



2011 CHAPTER 25

Part 5

Enforcement

VALID FROM 13/02/2015

Certificate of lawful use or development

Certificate of lawfulness of existing use or development

169.—(1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

that person may make an application for the purpose to the appropriate council specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

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(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) If, on an application under this section, the council is provided with information satisfying it of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the council or a description substituted by it, the council must issue a certificate to that effect; and in any other case it must refuse the application.

(5) A certificate under this section must—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 23(3)(e), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following statutory provisions, as if it were a grant of planning permission—

(a) section 3(3) of the Caravans Act (Northern Ireland) 1963 (c. 17);

(b) Article 8(3) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19).

Certificate of lawfulness of proposed use or development

170.—(1) If any person wishes to ascertain whether—

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land,

would be lawful, that person may make an application for the purpose to the appropriate council specifying the land and describing the use or operations in question.

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(2) If, on an application under this section, the council is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it must issue a certificate to that effect; and in any other case it shall refuse the application.

(3) A certificate under this section must—

- (a) specify the land to which it relates;
- (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 23(3)(e), identifying it by reference to that class);
- (c) give the reasons for determining the use or operations to be lawful; and
- (d) specify the date of the application for the certificate.

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

Certificates under sections 169 and 170: supplementary provisions

171.—(1) An application for a certificate under section 169 or 170 must be made in such manner as may be specified by a development order and must include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the council.

(2) Provision may be made by a development order for regulating the manner in which applications for certificates under those sections are to be dealt with by councils.

(3) In particular, such an order may provide for requiring the council—

- (a) to give to any applicant within such time as may be specified by the order such notice as may be so specified as to the manner in which the applicant's application has been dealt with; and
- (b) to give to such persons as may be specified by or under the order, such information as may be so specified with respect to such applications, including information as to the manner in which any application has been dealt with.

(4) A certificate under either of those sections may be issued—

- (a) for the whole or part of the land specified in the application; and
- (b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and must be in such form as may be specified by a development order.

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(5) A certificate under section 169 or 170 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.

(6) In section 242 (planning register) references to applications for planning permission shall include references to applications for certificates under section 169 or 170.

(7) The council may revoke a certificate under either of those sections if, on the application for the certificate—

(a) a statement was made or document used which was false in a material particular; or

(b) any material information was withheld.

(8) Provision may be made by a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

Offences

172.—(1) If any person, for the purpose of procuring a particular decision on an application (whether by that person or another) for the issue of a certificate under section 169 or 170—

(a) knowingly or recklessly makes a statement which is false or misleading in a material particular;

(b) with intent to deceive, uses any document which is false or misleading in a material particular; or

(c) with intent to deceive, withholds any material information,

that person shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

(3) Notwithstanding Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26), a magistrates' court may hear and determine a complaint in respect of an offence under subsection (1) whenever made.

Appeals against refusal or failure to give decision on application

173.—(1) Where an application is made to a council for a certificate under section 169 or 170 and—

(a) the application is refused or is refused in part; or

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- (b) the council does not give notice to the applicant of its decision on the application within such period as may be specified by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the council,

the applicant may by notice appeal to the planning appeals commission—

- (i) in the case described in paragraph (a), within the period of 4 months from the date on which the application is refused or is refused in part or such other period as may be prescribed;
- (ii) in the case described in paragraph (b), within the period of 4 months from the end of the period referred to in that paragraph or such other period as may be prescribed.

(2) On any such appeal, if and so far as the planning appeals commission is satisfied—

- (a) in the case of an appeal under subsection (1)(a), that the council's refusal is not well-founded; or
- (b) in the case of an appeal under subsection (1)(b), that if the council had refused the application its refusal would not have been well-founded,

the planning appeals commission must grant the appellant a certificate under section 169 or, as the case may be, 170 accordingly or, in the case of a refusal in part, modify the certificate granted by the council on the application.

(3) If and so far as the planning appeals commission is satisfied that the council's refusal is or, as the case may be, would have been well-founded, the commission must dismiss the appeal.

(4) References in this section to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.

Further provisions as to appeals under section 173

174.—(1) Before determining an appeal to it under section 173(1), the planning appeals commission must, if either the appellant or the council so wish, afford to each of them an opportunity of appearing before, and being heard by, the planning appeals commission.

(2) Where the planning appeals commission grants a certificate under section 169 or 170 on such an appeal, it shall give notice to the council of that fact.

(3) The decision of the planning appeals commission on such an appeal shall be final.

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