



Town and Country Planning Act 1971

1971 CHAPTER 78

PART V

ENFORCEMENT OF CONTROL UNDER PARTS III AND IV

Development requiring planning permission

88 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 Secretary of State 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 87(3) of this Act, 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) of this subsection, 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 87(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 Secretary of State, which shall indicate the grounds of the appeal and state the facts on which it is based; and on any such appeal the Secretary of State 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 Secretary of State 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 Secretary of State 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 87(4) of this Act to be served with the notice was not served, the Secretary of State 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 Secretary of State 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 Secretary of State 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) of this section, the Secretary of State 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 Secretary of State 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 Secretary of State of his powers under subsection (5) of this section, 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 Secretary of State's decision shall be final; and

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- (c) for the purposes of section 34 of this Act, the decision shall be treated as having been given by the Secretary of State in dealing with an application for planning permission made to the local planning authority.
- (8) On an appeal under this section against an enforcement notice relating to anything done in contravention of a condition to which section 71 or 82 of this Act applies, the Secretary of State shall not be required to entertain the appeal in so far as the appellant claims that planning permission free from that condition ought to be granted.
- (9) Schedule 9 to this Act applies to appeals under this section, including appeals under this section as applied by regulations under any other provision of this Act.