

Levelling-Up & Regeneration Bill: Post-decision – amendments, enforcement and appeals



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SCOPE

CHANGES RELATING TO POST-DECISION MATTERS:

- (1) **Amendments:** Cl. 98 Minor variations in planning permission
- (2) **Enforcement:** Cls. 99-107 Increased powers
- (3) **Appeals :** Cls. 104-105 Restrictions on, and progressing of, enforcement appeals

SOURCES:

In addition to the Bill itself, the Explanatory Notes (ExN) merit consideration in relation to these new provisions.

1. MINOR VARIATIONS TO PLANNING PERMISSIONS

- ExN[571] “...*the existing framework for varying planning permissions is often seen as confusing, burdensome, and overly restrictive by applicants and local planning authorities. Recent case law has compounded these issues.*”
- **Current position:** s.73 applications (to develop land without compliance with conditions) and section 96A (non-material changes to planning permissions)
- **What about material changes outside of section 73?**
E.g. changes to description of development approved is outside scope of s.73 (*Finney v Welsh Ministers* [2019] EWCA Civ 1868)
- **What about ‘drop-in’ applications?**
Potential problems following *Hillside Parks Ltd. v Snowdonia National Park Authority* [2020] EWCA Civ 1440

Minor variations in planning permissions (2)

- Cl.98 (Minor variations in planning permission) would introduce a new s.73B
 - *Applications for permission substantially the same as existing permission*
- Based on an **existing permission** other than one which has been granted under s.73, s.73A or s.73B.
- That existing permission must have been granted **on application**.
- Application proposes **the conditions** if any to which it should be subject BUT Cannot change date for development to be started or for reserved matters applications to be made (Cl. 98(6)).
- Applies also to a **permission in principle** (Cl.98(13))

Minor variations to planning permissions (3)

- **CRITICAL:** Planning permission may be granted in accordance with this new section only if the local planning authority is satisfied that:
its effect (by reference to both the development it authorises and any conditions to which it is subject) will not be substantially different from that of the existing permission (ignoring any minor amendment made under s.96A). (s.73B(5)-(10))
- **DETERMINATION:** is based on limiting considerations to those respects in which the permission being applied for would differ in effect from the existing permission identified and from any permission under s. 73 (s.73B(7))
- **CONSEQUENCES:** no right of appeal; new planning permission; can't avoid the mandatory BNG condition (under para 13 of Shcd 7A of the TCPA 1990)

2. ENFORCEMENT

- Enforcing the carrying out the **development authorised**:
CI.99 Development Commencement Notices
CI.100 Completion notices
- Enforcing against **unauthorised development**
 - Time limits for taking enforcement action
 - Duration of temporary stop notices
 - Enforcement warning notices
 - Power to provide relief from enforcement of planning conditions
 - Increase in some penalties

Enforcement (2) – Authorised Development Development Commencement Notices

- Inserts new s.93G into the TCPA 1990 (England) which imposes a duty on the person intending to carry out development (permitted pursuant to an application under s.58(1)(b) or 73 of the TCPA, 1990 and of a prescribed description) to **serve a Commencement Notice (CN) before development is begun.**
- **The CN must contain the information to be prescribed** – but see Example 1 (on p.97 of the ExN) for residential scheme – delivery rate; phasing; expected completion date.
- The information required is to be included in the **Planning Register** (s.69 of the TCPA 1990, as to be amended by s.93G).
- There is power for the LPA **to serve a notice** requiring the required information to be provided and if not provided within 21 days (without a reasonable excuse) a level 3 summary offence (£1000) will have been committed, (S.93G(3)-(9)).

Enforcement (3) – Authorised Development Completion notices

- **Currently:** Existing provisions under ss.94-96 of the TCPA 1990.
- A CN can be served after the deadline for commencement of development has passed; and
- Currently requires confirmation by the SoS.
- **Proposed:** Cl. 100(2) introduces new ss. 93H, 93I & 93J into the TCPA 1990 removing the requirement for that confirmation
- The new provisions apply **retrospectively to permissions** granted before the measures come into effect.
- However, any CNs served before the new measures come into effect remain **subject to the current procedures**.

Enforcement (4) – Authorised Development Completion notices

- New s.93H (and Schedule 10 consequential amendments) gives a power to LPAs in England to serve a CN for development which has commenced as required by ss.91 or 92 but in their opinion **will not be completed in a reasonable period** (s.93H(1)).
- That period must be at **least 12 months after service of CN** (s.93H(2)&(3)).
- The effect of a CN is that the planning permission to which it relates becomes **invalid** at the CN deadline whether as originally specified or substituted on appeal. S.93I introduces a process of appeals against the service of a CN.
- Development carried out under the planning permission **prior to the CN is not affected** (s.93J(3))
- However, the notice is of **no effect** pending the final determination of an appeal or withdrawal of the appeal (s.93J(2)).

ENFORCEMENT (5) – UNAUTHORISED DEVELOPMENT Time Limits for enforcement action

- **Currently** - 4 year time limit for unauthorised operational development (building, engineering, mining or other) (s.171B(1)) and for change of use of any building to use as a single dwelling house (s.171B(2)).
- Other breaches are subject to 10 year time limit for taking enforcement action (s.171B(3)).
- **Proposed** – In England (but not Wales) these 4 year time limits are to be amended to 10 years in common with other breaches.

Enforcement (6) – Unauthorised Development

Duration of temporary stop notices

- **Currently** - s.171E of the TCPA 1990 empowers LPAs to pause development for 28 days if a planning breach is suspected whilst the facts are established to decide further action to take.
- **Proposed** – Cl.102 extns this period to up to 56 days in England
- **Listed Buildings** – Cl.93 amends the LBA to enable the issuing of a temporary stop notice for such unauthorised works for up to 56 days. There are also changes in respect of the compensation provisions for LB temporary stop notices and related matted matters (Cl.94-95).

Enforcement (7) – Unauthorised Development Enforcement warning notices

- **Proposed** – a new power by inserting a new s.172ZA into the TCPA 1990 and with other consequential amendments (Cl.103).
- It would apply where the LPA in England becomes aware of unauthorised development **that has a reasonable prospect of being acceptable**.
- The LPA will be enable serve an Enforcement Notice Warning asking the person concerned (the owner of the land and any other person having interest in the land that would be materially affected by the taking of any further enforcement action) **to submit a retrospective planning permission**.
- If such an application is not received within the specified period the LPA **can take further enforcement action**.

Enforcement (8) – Unauthorised Development Relief from enforcement of planning conditions

- **Proposed** – Cl. 107 would insert a new s.196E into the TCPA 1990 which would grant a new power to the SoS to provide by regulations that a LPA in England may not take, or is subject to specific restrictions in how it may take, enforcement measures for non-compliance with specified planning conditions or limitations for a specified period of time.
- **Context** (see ExN[620]-[622]) – since March 2020 LPAs have been encouraged to be flexible in terms of enforcement action in terms of construction working hours and delivery ours in response to the pandemic (s.16 of the Business and Planning Act 2020 and Written Ministerial Statements).
- **Example** (ExN p.106) – shortage of HGV drivers leading to need for deliveries outside of usual hours

ENFORCEMENT (9) – Increase in some penalties

- Cl.106 would amend s.187A (**enforcement of planning conditions**) and s.216 (**maintenance of land**) to increase the maximum level of fines for breaches in relation to these in England (the current fine levels are maintained in Wales).
- As a consequence, there would be an **unlimited fine** (level 5 on the standard scale) for failure to comply with a **breach of condition notice**.
- The maximum fine for **non-compliance with a s.215 notice** would also be unlimited and the maximum daily fine in England to the greater of either one tenth of a **level 4 fine (currently £2,500) or £5,000**.

3. ENFORCEMENT NOTICE APPEALS- Restrictions on appeals under ground (a)

- **Currently** – s.174(2A) & (2B) removes the ability of a person to lodge an appeal on ground (a) in England in certain circumstances (Cl.104).
- **Proposed** – to extend the circumstances where a ground (a) appeal is prohibited to cover the situation where a related application has been submitted (even before the time for determination has expired).
- Applies to a '*related application for planning permission*' which is one that **covers the same development** as is the subject of the enforcement notice.
- Applies where the enforcement notice is served **within 2 years** of the date the related application ceased to be under consideration (as explained in new s.174((2AB) & 2AC –see also the Table in ExN[613] at p.102).

ENFORCEMENT NOTICE APPEALS (2) – Undue delay in appeals

- **Proposed by Cl.105** – a new power (new ss.(6) in s.176 and amended s.195 of the TCPA 1990) to the SoS to dismiss an appeal in relation to an enforcement notice or an application for a lawful development certificate in England, should it appear to them that the appellant is causing undue delay to the appeals process. (already exists for s.78 appeals – s.79(6A) of the TCPA 1990).
- In such circumstances, the SoS may **issue a notice** explaining that the appeal may be dismissed if the appellant does not take the steps specified in the notice to expedite the appeal **within the specified time**.

And finally...

Cl. 110

Additional powers in relation to planning obligations

In section 106A of TCPA 1990 (modification and discharge of planning obligations), after subsection (9) insert—

“(9A) Regulations may make provision for, or in connection with—

- (a) requirements which must be met in order for a planning obligation in respect of land in England to be modified or discharged; and**
- (b) circumstances in which a planning obligation in respect of land in England may not be modified or discharged.”**

Thank you for listening

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