



# Planning and Compulsory Purchase Act 2004

## 2004 CHAPTER 5

### PART 4

#### DEVELOPMENT CONTROL

##### *Miscellaneous*

#### **49 Development to include certain internal operations**

(1) In the principal Act in section 55 (meaning of development) after subsection (2) there are inserted the following subsections—

“(2A) The Secretary of State may in a development order specify any circumstances or description of circumstances in which subsection (2) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by such amount or percentage amount as is so specified.

(2B) The development order may make different provision for different purposes.”

(2) This subsection applies if—

- (a) section 55(2) of the principal Act is disapplied in respect of any operations by virtue of a development order under section 55(2A) of that Act,
- (b) at the date the development order comes into force a certificate under section 192 of the principal Act (certificate of lawfulness of proposed use or development) is in force in respect of the operations, and
- (c) before that date no such operations have been begun.

(3) If subsection (2) applies the certificate under section 192 of the principal Act is of no effect.

- (4) A development order made for the purposes of section 55(2A) of the principal Act does not affect any operations begun before it is made.

**50 Appeal made: functions of local planning authority**

- (1) In the principal Act after section 78 (right to appeal) there is inserted the following section—

**“78A Appeal made: functions of local planning authorities**

- (1) This section applies if a person who has made an application mentioned in section 78(1)(a) appeals to the Secretary of State under section 78(2).
  - (2) At any time before the end of the additional period the local planning authority may give the notice referred to in section 78(2).
  - (3) If the local planning authority give notice as mentioned in subsection (2) that their decision is to refuse the application—
    - (a) the appeal must be treated as an appeal under section 78(1) against the refusal;
    - (b) the Secretary of State must give the person making the appeal an opportunity to revise the grounds of the appeal;
    - (c) the Secretary of State must give such a person an opportunity to change any option the person has chosen relating to the procedure for the appeal.
  - (4) If the local planning authority give notice as mentioned in subsection (2) that their decision is to grant the application subject to conditions the Secretary of State must give the person making the appeal the opportunity—
    - (a) to proceed with the appeal as an appeal under section 78(1) against the grant of the application subject to conditions;
    - (b) to revise the grounds of the appeal;
    - (c) to change any option the person has chosen relating to the procedure for the appeal.
  - (5) The Secretary of State must not issue his decision on the appeal before the end of the additional period.
  - (6) The additional period is the period prescribed by development order for the purposes of this section and which starts on the day on which the person appeals under section 78(2).”
- (2) In the listed buildings Act after section 20 (right to appeal) there is inserted the following section—

**“20A Appeal made: functions of local planning authorities**

- (1) This section applies if a person who has made an application mentioned in section 20(1)(a) appeals to the Secretary of State under section 20(2).
- (2) At any time before the end of the additional period the local planning authority may give the notice referred to in section 20(2).

- (3) If the local planning authority give notice as mentioned in subsection (2) that their decision is to refuse the application—
  - (a) the appeal must be treated as an appeal under section 20(1) against the refusal;
  - (b) the Secretary of State must give the person making the appeal an opportunity to revise the grounds of the appeal;
  - (c) the Secretary of State must give such a person an opportunity to change any option the person has chosen relating to the procedure for the appeal.
- (4) If the local planning authority give notice as mentioned in subsection (2) that their decision is to grant the application subject to conditions the Secretary of State must give the person making the appeal the opportunity—
  - (a) to proceed with the appeal as an appeal under section 20(1) against the grant of the application subject to conditions;
  - (b) to revise the grounds of the appeal;
  - (c) to change any option the person has chosen relating to the procedure for the appeal.
- (5) The Secretary of State must not issue his decision on the appeal before the end of the additional period.
- (6) The additional period is the period prescribed for the purposes of this section and which starts on the day on which the person appeals under section 20(2).”
- (3) This section has effect only in relation to relevant applications which are received by the local planning authority after the commencement of this section.
- (4) The following are relevant applications—
  - (a) an application mentioned in section 78(1)(a) of the principal Act;
  - (b) an application mentioned in section 20(1)(a) of the listed buildings Act;
  - (c) an application mentioned in section 20(1)(a) of the listed buildings Act as given effect by section 74(3) of that Act (application of certain provisions to the control of demolition in conservation areas).

## **51 Duration of permission and consent**

- (1) Section 91 of the principal Act (limit on duration of planning permission) is amended as follows—
  - (a) in subsections (1)(a) and (3) for the words “five years” there is substituted “three years”;
  - (b) after subsection (3) there are inserted the following subsections—
    - “(3A) Subsection (3B) applies if any proceedings are begun to challenge the validity of a grant of planning permission or of a deemed grant of planning permission.
    - (3B) The period before the end of which the development to which the planning permission relates is required to be begun in pursuance of subsection (1) or (3) must be taken to be extended by one year.
    - (3C) Nothing in this section prevents the development being begun from the time the permission is granted or deemed to be granted.”

- (2) In section 92 of that Act (outline planning permission)—
- (a) in subsection (2)(b) sub-paragraph (i) is omitted;
  - (b) in subsection (2)(b) in sub-paragraph (ii) the words “if later” are omitted;
  - (c) in subsection (4) “five years” is omitted.
- (3) In section 73 of the principal Act (applications to develop land without compliance with existing conditions) after subsection (4) there is inserted the following subsection—
- “(5) Planning permission must not be granted under this section to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which—
- (a) a development must be started;
  - (b) an application for approval of reserved matters (within the meaning of section 92) must be made.”
- (4) Section 18 of the listed buildings Act (limit of duration of listed buildings consent) is amended as follows—
- (a) in subsections (1)(a) and (2) for the words “five years” there is substituted “three years”;
  - (b) after subsection (2) there are inserted the following subsections—
- “(2A) Subsection (2B) applies if any proceedings are begun to challenge the validity of a grant of listed building consent or of a deemed grant of listed building consent.
- (2B) The period before the end of which the works to which the consent relates are required to be begun in pursuance of subsection (1) or (2) must be taken to be extended by one year.
- (2C) Nothing in this section prevents the works being begun from the time the consent is granted.”
- (5) In section 19 of that Act (variation or discharge of conditions) after subsection (4) there is inserted the following subsection—
- “(5) But a variation or discharge of conditions under this section must not—
- (a) vary a condition subject to which a consent was granted by extending the time within which the works must be started;
  - (b) discharge such a condition.”
- (6) This section has effect only in relation to applications made under the principal Act or the listed buildings Act which are received by the local planning authority after the commencement of the section.

## 52 Temporary stop notice

After section 171D of the principal Act (penalties for non-compliance with planning contravention notice) there are inserted the following sections—

*“Temporary stop notices*

**171E Temporary stop notice**

- (1) This section applies if the local planning authority think—
  - (a) that there has been a breach of planning control in relation to any land, and
  - (b) that it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.
- (2) The authority may issue a temporary stop notice.
- (3) The notice must be in writing and must—
  - (a) specify the activity which the authority think amounts to the breach;
  - (b) prohibit the carrying on of the activity (or of so much of the activity as is specified in the notice);
  - (c) set out the authority’s reasons for issuing the notice.
- (4) A temporary stop notice may be served on any of the following—
  - (a) the person who the authority think is carrying on the activity;
  - (b) a person who the authority think is an occupier of the land;
  - (c) a person who the authority think has an interest in the land.
- (5) The authority must display on the land—
  - (a) a copy of the notice;
  - (b) a statement of the effect of the notice and of section 171G.
- (6) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of subsection (5).
- (7) A temporary stop notice ceases to have effect—
  - (a) at the end of the period of 28 days starting on the day the copy notice is so displayed,
  - (b) at the end of such shorter period starting on that day as is specified in the notice, or
  - (c) if it is withdrawn by the local planning authority.

**171F Temporary stop notice: restrictions**

- (1) A temporary stop notice does not prohibit—
  - (a) the use of a building as a dwelling house;
  - (b) the carrying out of an activity of such description or in such circumstances as is prescribed.
- (2) A temporary stop notice does not prohibit the carrying out of any activity which has been carried out (whether or not continuously) for a period of four years ending with the day on which the copy of the notice is first displayed as mentioned in section 171E(6).
- (3) Subsection (2) does not prevent a temporary stop notice prohibiting—

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

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- (a) activity consisting of or incidental to building, engineering, mining or other operations, or
  - (b) the deposit of refuse or waste materials.
- (4) For the purposes of subsection (2) any period during which the activity is authorised by planning permission must be ignored.
- (5) A second or subsequent temporary stop notice must not be issued in respect of the same activity unless the local planning authority has first taken some other enforcement action in relation to the breach of planning control which is constituted by the activity.
- (6) In subsection (5) enforcement action includes obtaining the grant of an injunction under section 187B.

#### **171G Temporary stop notice: offences**

- (1) A person commits an offence if he contravenes a temporary stop notice—
- (a) which has been served on him, or
  - (b) a copy of which has been displayed in accordance with section 171E(5).
- (2) Contravention of a temporary stop notice includes causing or permitting the contravention of the notice.
- (3) An offence under this section may be charged by reference to a day or a longer period of time.
- (4) A person may be convicted of more than one such offence in relation to the same temporary stop notice by reference to different days or periods of time.
- (5) A person does not commit an offence under this section if he proves—
- (a) that the temporary stop notice was not served on him, and
  - (b) that he did not know, and could not reasonably have been expected to know, of its existence.
- (6) A person convicted of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding £20,000;
  - (b) on conviction on indictment, to a fine.
- (7) In determining the amount of the fine the court must have regard in particular to any financial benefit which has accrued or has appeared to accrue to the person convicted in consequence of the offence.

#### **171H Temporary stop notice: compensation**

- (1) This section applies if and only if a temporary stop notice is issued and at least one of the following paragraphs applies—
- (a) the activity which is specified in the notice is authorised by planning permission or a development order or local development order;
  - (b) a certificate in respect of the activity is issued under section 191 or granted under that section by virtue of section 195;
  - (c) the authority withdraws the notice.

- (2) Subsection (1)(a) does not apply if the planning permission is granted on or after the date on which a copy of the notice is first displayed as mentioned in section 171E(6).
- (3) Subsection (1)(c) does not apply if the notice is withdrawn following the grant of planning permission as mentioned in subsection (2).
- (4) A person who at the time the notice is served has an interest in the land to which the notice relates is entitled to be compensated by the local planning authority in respect of any loss or damage directly attributable to the prohibition effected by the notice.
- (5) Subsections (3) to (7) of section 186 apply to compensation payable under this section as they apply to compensation payable under that section; and for that purpose references in those subsections to a stop notice must be taken to be references to a temporary stop notice.”

### **53 Fees and charges**

- (1) Section 303 (fees for planning applications, etc) of the principal Act is amended as follows.
- (2) The following subsections are substituted for subsections (1) and (2)—
  - “(1) The appropriate authority may by regulations make provision for the payment of a charge or fee to a local planning authority in respect of—
    - (a) the performance by the local planning authority of any function they have;
    - (b) anything done by them which is calculated to facilitate or is conducive or incidental to the performance of any such function.
  - (2) The regulations may prescribe—
    - (a) the person by whom the charge or fee is payable;
    - (b) provision as to the calculation of the charge or fee (including the person by whom it is to be calculated);
    - (c) circumstances in which no charge or fee is to be paid;
    - (d) circumstances in which a charge or fee is to be transferred from one local planning authority to another.
  - (2A) The appropriate authority is—
    - (a) the Secretary of State in relation to England;
    - (b) the National Assembly for Wales in relation to Wales,and in the case of regulations made by the National Assembly for Wales section 333(3) must be ignored.”
- (3) In subsection (4) after the first “prescribed” there is inserted “charge or”.
- (4) After subsection (5) there are inserted the following subsections—
  - “(5A) If the local planning authority calculate the amount of fees or charges in pursuance of provision made by regulations under subsection (1) the authority must secure that, taking one financial year with another, the income from the fees or charges does not exceed the cost of the performance of the function or doing of the thing (as the case may be).

(5B) A financial year is the period of 12 months beginning with 1 April.”

(5) Subsection (6) is omitted.

#### **54 Duty to respond to consultation**

(1) This section applies to a prescribed requirement to consult any person or body (the consultee) which exercises functions for the purposes of any enactment.

(2) A prescribed requirement to consult is a requirement—

- (a) with which the appropriate authority or a local planning authority must comply before granting any permission, approval or consent under or by virtue of the planning Acts;
- (b) which is prescribed for the purposes of this subsection.

(3) At any time before an application is made for any permission, approval or consent mentioned in subsection (2) any person may in relation to a proposed development consult the consultee on any matter in respect of which the appropriate authority or the local planning authority are required to consult the consultee.

(4) The consultee must give a substantive response to any consultation mentioned in subsection (2) or by virtue of subsection (3) before the end of—

- (a) the period prescribed for the purposes of this subsection, or
- (b) such other period as is agreed in writing between the consultee and the appropriate authority or the local planning authority (as the case may be).

(5) The appropriate authority may also prescribe—

- (a) the procedure to be followed for the purposes of this section;
- (b) the information to be provided to the consultee for the purposes of the consultation;
- (c) the requirements of a substantive response.

(6) Anything prescribed for the purposes of subsections (1) to (5) must be prescribed by development order.

(7) A development order may—

- (a) require consultees to give the appropriate authority a report as to their compliance with subsection (4);
- (b) prescribe the form and content of the report;
- (c) prescribe the times at which the report is to be made.

(8) The appropriate authority is—

- (a) the Secretary of State in relation to England;
- (b) the National Assembly for Wales in relation to Wales.

#### **55 Time in which Secretary of State to take decisions**

(1) Schedule 2 contains provisions about the time in which the Secretary of State must take certain decisions.

(2) But Schedule 2 does not apply in relation to any decision taken in the exercise of a function in relation to Wales if the function is exercisable in relation to Wales by the



National Assembly for Wales by virtue of an order under section 22 of the Government of Wales Act [1998 \(c. 38\)](#).