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Royal Town Planning Institute

Guidance note for planning enforcement professionals on the Levelling Up and Regeneration Act (2023)

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Introduction

On 26 October 2023, the Levelling Up and Regeneration Bill became law.

The aim of this document is to set out the changes brought in by the Levelling Up and Regeneration Act 2023 (“the Act”) which impact on planning enforcement directly. This document sets out the views of the National Association of Planning Enforcement (NAPE).

This guidance note is not a legal document which seeks to set out the legislation in detail. Instead, it sets out the changes in summary with some commentary on the impact of the changes.

The changes detailed in this guidance document are not yet in force. This includes 115 (time limits for enforcement).

The changes

The Act has introduced a number of changes which impact on planning enforcement.

Within Chapter 3 – ‘Heritage’, there is a change numbered 103 which introduces the power to issue Temporary Stop Notices (TSN) in respect of works to Listed Buildings.

Within Chapter 4 – ‘Grant and Implementation of Planning Permission’, there are two changes numbered 111 and 112. These concern ‘Development Commencement Notices’ and ‘Completion Notices’, respectively.

And finally, within Chapter 5 - ‘Enforcement of planning controls’ there are 7 changes, numbered 115 to 121 inclusive.

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103: Temporary Stop Notices in relation to Listed Buildings

Summary: This change gives the local planning authority (LPA) power to serve a TSN in relation to unauthorised works to a listed building. The power has been inserted just after the power to seek an injunction (S44A).

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.

111: Development Commencement Notices

Summary: The Town and Country Planning Act 1990 (TCPA) is amended to insert S93G ‘commencement notices’. This applies where a planning permission has been granted for the development of any land in England.

Before the development has begun, the person proposing to carry it out must give notice (a ‘commencement notice’) to the LPA, specifying when they propose to commence the work.

Once a person has given the LPA a commencement notice, they may vary the date of the commencement of development and must do so if the development is not commenced on the date previously given.

Where it appears to the LPA that a person has failed to comply with the requirements set out above, they may serve a notice on any relevant person, requiring the relevant information to be submitted to the LPA.

‘Relevant person’ is set out in subsection (5).

If a notice is served by the LPA, requiring the information to be provided to it, and the relevant person fails to give that information within 21 days, they shall be guilty of an offence.

Impact on planning enforcement: This change has positive connotations as far as the commencement of developments should be recorded formally. The failure to provide the LPA with the information requested introduces an offence for which the planning enforcement team in many LPAs would likely be responsible for pursuing.

112: Completion Notices

Summary: The (TCPA) is amended to insert S93H ‘termination of planning permission’. This applies where a planning permission has been granted for development and is subject to the ‘commence within 3 years’ condition, and this condition was complied with, but the development has not been completed.

If the LPA are of the opinion that the development will not be completed with a reasonable time period, then they may serve a notice (‘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.

Appeals against Completion Notices

Section 93I: An appeal against a completion notice is made to the Secretary of State and can be made under any or all of the following 3 grounds:

- (a) that the appellant considers that the development will be completed within a reasonable period;
- (b) that the completion notice deadline is an unreasonable one and;
- (c) that the notice was not served on the persons on whom it was required to be served under section 93H(5).

Effect of completion notices: 93J of the TCPA prescribes that the effect of a completion notice is that the planning permission to which the notice related becomes invalid at the completion notice deadline (whether as originally specified or substituted on appeal under section 93J).

115: Time limits for enforcement

Summary: Section 171B of the TCPA has been amended to delete the words 'four years' and to substitute with 'ten years' (England).

Impact on planning enforcement: This means that all breaches of planning control can only become immune from enforcement action after 10 years. This includes those breaches which were previously 4 years – such as change of use of a building to residential and operational development.

116: Duration of temporary stop notices

Summary: S171E(7) of the TCPA has been amended in order to allow TSN (this applies to Listed Building and other TSN) to be in force for 56 days – an increase from 28 days. (England).

Impact on planning enforcement: This change means that LPAs can have more time to consider next steps. Remember, LPAs do not have to require that all of the activities/uses must cease in a TSN (only the most harmful) and 56 days is the maximum duration for a TSN, so LPAs may set shorter TSNs.

117: Enforcement warning notices

Summary: The TCPA is amended to include provision for LPAs in England to issue Enforcement Warning Notices (EWN).

S172ZA of the TCPA provides that LPAs can issue an EWN where it appears to them that there has been a breach of planning control and that there is a reasonable prospect that, if an application is made, permission would be granted.

The EWN must state that unless an application for planning permission is made within a period specified in the notice, further enforcement action may be taken.

Impact on planning enforcement: Issuing an EWN ‘stops the clock’ on immunity and can reduce the number of appeals for ‘acceptable’ developments when an enforcement notice has been issued.

118: Restrictions on appeals against enforcement notices

Summary: This change to S174 (2)(a) and (2)(b) means that if planning permission for what is alleged in an enforcement notice has been refused by the LPA and that refusal was appealed and dismissed, an appellant in an enforcement appeal **cannot** appeal under ground (a).

There are some restrictions, however. The refused planning permission must have been appealed under s78 to the Secretary of State and the enforcement notice must have been issued within 2 years of the appeal decision to which the development relates.

Impact on planning enforcement: This change effectively removes the possibility of a ‘3rd’ bite at the cherry. Whereas previously an applicant could apply for planning permission, appeal a refusal, then receive an enforcement notice and have ‘another go’ at obtaining planning permission through ground (a), this is now barred at the 3rd attempt.

119: Undue delays in appeals

Summary: S176 of the TCPA 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.

120: Penalties for non-compliance

Summary: The level of fine has been increased for non-compliance with 187A of the TCPA (breach of condition notices) and for non-compliance with a S215 notice.

Breach of condition notice: The wording of S187A of the TCPA (enforcement of conditions) has been changed so that the words ‘not exceeding level 3 on the standard scale’ have been removed and so just the words ‘he shall be guilty of an offence and liable on summary conviction to a fine’ remain in subsection (12).

Impact on planning enforcement: This means that, on conviction, the fine for breaching a breach of condition notice is now unlimited in theory.

S215 notice: The wording of S216 of the TCPA (penalty for non-compliance with s215 notice) has been changed so that the words ‘not exceeding level 3 on the standard scale’ have been removed and so just the words ‘he shall be guilty of an offence and liable on summary conviction to a fine’ remain in subsection (2).

And in subsection (6) of S216, the words ‘one-tenth of level 3 on the standard scale’ have 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.’

This means that, on conviction, the fine for breaching a S215 notice can now be higher than previously.

121: Power to provide relief from enforcement of planning conditions

Summary: Section 196E of the TCPA provides power to provide relief from enforcement of planning conditions.

The Secretary of State may, by regulations, provide that an LPA 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.

‘Relevant enforcement action’ includes:

The exercise of a power under:

- (i) section 171BB (power to apply for planning enforcement 10 order);
- (ii) section 187B (power to apply to court for injunction);
- (iii) section 196A (power to enter without a warrant);
- (iv) 15 section 196B (power to apply for, and enter under, warrant);

The issue of:

- (i) 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.

When is the Act likely to come into effect in relation to these measures/changes?

Section 255 (3) of the Act states that:

(3) In Part 3—

(a) sections 108, 109 (so far as it confers a power to make regulations or to make a development order), 112, 113 and 114 (so far as conferring a power to make regulations), 121, 126 to 128, 130 to 133 and 136 come into force at the end of the period of two months beginning with the day on which this Act is passed;

(b) sections 109, 112, 113 and 114 (as far as not already commenced by virtue of paragraph (a)), Schedule 13 (as far as it relates to Chapter 1 of Part 3), and the other provisions come into force on such day as the Secretary of State may by regulations appoint.

This means that all of the above provisions/changes come into force on such day as the Secretary of State may by regulations appoint.



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The changes detailed in this guidance document are not yet in force. This includes 115 (time limits for enforcement).

Except:

112 (completion notices) which, if the development is commenced on Crown Land or under a Street Vote Development Order, this comes into force at the end of the period of two months beginning with the day on which this Act is passed (26 December 2023).

121 (Power to provide relief from enforcement of planning conditions) which comes into force at the end of the period of two months beginning with the day on which this Act is passed (26 December 2023).

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