

Levelling Up and Regeneration Act (2023)


Presentation by Cate Buck – Senior Planning and Enforcement
Officer

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The Levelling Up and Regeneration Act (2023) has introduced 10 changes to legislation

These impact on planning enforcement

- Temporary Stop Notices in relation to Listed Buildings
 - Development Commencement Notices
 - Completion Notices
 - Time limits for enforcement
 - Duration of temporary stop notices
 - Enforcement warning notices
 - Restrictions on appeals against enforcement notices
 - Undue delays in appeals
 - Penalties for non-compliance
 - Power to provide relief from enforcement of planning conditions
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Temporary Stop Notices in relation to Listed Buildings –S44AA of P(LBCA) Act 1990 (as amended)

- This change gives the local planning authority (LPA) power to serve a TSN in relation to unauthorised works to a listed building.
- The notice would be served under S44AA of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the works which the LPA require to cease, must be in contravention of s9(1) or (2) – which is that the works do not have listed building consent (LBC), or that they breach the conditions attached to an LBC.
- The Listed Building Temporary Stop Notice (“LBTSN”) can be in force for up to 56 days.

Previously there was no power to serve TSN’s for Listed Buildings.

S 93G TCPA 1990 (as amended) - Development Commencement Notices

This section applies where—

- Planning permission has been granted for the development of any land in England
- Requires the person carrying out the development to provide the LPA with a date that the works will commence (a “Commencement Notice”)
- The date can be varied once it has been provided.
- If the requirements to provide a “commencement notice” is not complied with, a notice can be served on any ‘relevant person’ requiring the information to be provided
- If a notice is served then the ‘relevant person’ has 21 days to provide the information to the LPA
- The provision to require a “commencement Notice” from the Development would likely be required by Condition
- **Penalties for not complying with the Notice served by the LPA – prosecution at court – Fine level 3 – mags court**

No previous provision for requiring commencement notification

S 93H TCPA 1990 (as amended) - Completion Notices

- Relates to failure to complete a development if development has been implemented within the time limits stated by condition – such as “commence within 3 years” but has not been completed.
- If, in the opinion of the LPA, development is not likely to be completed in a ‘reasonable period’ the LPA can serve a “completion notice” stating that the planning permission will cease to have effect at a specified time (the “completion notice deadline”)
- The completion notice must be served on the owner of the land, the occupier of the land and any person with an interest in the land.
- There is an Appeal to the Secretary of State (PINS) against the Notice

There was previous provision to serve completion notices under s94 however, it had to be confirmed by the Secretary of State. This new provision under s93H makes the process simpler for LPA’s to take action over partially completed developments.

Time limits for enforcement - Section 171B of the TCPA 1990 (as amended)

- There will be a blanket time limit of 10 years beginning with the date on which the operations were substantially completed

Previously, time limits were 4 years for buildings and residential uses and 10 years for uses of land and breaches of condition.

This provision will give the LPA more time in which to pursue enforcement action if required as we will no longer be restricted to four years for buildings and residential uses.

Duration of temporary stop notices (TSN) - S171E(7) of the TCPA 1990 (as amended)

- TSN's will now be in force for a maximum 56 days, this also includes the new TSN for Listed Buildings
- This change will give LPA's longer time to decide upon further action to be taken such as issuing an enforcement notice

Previously the duration was a maximum of 28 days



Enforcement warning notices (EWN) -S172ZA of the TCPA 1990 (as amended)

- An EWN can be served where it appears to the LPA that a breach of planning control has occurred but there is reasonable prospect of planning permission being granted if an application is made

No previous provision for EWN before, however, these matters are usually dealt with during the negotiation phase conducted by Enforcement Officers in line with the Council's Enforcement Plan.

Restrictions on appeals against enforcement notices -S174 (2)(a) and (2)(b) TCPA 1990 (as amended)

- This means that if planning permission has already been refused, appealed and dismissed for what is being alleged in the Enforcement Notice then a Ground (a) (that planning permission should be granted) enforcement appeal cannot be submitted
- However, this only applies to refused planning permissions appealed to the Secretary of State under s78 TCPA and the notice was issued within 2 years of the date of the appeal decision.

Previously appellants were able to appeal enforcement notices under ground (a) regardless of whether planning permission for the same development had already been refused and dismissed at appeal.

This restriction will likely save significant time in defending enforcement appeals

Undue delays in appeals – S176 of the TCPA

- This section now includes the power for the Secretary of State to dismiss appeals where it appears to them that the appellant is responsible for undue delays in the progress of the appeal.
- This change applies to both s176 enforcement appeals and s195 certificate of lawfulness appeals.

No previous provision for this, the Secretary of State has had to proceed with the appeal once validated regardless of delays

Penalties for non-compliance – 187A (Breach of Condition Notices and S215 (Untidy Site Notices) TCPA 1990 (as amended)

- s187A – Breach of Condition Notices – have been amended to remove the ‘not exceeding Level 3 on the standard scale’ relating to fines – now on conviction the fine could be limitless.
- S215 – Untidy Site Notices – have been amended to remove the ‘not exceeding level 3 on the standard scale’

In subsection (6) of S216, the words ‘one-tenth of level 3 on the standard scale’ has been replaced with; ‘the relevant amount’.

The ‘relevant amount’ means ‘if the land is in England, one-tenth of the greater of £5,000 or level 4 of the standard scale

Previously fines for Breach of Condition Notices and Untidy Site Notice were up to a level 3 which is currently £1000. A Level 4 fine is up to £2500. This change will hopefully provide a greater incentive not to breach BCN’s or S215 Notices.

Power to provide relief from enforcement of planning conditions - 196E TCPA 1990 (as amended)

This is a power that is only afforded to the Secretary of State

- *“The Secretary of State may by regulations provide that a local planning authority in England may not take, or is subject to specified restrictions in how it may take, relevant enforcement measures in relation to any actual or apparent failure to comply with a relevant planning condition.*

If deemed appropriate The Secretary of State may make regulations under subsection (1) only if the Secretary of State considers that it is appropriate to make the regulations for the purposes of national defence or preventing or responding to civil emergency or significant disruption to the economy of the United Kingdom or any part of the United Kingdom.”

*Relevant enforcement measures could be a planning contravention notice under section 171C,
(ii) a temporary stop notice under section 171E,
(iii) an enforcement notice under section 172,
(iv) an enforcement warning notice under section 172ZA,
(v) a stop notice under section 183, or
(vi) a breach of condition notice under section 187A.”*

Or a breach of a planning condition

This relates to the measures that were issued by CLG for example during covid whereby conditions relating to opening hours or pubs being used as shops were allowed for a short period of time and the LPA wasn't able to pursue enforcement action against what would normally have been a breach of planning control.

This enshrines this ability in Law.

When will this new legislation come into effect?

As yet the new legislation has yet to come into effect, we are waiting for confirmation from the Secretary of State for confirmation.

Any Questions?

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