



Planning and Compensation Act 1991

1991 CHAPTER 34

PART II

TOWN AND COUNTRY PLANNING - SCOTLAND

Other changes relating to enforcement

^{F1}38

Textual Amendments

^{F1} S. 33-59 repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), Sch. 1 Pt. I (with s. 5, Sch. 3)

38 Appeal against enforcement notice. **S**

(1) For section 85(1) and (2) of the 1972 Act (appeal against enforcement notice) there is substituted—

“(1) A person on whom an enforcement notice is served, or any other person having an interest in the land 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, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;

Status: Point in time view as at 27/05/1997.

Changes to legislation: There are currently no known outstanding effects for the Planning and Compensation Act 1991, Section 38. (See end of Document for details)

- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
 - (e) that copies of the enforcement notice were not served as required by section 84 of this Act;
 - (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
 - (g) that any period specified in the notice in accordance with section 84AA(9) of this Act falls short of what should reasonably be allowed.
- (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 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 pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.”
- (2) After section 85(7) of that Act (appellant deemed to have made an application for planning permission for the development to which the enforcement notice relates) there is inserted—
- “(7A) Where—
- (a) the statement under subsection (2A) of section 85 of this Act specifies the ground mentioned in subsection (1)(a) of that section;
 - (b) any fee is payable under regulations made by virtue of section 87 (fees for planning applications etc.) of the ^{M1}Local Government, Planning and Land Act 1980 in respect of the application deemed to be made by virtue of the appeal; and
 - (c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,
- then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.”

Commencement Information

II S. 38 wholly in force at 26.3.1992 (subject to art. 5 of S.I. 1992/334) see **s. 84(2)(3)** and S.I. 1992/334, arts. 4, 5.

Marginal Citations

M1 1980 c. 65.

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