



Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

1997 CHAPTER 9

PART I

LISTED BUILDINGS

CHAPTER IV

ENFORCEMENT

34 Power to issue listed building enforcement notice

- (1) Where it appears to the planning authority—
 - (a) that any works have been, or are being, executed to a listed building in their district, and
 - (b) that the works are such as to involve a contravention of section 8(1) or (2),they may, if they consider 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, serve a notice under this section (in this Act referred to as a “listed building enforcement notice”).
- (2) A listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken—
 - (a) for restoring the building to its former state,
 - (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider are required to alleviate in a manner acceptable to them the effect of the works which were carried out without listed building consent, or

Status: This is the original version (as it was originally enacted).

- (c) for bringing the building to the state it would have been in if the terms and conditions of any listed building consent for the works had been complied with.
- (3) In considering whether such restoration is undesirable under subsection (2)(b), the authority shall have regard to the desirability of preserving—
- (a) the character of the building, or
 - (b) its features of architectural or historical interest.
- (4) Where such further works as are mentioned in subsection (2)(b) have been carried out on a building, listed building consent shall be deemed to have been granted in respect of the works carried out on that building.
- (5) A listed building enforcement notice—
- (a) shall specify the date upon which it is to take effect and, subject to section 35(3), shall take effect on that date, and
 - (b) shall specify the period (the “period for compliance”) 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 Act to the period for compliance with a listed building enforcement notice, in relation to any step, are to the period within which the step is required to be taken.
- (6) A copy of a listed building enforcement notice shall be served—
- (a) on the owner, on the lessee and on the occupier of the building to which it relates, and
 - (b) on any other person having an interest in the building, being an interest which in the opinion of the authority is materially affected by the notice.
- (7) The planning authority may—
- (a) withdraw a listed building enforcement notice (without prejudice to their power to issue another), or
 - (b) waive or relax any requirement of such a notice and, in particular, extend the period specified in accordance with subsection (5),
- and the powers conferred by this subsection may be exercised whether or not the notice has taken effect.
- (8) The planning authority shall, immediately after exercising the powers conferred by subsection (7), give notice of the exercise to every person who has been served with a copy of the listed building enforcement notice or would, if the notice were reissued, be served with a copy of it.
- (9) Every planning authority shall keep available for public inspection free of charge at reasonable hours and at a convenient place a list containing particulars of any building in their district in respect of which a listed building enforcement notice has been served.

35 Appeal against listed building enforcement notice

- (1) A person on whom a listed building enforcement notice is served or any other person having an interest in the building to which it relates may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds—
- (a) that the building is not of special architectural or historic interest;

- (b) that the matters alleged to constitute a contravention of section 8(1) or (2) have not occurred;
 - (c) that those matters (if they occurred) do not constitute such a contravention;
 - (d) that—
 - (i) works to the building were urgently necessary in the interests of safety or health, or for the preservation of the building,
 - (ii) 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
 - (iii) 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 34(6);
 - (g) except in relation to such a requirement as is mentioned in section 34(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
 - (h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
 - (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 34(2)(b) 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 34(2)(c) exceed what may reasonably be required 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) An appeal under this section shall be made either—
- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the listed building enforcement notice as the date on which it is to take effect, or
 - (b) by sending such notice to him in a properly addressed and prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.
- (3) Where an appeal is brought under this section the notice shall be of no effect pending the final determination or withdrawal of the appeal.
- (4) A person who gives notice of appeal under this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed, a statement in writing—
- (a) specifying the grounds on which he is appealing against the listed building enforcement notice, and
 - (b) giving such further information as may be prescribed.
- (5) Schedule 3 (which makes provision regarding the determination of certain appeals by a person appointed by the Secretary of State) applies in relation to appeals under this section.

36 Appeals: supplementary provisions

- (1) The Secretary of State may prescribe the procedure to be followed on appeals under section 35, and may in particular—
 - (a) require the planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal,
 - (b) specify the matters to be included in such a statement,
 - (c) require the authority or the appellant to give such notice of such an appeal as may be prescribed to such persons as may be prescribed, and
 - (d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.
- (2) Subject to section 37(3), the Secretary of State shall, if either the planning authority or the appellant so requires, give each of them an opportunity of appearing before and being heard by a person appointed by him for the purpose.

37 Determination of appeals under section 35

- (1) On the determination of an appeal under section 35 the Secretary of State shall give directions for giving effect to the determination, including where appropriate directions for quashing the listed building enforcement notice.
- (2) On such an appeal the Secretary of State—
 - (a) may—
 - (i) correct any defect, error or misdescription in the listed building enforcement notice, or
 - (ii) vary the terms of the listed building enforcement notice,if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority, and
 - (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 34(6) to be served with a copy of the notice was not served, may disregard that fact if he is satisfied that the person has not been substantially prejudiced by the failure to serve him.
- (3) The Secretary of State may—
 - (a) dismiss such an appeal if the appellant fails to comply with section 35(4) within the prescribed time;
 - (b) allow such an appeal or quash the listed building enforcement notice if the planning authority fail to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 36(1)(a), (b) or (d).
- (4) On the determination of an appeal under section 35 the Secretary of State may—
 - (a) grant listed building consent for the works to which the listed building enforcement notice relates,
 - (b) discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous, or

- (c) if he thinks fit, exercise his power under section 1 to amend any list compiled or approved under that section by removing from it the building to which the appeal relates.
- (5) Any listed building consent granted by the Secretary of State under subsection (4) shall be treated as granted on an application for the same consent under section 9.
- (6) The validity of a listed building enforcement notice shall not, except by way of appeal under section 35, be questioned in any proceedings whatsoever on the grounds specified in section 35(1)(b) and (f).

38 Execution of works required by listed building enforcement notice

- (1) If any of the steps specified in the listed building enforcement notice have not been taken within the period for compliance with the notice, the authority may—
 - (a) enter on the land and take those steps, and
 - (b) recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
- (2) Where a listed building enforcement notice has been served in respect of a building—
 - (a) any expenses incurred by the owner, lessee or occupier of a building for the purpose of complying with it, and
 - (b) any sums paid by the owner or lessee of a building under subsection (1) in respect of expenses incurred by the planning authority in taking steps required by it,shall be deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.
- (3) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by a listed building enforcement notice, the sheriff may by warrant authorise the owner to go on the land and carry out that work.
- (4) A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal.
- (5) After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.
- (6) Where a planning authority seek, under subsection (1), to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that—
 - (a) he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and
 - (b) he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.
- (7) A planning authority who by reason of subsection (6) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.

- (8) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

39 Offence where listed building enforcement notice not complied with

- (1) Where, after the end of the period for compliance with the notice, any step required by a listed building enforcement notice to be taken has not been taken, the person who is for the time being owner of the land is in breach of the notice.
- (2) If at any time the owner of the land is in breach of a listed building enforcement notice he shall be guilty of an offence.
- (3) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.
- (4) In proceedings against any person for an offence under this section, it shall be a defence for him to show—
- (a) that he did everything he could be expected to do to secure that all the steps required by the notice were taken, or
 - (b) that he was not served with a copy of the listed building enforcement notice and was not aware of its existence.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000, and
 - (b) on conviction on indictment, to a fine.
- (6) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

40 Effect of listed building consent on listed building enforcement notice

- (1) If, after the issue of a listed building enforcement notice, consent is granted under section 7(3)—
- (a) for the retention of any work to which the listed building enforcement notice relates, or
 - (b) permitting 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 involving the works not being retained or, as the case may be, for complying with that condition.
- (2) The fact that such a notice has wholly or partly ceased to have effect under subsection (1) shall not affect the liability of any person for an offence in respect of a previous failure to comply with that notice.

41 Enforcement by Secretary of State

- (1) If it appears to the Secretary of State that it is expedient that a listed building enforcement notice should be served in respect of any land, he may himself serve such a notice under section 34.
- (2) A listed building enforcement notice served by the Secretary of State shall have the same effect as a notice served by the planning authority.
- (3) The Secretary of State shall not serve such a notice without consulting the planning authority.
- (4) The provisions of this Act relating to listed building enforcement notices apply, so far as relevant, to a listed building enforcement notice served by the Secretary of State as they apply to a listed building enforcement notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Secretary of State, and any other necessary modifications.