



Town and Country Planning (Scotland) Act 1997

1997 CHAPTER 8

PART VI

ENFORCEMENT

Certificate of lawful use or development

150 Certificate of lawfulness of existing use or development

- (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,he may make an application for the purpose to the planning authority 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
 - (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 planning authority are provided with information satisfying them 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 planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- (5) A certificate under this section shall—
 - (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 26(2)(f), identifying it by reference to that class),
 - (c) give the reasons for determining the use, operations or other thing 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 enactments, as if it were a grant of planning permission—
 - (a) section 3(3) of the Caravan Sites and Control of Development Act 1960,
 - (b) section 5(2) of the Control of Pollution Act 1974, and
 - (c) section 36(2)(a) of the Environmental Protection Act 1990.

151 Certificate of lawfulness of proposed use or development

- (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, he may make an application for the purpose to the planning authority specifying the land and describing the use or operations in question.
- (2) If, on an application under this section, the planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- (3) A certificate under this section shall—
 - (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 26(2)(f), 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) There shall be an irrefutable presumption as to the lawfulness of any use or operations for which a certificate is in force under this section 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.

152 Certificates under sections 150 and 151: supplementary provisions

- (1) An application for a certificate under section 150 or 151 shall be made in such manner as may be prescribed by regulations or a development order and shall include such particulars, and be verified by such evidence, as may be required by such regulations or such an order or by any directions given under such regulations or such an order or by the planning authority.
- (2) Provision may be made by such regulations or a development order for regulating the manner in which applications for certificates under those sections are to be dealt with by planning authorities.
- (3) In particular, such regulations or such an order may provide for requiring the authority—
 - (a) to give to any applicant within such time as may be prescribed by the regulations or the order such notice as may be so prescribed as to the manner in which his application has been dealt with, and
 - (b) to give to the Secretary of State and to such other persons as may be prescribed by or under the regulations or the order, such information as may be so prescribed with respect to such applications made to the authority, including information as to the manner in which any application has been dealt with.
- (4) A certificate under section 150 or 151 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 things, for all of them or some one or more of them,and shall be in such form as may be prescribed by such regulations or a development order.
- (5) A certificate under section 150 or 151 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 36 references to applications for planning permission shall include references to applications for certificates under section 150 or 151.
- (7) A planning authority may revoke a certificate under section 150 or 151 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 such regulations or a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

153 Offences

- (1) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under section 150 or 151 of this Act—
 - (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,
- he 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, and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

154 Appeals against refusal or failure to give decision on application

- (1) Where an application is made to a planning authority for a certificate under section 150 or 151 and—
- (a) the application is refused or is refused in part, or
 - (b) the planning authority do not give notice to the applicant of their decision on the application within such period as may be prescribed by regulations or a development order or within such extended period as may at any time be agreed in writing by the applicant and the authority,
- the applicant may appeal to the Secretary of State.
- (2) An appeal under subsection (1) shall be by notice given within such period (not being less than 28 days) as may be prescribed by regulations or a development order.
- (3) On any such appeal, if and so far as the Secretary of State is satisfied—
- (a) in the case of an appeal under subsection (1)(a), that the authority's refusal is not well-founded, or
 - (b) in the case of an appeal under subsection (1)(b), that, if the planning authority had refused the application, their refusal would not have been well-founded,
- he shall grant the appellant a certificate under section 150 or 151 accordingly or, in the case of a refusal in part, modify the certificate granted by the authority on the application.
- (4) If and so far as the Secretary of State is satisfied that the authority's refusal is or, as the case may be, would have been well-founded, he shall dismiss the appeal.
- (5) Schedule 4 applies to appeals under this section.

155 Further provisions as to appeals to the Secretary of State

- (1) Before determining an appeal under section 154(1), the Secretary of State shall, if either the appellant or the planning authority so wish, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (2) Where the Secretary of State or a person appointed by him under Schedule 4 to determine an appeal grants a certificate under section 150 or 151, the Secretary of State or that person shall give notice to the planning authority of that fact.