

PRACTICE NOTE 5

PLANNING ENFORCEMENT - THE COMPLIANCE PROVISIONS

Background

The Island's planning Laws for many years were the Island Development (Guernsey) Laws, 1966-1990. These Laws contained various powers for the enforcement of planning control and the Building (Guernsey) Law, 1956 and the Ancient Monuments and Protected Buildings (Guernsey) Law, 1967 ("Ancient Monuments Law") provided for the enforcement of the requirements of the Building Regulations and Ancient Monuments Law respectively. It has however been widely acknowledged that these powers were generally out of date and no longer fit for purpose in the 21st Century.

The Land Planning and Development (Guernsey) Law, 2005 ('the Law'), and the associated Land Planning and Development (Enforcement) Ordinance, 2007 ('the Enforcement Ordinance'), set out the powers available to us to ensure that compliance with the planning restrictions and requirements that apply under the Law and the requirements of the Building Regulations are appropriately enforced. Some existing enforcement powers in the Building Regulations, 1992 are retained.

What constitutes a breach of planning control?

There will have been breach of planning control for which enforcement action may be taken under the Law where:-

- Development has been carried out without planning permission required under the Law; this now includes operations in relation to monuments and protected buildings previously regulated under the Ancient Monuments Law,
- Any term (including any condition or limitation) of any planning permission has not been complied with, or
- Any relevant requirement of the Building Regulations has not been complied with.

For the avoidance of doubt, the term 'breach of planning control' therefore includes a breach of the Building Regulations.

The enforcement powers

Part V of the Law deals with enforcement. The main elements of the enforcement powers as set out in the Law and the Enforcement Ordinance are summarised below.

Challenge Notice

Where it appears to us that there may have been a breach of planning control, we may serve a Challenge Notice (under section 47 of the Law). Challenge Notices are essentially used to gather further information as to a suspected breach, and may be served on anyone on whom a Compliance Notice (see below) might subsequently be served.

The information that is required by us to be given as to the suspected breach will be specified in the Challenge Notice. The notice may also contain a statement as to the time and place where we will consider (1) any offer by the person concerned to make a planning application, to stop doing anything or to carry out remedial works or (2) any representations that the person might wish to make about the Challenge Notice.

Where the suspected breach relates to contravention of the Building Regulations, the notice may require information which would necessitate opening up of the building work.

It is important to note that a failure by a person on whom the notice is served to comply with any requirement of the notice within 21 days beginning with the date of service of the notice is an offence in accordance with section 58 of the Law.

Compliance Notice

Where it appears to us that there has been a breach of planning control which should be remedied, we may serve a Compliance Notice (under section 48 of the Law). The required content of a Compliance Notice is set out in section 49 of the Law and section 2 of the Enforcement Ordinance.

A Compliance Notice will principally:-

- Identify the land to which it relates (by means of a plan or otherwise),
- Specify the matters which appear to us to constitute the breach of planning control,
- Specify the steps which we require to be taken or the activities we require to cease for the purpose of remedying the breach or remedying or alleviating any harm to amenity caused by the breach,
- Specify the period or periods of time ('the compliance period') within which the measures are required to be taken.

A copy of a Compliance Notice must be served on the owner, occupier or other person with an interest in the land concerned which would be materially affected by the notice (in each case whether or not he was responsible for the alleged breach to which the notice relates, and whether or not he was its owner or occupier or had an interest at the time of the alleged breach).

A copy of the Compliance Notice must be served on such persons within 28 days of the date of its issue, and not less than 28 days before the date specified in it as the date on which it is to take effect.

Where the alleged breach relates to any development other than a material change of use, no Compliance Notice may be issued (a) after the expiry of the period of 4 years beginning with the date of the alleged breach to which it relates, or (b) of the period of 4 years beginning with the date on which the facts alleged to constitute that breach are first known by us, whichever is the sooner. The period of 10 years from the date of the alleged breach applies in (a) in respect of any development which is a material change of use.

Furthermore, no action under the enforcement provisions of the Law can be taken where an Immunity Certificate has been granted (under section 3 of the Enforcement Ordinance) in respect of a breach occurring on or before the date of the certificate and against the persons on whom the certificate confers immunity.

Any breach of planning control proven to have taken place before the introduction of the new Law on 6th April 2009 would be dealt with in all respects under the provisions of the previous Island Development Laws, the Building Law and the Ancient Monuments Law. There is an evidential presumption within the new Law that a breach of planning control occurred after 6th April 2009.

The Law provides (in section 50) that where certain measures required to be taken by a compliance notice are not taken within the compliance period, we may enter the land concerned and take those measures and recover the costs as a civil debt.

There is a right of appeal to the Planning Tribunal against a Compliance Notice under section 70(1) of the Law. A planning application may also be made in respect of the matter concerned. Section 51 of the Law provides that no action may be taken under section 50 or proceedings instituted or continued under the enforcement part of the Law where an appeal has been duly instituted or if before the expiry of a specified period a planning application is duly made or plans are duly deposited under the Building Regulations to regularise the breach. In the case of an appeal this position applies until such time as an appeal is finally determined or withdrawn.

The Royal Court may authorise that a charge be created over any land (under section 55 of the Law) for the purpose of securing compliance with a Compliance Notice in relation to it. Any expenses we incur in carrying out measures on land under section 50 of the Law and legal costs incurred in making an application to the court under section 55 are a charge on the land and recoverable by us.

It is important to note that if any measure required to be taken by a Compliance Notice is not taken within the compliance period then every person on who the Compliance Notice was served and every person who is owner of the land after the expiry of the compliance period and whilst the failure to take the measure continues, is guilty of an offence in accordance with section 59 of the Law. The carrying out

of operations or use of land in contravention of a Compliance Notice also constitutes an offence under section 59 of the Law.

Interim Compliance Notice

Where we issue, or have issued, a Compliance Notice requiring an activity to cease but considers it expedient that the activity or any associated activity should cease before the end of the compliance period, then we may serve an Interim compliance Notice (under section 53 of the Law) to prohibit the carrying out of the activity concerned. The Interim Compliance Notice would be served on any person who appears to us to have an interest in the land concerned or to be engaged in any activity prohibited by the notice.

An Interim Compliance Notice cannot take effect earlier than 24 hours or later than 28 days from the time it is first served on any person, other than where it is required to remedy a breach of the Building Regulations in which case it can take effect immediately under section 53(5A) of the Law as inserted by section 7(7)(b) of the Enforcement Ordinance.

An Interim Compliance Notice shall not prohibit the use of any building as a dwelling-house or, subject to certain exclusions relating to building, engineering or mining operations or operations relating to protected buildings, protected monuments, protected trees, sites of special significance or Conservation Areas, shall not prohibit the carrying out of an activity that has been carried out for a period of more than four years ending with the date of service of the Notice.

We may erect a site notice when an Interim Compliance Notice has been served relating to that notice.

A person who contravenes an Interim Compliance Notice is guilty of an offence in accordance with section 60 of the Law.

Any person on whom an Interim Compliance Notice has been served, or who has an interest in the land concerned, can apply to the Royal Court (under section 54 of the Law) to have the notice set aside. The Court may only set the notice aside if it is satisfied that an appeal against the Compliance Notice to which the Interim Compliance Notice relates has been or is proposed to be instituted under section 70 of the Law, and where the appellant has an arguable case in relation to any ground of appeal under that section and that in the circumstances it would be unreasonable or disproportionate not to do so.

Criminal Proceedings

Section 57 of the Law provides that it is an offence for any person to carry out development of land without planning permission or without complying with the terms of planning permission for the development, including any conditions and limitations subject to which it is granted, or without reasonable excuse to breach any requirement of the Building Regulations, whether he does so on his own behalf or as an agent.

As noted above, failure to comply with the requirements of a Challenge Notice, Compliance Notice or Interim Compliance Notice constitutes an offence.

A person found guilty of an offence is liable on conviction to a fine or imprisonment or both.

A person who causes or permits any act or omission which is an offence under the Law is also guilty of that offence (s65 of the Law).

Planning Injunction

Powers also exist, under section 52 of the Law, for us to apply to the Royal Court for a planning injunction to restrain any actual, or apprehended, breach of planning control. This may be final or interim and may be addressed to any person that the court thinks necessary to stop the breach. The breaching of an injunction may result in a penalty having to be paid, as well as potential action for contempt of Court.

A written notice may be served by us under section 52(14) of the Law where we intend to apply an injunction to restrain immediately the planning breach in question. Contravention of the notice without reasonable excuse constitutes an offence which on conviction may lead to a fine and imprisonment, or both. Such a notice will cease to have effect when the Royal Court makes a decision on the injunction or 24 hours after service whichever is earlier.

Register of enforcement notices

We are obliged under section 61 of the Law to keep a register of enforcement notices and the documents etc. to be kept on the register are set out in section 6 of the Enforcement Ordinance. This must be kept at our principal office, made available for inspection by the public free of charge at all reasonable times and the details to be included as specified in the Enforcement Ordinance shall be kept on the register for 10 years. We must provide copies of any details on the register to any person on written request. A fee will be charged for this.

This note is issued by the Development and Planning Authority to assist understanding of the provisions of the planning legislation. It represents the Authority's interpretation of certain provisions of the legislation and is not intended to be exhaustive or a substitute for the full text of the legislation copies of which are available from the Greffe. Electronic copies are also available at www.guernseylegalresources.gg Substantive queries concerning the legislation should be addressed to the Authority by email at planning@gov.gg. The Authority does not accept any liability for loss or expense arising out of the provision of, or reliance on, any advice given. You are recommended to seek advice from an independent professional advisor where appropriate.