this Act referred to as a " stop notice ") referring to, and having annexed to it a copy of, the enforcement notice and prohibiting any person on whom the stop notice is served from carrying out or continuing any specified operations on the land, being operations either alleged in the enforcement notice to constitute a breach of planning control or so closely associated therewith as to constitute substantially the same operations.

- (2) The operations which may be the subject of a stop notice shall include the deposit of refuse or waste materials on land where that is a breach of planning control alleged in the enforcement notice.
- (3) A stop notice may be served by the local planning authority on any person who appears to them to have an interest in the land or to be concerned with the carrying out or continuance of any operations thereon.
- (4) A stop notice—
  - (a) shall specify the date (not earlier than three nor later than fourteen days from the day on which the notice is first served on any person) when it is to take effect;
  - (b) in relation to any person served with it, shall have effect as from that date or the third day after the date of service on him, whichever is the later; and
  - (c) shall, without prejudice to subsection (7) below, cease to have effect when the enforcement notice takes effect or is withdrawn or quashed.
- (5) If while a stop notice has effect in relation to him a person carries out, or causes or permits to be carried out, any operations prohibited by the notice, he shall be guilty of an offence and liable on summary conviction to a fine of not more than £400, or on conviction on indictment to a fine; and if the offence is continued after conviction he shall be liable on summary conviction to a further fine of not more than £50 for every day on which it is continued, or on conviction on indictment to a further fine.
- (6) A stop notice shall not be invalid by reason that the enforcement notice to which it relates was not served as required by section 15(4) of this Act if it is shown that the local planning authority took all such steps as were reasonably practicable to effect proper service.
- (7) The local planning authority may at any time withdraw a stop notice (without prejudice to their power to serve another) by serving notice to that effect on persons who were served with the stop notice, which shall cease to have effect as from the date of service of the notice under this subsection.
- (8) Where a person (in this subsection called " the contractor ") is under contract to another person (in this subsection called " the developer ") to carry out any operations on land and—
  - (a) a stop notice takes effect (whether in relation to the developer or the contractor, or both) prohibiting the carrying out or continuance of those operations; and
  - (b) the operations are countermanded or discontinued by the contractor accordingly,

then, unless and in so far as the contract makes provision explicitly to the contrary of this subsection, the developer shall be under the same liability in contract as if the operations had been countermanded or discontinued on instructions given by him in breach of the contract.

This subsection applies only to contracts entered into on or before the end of 1969, whether before or after the commencement of this section.

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## **20 Compensation for loss due to stop notice.**

- (1) Where a stop notice ceases to have effect, a person who, at the time when it was first served, had an interest in the land to which it relates shall, in any of the circumstances mentioned in subsection (2) below, be entitled to be compensated by the local planning authority in respect of any loss or damage directly attributable to the prohibition contained in the notice.
- (2) A person shall be entitled to compensation under subsection (1) above in respect of a prohibition contained in a stop notice in any of the following circumstances :—
  - (a) the enforcement notice is quashed on any of the grounds mentioned in paragraph (b), (c), (d) or (e) of section 16(1) above;
  - (b) the allegation in the enforcement notice on which the prohibition in the stop notice is dependent is not upheld by reason that the enforcement notice is varied on one of those grounds ;
  - (c) the enforcement notice is withdrawn by the local planning authority otherwise than in consequence of the grant by them of planning permission for the development to which the notice relates or for its retention or continuance without compliance with a condition or limitation subject to which a previous planning permission was granted ;
  - (d) the stop notice is withdrawn.
- (3) A prohibition in a stop notice shall be treated for the purposes of subsection (2) above as dependent on an allegation in an enforcement notice if and to the extent that the operations to which the prohibition in the stop notice relates are the same as those alleged in the enforcement notice to constitute a breach of planning control or are so closely associated therewith as to constitute substantially the same operations.
- (4) A claim for compensation under this section shall be made to the local planning authority within the time and in the manner prescribed by regulations under the principal Act.
- (5) The loss or damage in respect of which compensation is payable under this section in respect of a prohibition shall include a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition or of any liability arising by virtue of section 19(8) of this Act.