

Circular 10/97: Enforcing planning control: legislative provisions and procedural requirements

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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Circular 10/97: Enforcing planning control: legislative provisions and procedural requirements

1. This Circular brings together and updates the earlier guidance, in DOE Circulars 21/91 and 17/92, on how to use the amended planning enforcement provisions in Part VII of the Town and Country Planning Act 1990. It should be kept in mind that although the guidance reflects the Department's current considered views, interpretation of the law is ultimately for the Courts.

2. The Annexes to the Circular provide detailed procedural advice as follows:

Annex 1 : the planning contravention notice;

Annex 2 : enforcement notices and appeals;

Annex 3 : the stop notice;

Annex 4 : enforcement of planning conditions: the breach of condition notice;

Annex 5 : an injunction to restrain a breach of planning control;

Annex 6 : rights of entry to land for enforcement purposes;

Annex 7 : control of development on Crown land;

Annex 8 : lawfulness and the lawful development certificate (LDC);

Annex 9 : the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992.

Where appropriate, these Annexes mention the comparable provisions for enforcement of listed building and conservation area control, minerals planning control, hazardous substances control and control for protected trees.

Subordinate legislation

3. The Town and Country Planning (Enforcement Notices and Appeals) Regulations 1991 (SI 1991/2804) re-enact, with some amendments (in SI 1992/1904), the previous Regulations (SI 1981/1742) in respect of all enforcement notices issued by local planning authorities (LPAs) and all enforcement appeals submitted to the Secretary of State.

4. The Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1981 (SI 1981/1743) were revoked and replaced by the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992 (SI 1992/1903). The 1992 Rules apply to planning enforcement, listed building enforcement and conservation area enforcement notice appeal inquiries, and to LDC appeal inquiries.

5. The "permitted development" and procedural provisions of the Town and Country Planning General Development Order 1988 and subsequent amending Orders have been consolidated in, respectively, the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418) ("the GPDO") and the Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419) ("the GDPO"). The main changes introduced by the Orders are explained in DOE Circular 9/95.

6. The Town and Country Planning (Fees for Applications and Deemed Applications)

Regulations 1989 (SI 1989/193) have been amended by SI 1990/2473, SI 1991/2735, SI 1992/1817, SI 1992/3052 and SI 1993/3170. The 1991 amendment provides (in regulation 4) for the payment of a deemed planning application fee to the LPA (as well as to the Secretary of State) with effect from 2 January 1992 in all enforcement appeals against a notice issued on or after that date. The 1992 Amendment Regulations apply to applications for a LDC, including applications to "convert" an "established use" certificate into a LDC, and provide for the enforcement notice appeal "deemed application" fee to be retained where, exceptionally, the Secretary of State or a Planning Inspector issues a LDC, in exercise of the power in section 177(1)(c) of the Town and Country Planning Act 1990 ("the 1990 Act").

7. The 1984 Regulations (SI 1984/1016) have been superseded and updated by The Town and Country Planning (Special Enforcement Notices) Regulations 1992 (SI 1992/1562).

8. The Town and Country Planning (Crown Land Applications) Regulations 1992 (SI 1992/2683) have been revoked by the Town and Country Planning (Crown Land Applications) Regulations 1995 (SI 1995/1139), with effect from 3 June 1995. The 1995 Regulations modify article 24 of the GDPO by inserting a new paragraph 2A. Regulation 3 of the 1995 Regulations requires notice of disposal where a certificate has been issued under section 192(2) of the 1990 Act.

9. The Town and Country Planning (Environmental Assessment and Unauthorised Development) Regulations 1995 (SI 1995/2258) came into effect on 2 October 1995. The Regulations ensure that the enforcement appeal procedure complies with the requirements of the EIA Directive. Certain types of development that are the subject of an appeal against enforcement action may require the provision of an environmental statement since the introduction of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1988/1199).

Planning Policy Guidance (PPG) Note 18 : Enforcing Planning Control

10. PPG Note 18 gives policy guidance on enforcing planning control and is obtainable from The Stationery Office Bookshops (ISBN 0 11 752554 5, price £1.80). LPAs are expected to have regard to this guidance in deciding whether enforcement action is expedient to remedy a breach of planning control, where earlier attempts to do so by informal negotiation have proved unsuccessful.

Enforcement appeals: revised appeal forms and explanatory booklets

11. The official DOE enforcement appeal form and the explanatory booklet for appellants ("Enforcement Notice Appeals - a Guide to Procedure") have been revised to take account of the amended provisions. The booklet is reprinted periodically, with appropriate revisions to the text. Copies of the booklet are available from DOE Publications Despatch Centre, Blackhorse Road, London SE99 6TT (telephone 0181 691 9191 or facsimile no 0181 694 0099).

Lawful development certificate appeals (LDC)

12. The Department has produced an official form for LDC appeals and a booklet "Lawful Development Certificates - a user's guide". Prospective appellants may obtain LDC appeal forms from the Planning Inspectorate in Room 1102, Tollgate House, telephone 0117 986 8546. Copies of the booklet are obtainable from DOE Publications (see paragraph 11 for address).

Financial and manpower implications

13. As this Circular consolidates and updates earlier guidance it involves no change in local authorities financial or manpower commitments.

Cancellation of Circulars

14. Circulars 109/77, 21/91 and 17/92 are cancelled. A separate Circular will be issued by the Welsh Office in due course.

Richard Jones, *Assistant Secretary*

The Chief Executive
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Board Peak
Park Joint Planning Board
The General Manager
New Town Development Corporations
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The Broads Authority

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