



**T**he Conveyancing Committee of the Law Society has for many years been urging on the Department of the Environment the need to put a limit on the times within which enforcement notices or warning notices under the Planning Act could be served. Particularly in relation to change of use, the absence of any time limit meant that solicitors for vendors and purchasers were obliged to pursue detailed enquiries as to the use to which particular properties have been put for the entire period from 1 October, 1964 to date. A recommendation that time limits be imposed was also made by the Law Reform Commission in its Report 'Land Law and Conveyancing Law (1) General Proposals' published in 1989.

The Conveyancing Committee is glad to report that its representations to the Department of the Environment were favourably received by the Department and following consultation with representatives of the Conveyancing Committee, time limits have now been introduced by the 1992 Planning Act. The provisions relating to the time limits are quite complicated and the Conveyancing Committee is much obliged to John Gore Grimes, for the preparation of the note on this matter which follows.

### Summary of Time Limits

In relation to Enforcement Procedures Under Section 19 of the Local Government (Planning and Development) Act, 1992.

1. Section 31 of the 1963 Act provides that an Enforcement Notice under that section must be served by the Planning Authority:
  - a) within five years of such development being carried out where no Permission was granted;
  - b) within five years of the "appropriate date" in a case where there has been non-compliance with a condition in a Planning Permission. The "appropriate date" means:
    - i) either the date specified in the Grant of Planning Permission within which time the work must be carried out in order to achieve compliance with the condition, or;
    - ii) if there is no such date in the Grant of Planning Permission specifying a time limit for compliance with the Condition then within five years of the date for completion specified in a Notice (often referred to as a "latest date" Notice, which is not to be confused with an Enforcement Notice) served on the offending party by the Local Authority requiring compliance with the Condition.

Section 19 of the 1992 Act adds a new provision which provides that the "latest date" notice, as opposed to the Enforcement Notice, to be served by the Planning Authority seeking compliance with a Condition, must be served:

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- i) in the case where a Condition in a Planning Permission is not complied with - within the life of the Planning Permission which is normally five years from the date of grant (see section 2 of the 1982 Act) or such additional time as may be allowed under section 4 of the 1982 Act.
  - ii) if the Condition which is not complied with is contained in a Retention Permission - within a five year period from the date of issue of the Retention Permission.
2. Section 32 of the 1963 Act also contained its own five year time limit and time started to run after the "appropriate date". The "appropriate date" in that case is either the date specified in the Permission for Retention by which time the Condition must be complied with or, if there is no such date, an Enforcement Notice must be served within five years of the date specified in the "Latest Date" Notice served by the Planning Authority requiring compliance with the Condition. Section 19 of the 1992 Act provides that the "Latest Date" Notice requiring compliance with the Condition in the Retention Permission must be served within five years from the date on which the Retention Permission issued.
  3. In relation to both sections 31 and 32 of the 1963 Act, section 19 (1) (c) of the 1992 Act also provides that the time limit under sub section s. 19(1) has effect in relation to Conditions which have not been complied with before or after the commencement of the sub section namely 19 October 1992.
  4. Section 35 of the 1963 Act did not provide any time limit for the service of Enforcement Notices. However, under that section, because of the wording of the section, the Enforcement Notice could only be served on the person who has carried out or is carrying out the Development. Section 19 of the 1992 Act now provides that the Enforcement Notice under section 35 must be served within the lifetime of the Permission, that is to say within five years of the date of Grant of Permission or such greater period as may have been specified in the permission (see section 2 (3) of the 1982 Act) or such extended period as may be granted under section 4 of the 1982 Act.
  5. Before leaving the enforcement provisions of the 1963 Act reference should be made to prosecutions under section 24 (3). Prosecutions are in fact rarely instituted under this sub section, the planning authorities tending to rely either on Enforcement Notices served under the 1963 Act or Warning Notices served under the 1976 Act. Proceedings on indictment would of course be instituted by the Director of Public Prosecutions and it is believed that he would have a reluctance to institute proceedings by indictment after 5 years or more had elapsed at a time when no Enforcement Notice or Warning Notice could be served, unless the offence was a very serious one.  
A summary prosecution could only be brought after 5 years under the provisions of



Section 9 of the 1982 Act (as amended by Section 20 of the 1992 Act) where the Judge is satisfied that the facts constituted a minor offence, the Director of Public Prosecutions consents and the defendant does not object to a summary trial. It is apprehended that the risk of prosecutions being instituted under section 24 (3) of the 1963 Act in the vast majority of cases must be extremely remote.

6. Section 26 of the 1976 Act prescribed no time limit within which a Warning Notice under that section may be served. There are three circumstances where the section 26 Warning Notice (as amended by section 19 of the 1992 Act) may be served namely;
- a) Where it appears that land is or is likely to be developed in contravention of section 24 of the 1963 Act.
  - b) Where it appears that any unauthorised use is being made or is likely to be made of land.
  - c) Where it appears that any tree or other feature (whether structural or natural) or any other thing, the preservation of which is required by a Condition subject to which a Permission for the development of any land was granted, may be removed or damaged.

Section 19, sub-section (4) (e) of the 1992 Act provides:

“A Warning Notice in relation to any unauthorised use of land shall not be served after the expiration of a period of five years beginning on the day on which such unauthorised use first commenced”.

Section 19 applies a time limit to paragraph (b) only of the above three circumstances in which a Warning Notice may be served. No time limit is provided in the circumstances envisaged by paragraph (a) above but it is clear that under paragraph (a) a Warning Notice cannot be served after the completion of the development. Also, there is no time limit provided for the service of a Warning Notice in circumstances envisaged by paragraph (c) above.

7. Section 27 of the 1976 Act has been re-written into section 19 of the 1992 Act by sub-section (4) (a) and there are subtle and effective changes. There are two circumstances in which a planning injunction may be sought under section 27 (as amended by section 19 of the 1992 Act) namely:

*Sub-section 1*

- (a) Where development of land being development for which permission is required under Part 4 of the Principal Act *has been carried out* or is being carried out without such permission: **OR**
- (b) An unauthorised use is being made of land.

The High Court or the Circuit Court may on the application of a Planning Authority or any other person, whether or not that person has an interest in the land, by Order require any person to do or not to do or to cease to do as the case may be anything that the Court considers necessary and specifies in the Order to ensure as appropriate:

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- (a) that the development or unauthorised use of land is not continued:
- (b) in so far as is practicable that the land is restored to its condition prior to the commencement of the development or unauthorised use.

Section 19 of the 1992 Act allows injunctions to be taken in the Circuit Court as well as the High Court. The Court is now empowered to make an Order to stop the development or the unauthorised use and, as far as practicable, to restore the land to its condition prior to the commencement of the development or unauthorised use. Under the provisions of the 1976 Act in section 27 sub section 1, the Court could merely prevent the continuation of a wrongful state of affairs but it did not have the jurisdiction to order the knocking down of unauthorised buildings or the carrying out of any other steps which it might think appropriate.

The new section 27 procedure under section 19 of the 1992 Act, permits an application for a planning injunction to be made *even though the development has been completed*.

#### *Sub-section 2*

Sub-section 2 of section 27 of the 1976 Act, as now amended by section 19 of the 1992 Act, allows for an application to be made for a planning injunction in cases where development is proceeding which is authorised by Permission granted under Part IV of the 1963 Act but which has not been or is not being carried out in conformity with the Permission because of non compliance with the requirements of a Condition attached to the Permission or for any other reason. Again, application can be made either to the High Court or to the Circuit Court.

Section 19 of the 1992 Act has effectively abolished the old distinction which existed between sub-section 1 cases and sub-section 2 cases under section 27 of the 1976 Act.

The time limits applying to section 27 may be summarised as follows:

- (A) application for injunction to the High Court or to the Circuit Court in relation to development carried out without Permission shall not be made once five years have passed from the date on which the development was substantially completed.
- (B) application for injunction to the High Court or to the Circuit Court in relation to an unauthorised use where no Planning Permission at all has been obtained for the change of use shall not be made after five years from the date when the use first commenced, no matter whether the use commenced on or before 1 January, 1994 (the date on which paragraph (g) of s.19 (4) comes into operation (Commencement order S.I. No. 221/1992)). The effect of this will be that the five year period will in some cases already have expired, but an application for an injunction can still be brought before 1 January, 1994.
- (C) application for injunction to the High Court or to the Circuit Court in relation to authorised development where there is non compliance with the Condition



cannot be made after the expiration of five years. The five year period starts to run at the end of the life of the Planning Permission that is to say, in a normal case, the five year period provided for under section 2 of the 1982 Act or such greater period as may have been prescribed or such extended period as may be allowed under sections 2 and 4 respectively of the 1982 Act. The effect of this will be that the five year period will in some cases already have expired, but an application for an injunction can still be brought before 1 January, 1994.

John Gore-Grimes

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