



Town and Country Planning (Scotland) Act 1972

1972 CHAPTER 52

PART III

GENERAL PLANNING CONTROL

Secretary of State's powers in relation to planning applications and decisions

32 Reference of applications to Secretary of State

- (1) The Secretary of State may give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to him instead of being dealt with by local planning authorities.
- (2) A direction under this section—
 - (a) may be given either to a particular local planning authority or to local planning authorities generally; and
 - (b) may relate either to a particular application or to applications of a class specified in the direction.
- (3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.
- (4) Subject to subsection (5) of this section, where an application for planning permission is referred to the Secretary of State under this section, the following provisions of this Act, that is to say, sections 23(2) and (7), 24, 26(1) to (3) and 27(1), shall apply, with any necessary modifications, as they apply to an application for planning permission which falls to be determined by the local planning authority.
- (5) Before determining an application referred to him under this section, other than an application for planning permission referred to a Planning Inquiry Commission under section 45 of this Act, the Secretary of State shall, if either the applicant or the local

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planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

- (6) The decision of the Secretary of State on any application referred to him under this section shall be final.

33 Appeals against planning decisions

- (1) Where an application is made to a local planning authority for planning permission to develop land, or for any approval of that authority required under a development order, and that permission or approval is refused by that authority or is granted by them subject to conditions, the applicant, if he is aggrieved by their decision, may by notice under this section appeal to the Secretary of State.
- (2) Any notice under this section shall be served within such time (not being less than twenty-eight days from the date of notification of the decision to which it relates, and in such manner as may be prescribed by a development order.
- (3) Where an appeal is brought under this section from a decision of a local planning authority, the Secretary of State, subject to the following provisions of this section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the local planning authority, whether the appeal relates to that part thereof or not, and may deal with the application as if it had been made to him in the first instance.

Provided that where the Secretary of State proposes to reverse or vary any part of the decision of the local planning authority to which the appeal does not relate, he shall give notice of his intention to the local planning authority and to the applicant and shall afford to them an opportunity to make representations in regard thereto.

- (4) Before determining an appeal under this section, other than an appeal referred to a Planning Inquiry Commission under section 45 of this Act, the Secretary of State shall, if either the applicant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) Subject to subsection (4) of this section, the following provisions of this Act, that is to say, sections 24, 26(1) and (3) and 27(1) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under this section as they apply in relation to an application for planning permission which falls to be determined by the local planning authority.
- (6) The decision of the Secretary of State on any appeal under this section shall be final.
- (7) If before or during the determination of an appeal under this section in respect of an application for planning permission to develop land, the Secretary of State forms the opinion that, having regard to the provisions of sections 26(1), 27(1) and 65 of this Act and of the development order and to any directions given under that order, planning permission for that development—
- (a) could not have been granted by the local planning authority; or
 - (b) could not have been granted by them otherwise than subject to the conditions imposed by them,
- he may decline to determine the appeal or to proceed with the determination.

- (8) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section, including appeals under this section as applied by or under any other provision of this Act.

34 Appeal in default of planning decision

Where an application is made to a local planning authority for planning permission, or for any approval of that authority required under a development order, then unless within such period as may be prescribed by the development order, or within such extended period as may at any time be agreed upon in writing between the applicant and the local planning authority, the local planning authority either—

- (a) give notice to the applicant of their decision on the application ; or
- (b) give notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 32 of this Act,

the provisions of section 33 of this Act shall apply in relation to the application as if the permission or approval to which it relates had been refused by the local planning authority, and as if notification of their decision had been received by the applicant at the end of the period prescribed by the development order, or at the end of the said extended period, as the case may be.

35 Review of planning decisions where compensation claimed

- (1) The provisions of this section and of section 36 of this Act shall have effect where, in accordance with the provisions of section 143 of this Act, one or more claims for compensation in respect of a planning decision have been received by the Secretary of State, and the claim, or (if there is more than one) one or more of the claims, has not been withdrawn.
- (2) If, in the case of a planning decision of the local planning authority, it appears to the Secretary of State that, if the application for permission to develop the land in question had been referred to him for determination, he would have made a decision more favourable to the applicant, the Secretary of State may give a direction substituting that decision for the decision of the local planning authority.
- (3) If, in any case, it appears to the Secretary of State that planning permission could properly be granted (either unconditionally or subject to certain conditions) for some development of the land in question other than the development to which the application for planning permission related, the Secretary of State may give a direction that the provisions of this Act shall have effect in relation to that application and to the planning decision—
- (a) as if the application had included an application for permission for that other development, and the decision had included the grant of planning permission (unconditionally or subject to the said conditions, as the case may be) for that development; or
 - (b) as if the decision had been a decision of the Secretary of State and had included an undertaking to grant planning permission (unconditionally or subject to the said conditions, as the case may be) for that development,
- as may be specified in the direction.
- (4) The reference in subsection (2) of this section to a decision more favourable to the applicant shall be construed—

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- (a) in relation to a refusal of permission, as a reference to a decision granting the permission, either unconditionally or subject to conditions, and either in respect of the whole of the land to which the application for permission related or in respect of part of that land; and
- (b) in relation to a grant of permission subject to conditions, as a reference to a decision granting the permission applied for unconditionally or subject to less stringent conditions.

36 Provisions supplementary to s. 35

- (1) Before giving a direction under section 35 of this Act the Secretary of State shall give notice in writing of his proposed direction to the local planning authority to whose decision that direction relates, and to any person who made, and has not since withdrawn, a claim for compensation in respect of that decision ; and, if so required by the local planning authority or by any such person, shall afford to each of them an opportunity to appear before, and be heard by, a person appointed by the Secretary of State for the purpose.
- (2) In giving any direction under section 35 of this Act, the Secretary of State shall have regard to the provisions of the development plan for the area in which the land in question is situated, in so far as those provisions are material to the development of that land, and shall also have regard to the local circumstances affecting the proposed development, including the use which prevails generally in the case of contiguous or adjacent land, and to any other material considerations.
- (3) Where the Secretary of State gives a direction under section 35 of this Act, he shall give notice of the direction to the local planning authority to whose decision the direction relates, and to every person (if any) who made, and has not since withdrawn, a claim for compensation in respect of that decision.