

6. Service of Notices and Orders

Any notice or order or warning letter under the Act has to be served. A warning letter has to be served on the owner and / or occupier and / or person carrying on the development and a copy may be given to any person who may be concerned. An enforcement notice has to be served on the person carrying out the development and, if the Council considers it necessary, the owner and / or occupier, or any other person who may be concerned. Where further relevant people are identified later, the notice can be served on them too. (This is likely to happen where someone replies to the notice and says that he / she did not carry out the development, that it was someone else, or perhaps where it turns out that it was a limited company owned by the landowner, rather than the landowner himself / herself or vice versa.)

Section 250 of the 2000 Act deals with service of notices.

Finding Out Who to Serve

It will therefore be necessary to identify the developer, the owner and the occupier. Often the best approach is to knock on the door and ask, but obviously this will not work for an unoccupied site. Knocking on adjacent doors will usually ultimately produce the name of a person with an interest in the property.

Another straightforward approach is to check in the Land Registry: the ownership of much, but not all, of the land in the State can be established by such a check. Where land is leased for more than 35 years, the lease

should also be registered in the Land Registry. Shorter leases and licences to carry out an activity may not be registered, so identifying lessee or licensee can be difficult.

Local authority records can be a good source of information. If there has been a previous application for permission on the site, the applicant will have had to specify his / her interest in the property. It is usual to claim either to be an owner or to make the application with the consent of the owner.

Once the name of a person has been obtained, a notice can be served under Section 8 of the 2000 Act, requiring that person to set out details of his / her interest in the property. Failure to do so is an offence.

For the purposes of a warning letter, this is probably as far as it is necessary to go. If the owner, occupier or developer cannot be identified, the warning letter can be served on “the Owner / Occupier” and delivered to the address. If the owner or occupier wants to make a submission on the matter, he / she will have to identify himself / herself.

Where the owner / occupier have not been identified before service of the enforcement notice, strenuous efforts should be made to find out who it is because it may be necessary to prosecute for failure to comply with the notice, and a prosecution can only be taken against a known person.

It is possible that, at the end of all inquiries, no owner, occupier or developer will have been identified. If this is because a development has been left half completed, the Council should see if action can be taken under the Derelict Sites Act 1990. If this does not flush out the developer, the Council should ultimately be able to acquire the site and dispose of it.

If nothing produces any result, it is possible to serve the warning letter or notice on “the Owner / Occupier”.

There are some situations where identifying the developer may be very difficult. Dumping of waste is one. It is probably better dealt with through the Waste Management Act in any event. Cutting of turf is another: ownership of a right to cut turf (a turbary right) is not normally registered, and does not have to be. Often the owner of the right will sell the right to cut a single strip of turf to a person for a single year. It may be difficult to identify who is actually cutting, and who owns the right to cut. There is no way around this difficulty, other than careful and patient investigation.

Where the owner has employed a builder to carry out works on the land, the builder is, in a sense, the developer and may be liable along with the landowner.

Another situation to consider is where a landlord may have rented a house to someone who is operating a car repair workshop out of it, possibly through a company. The landlord may not want the car repairs carried out. He / she can be served as owner, and may be able to stop the development more easily than enforcement

action would. Where the landlord is involved in, or profiting from, the development, he / she can be liable for carrying out development or for breach of an enforcement notice.

Method of Service

A notice to a person whose name is known can be served in the following ways:

- by giving it to him / her by hand;
- by leaving it at the place where he / she ordinarily resides;
- by sending it by registered post to the place where he / she ordinarily resides;
- by leaving it with someone aged over 16 who lives at, or is employed at, the site;
- by leaving it with someone aged over 16 who is employed on or in connection with the development; or
- by affixing it in a prominent position on or near the premises.

Where the person has provided an address for service the notice can be delivered there rather than to the place where he / she normally resides.

Where the normal residence is not known, delivery to the site may be used.

In practice registered post should probably be the first option for service. If the letter comes back, personal delivery to the person or to someone at the person's home is the next best option. After that, delivery to the site is probably best, and finally, the least preferred option, would be affixing it to the site.

Where the letter is sent by registered post, the original receipt for posting must be available if the case ever goes to court. A copy will not do. The original should be retained carefully on the file or, if there is a registered post book, this should be retained by the Council's enforcement section.

Where the letter has been delivered by hand, the person who delivered it will have to give evidence of delivery. Similarly, where it is nailed up on site, the person who put it up will have to give evidence of putting it up, and also evidence as to whether it was taken down and when.

To serve a company, the Notice or Order should be addressed to the company secretary at the registered office of the company. The address of the registered office can be obtained from the Companies Registration Office (www.cro.ie).

Where a notice affixed to a site is removed or defaced, the person who removed or defaced it is guilty of an offence. In the unlikely event that the culprit can be found, a prosecution can be taken. In practice, it is very unlikely that any evidence will be found to show who is

responsible. Where service is effected by erecting the notice on the site, it is a good idea to take a picture of the notice after it is erected, and to mark the location on a sketch map of the site. It is probably as well to return after a few days to see if the notice is still there. If it has been removed, an additional copy should be erected: the probability is that the owner removed it, but this will not be sufficient to prove service beyond a reasonable doubt in criminal proceedings.