



Building Act 1984

1984 CHAPTER 55

PART I

BUILDING REGULATIONS

Appeals in certain cases

39 Appeal against refusal etc. to relax building regulations.

- (1) If a local authority refuse an application to dispense with or relax a requirement in building regulations that they have power to dispense with or relax, the applicant may by notice in writing appeal to the Secretary of State within one month from the date on which the local authority notify the applicant of their refusal.
- (2) If, within—
 - (a) a period of two months beginning with the date of an application, or
 - (b) such extended period as may at any time be agreed in writing between the applicant and the local authority,the local authority do not notify the applicant of their decision on the application, subsection (1) above applies in relation to the application as if the local authority had refused the application and notified the applicant of their decision at the end of the said period.
- (3) The notice of appeal shall set out the grounds of appeal, and a copy of the notice of appeal shall be sent to the local authority.
- (4) The local authority, on receiving a copy of the notice of appeal, shall at once transmit to the Secretary of State a copy of the application and a copy of all the documents furnished by the applicant for the purposes of his application.
- (5) The local authority shall at the same time give to the Secretary of State in writing any representations that they desire to make as regards the appeal, and shall send a copy to the appellant.

Status: Point in time view as at 01/04/2005.

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- (6) If the Secretary of State allows the appeal, he shall give such directions for dispensing with or relaxing building regulations as may be appropriate.

40 Appeal against section 36 notice.

- (1) A person aggrieved by the giving of a section 36 notice may appeal to a magistrates' court ^{F1}....
- (2) Subject to subsection (3) below, on an appeal under this section the court shall—
- (a) if it determines that the local authority were entitled to give the notice, confirm the notice, and
 - (b) in any other case, give the local authority a direction to withdraw the notice.
- (3) If, in a case where the appeal is against a notice under section 36(2) above, the court is satisfied that—
- (a) the local authority were entitled to give the notice, but
 - (b) in all the circumstances of the case the purpose for which was enacted the section of this Act by virtue of which the notice was given has been substantially achieved,
- the court may give a direction under subsection (2)(b) above.
- (4) An appeal under this section shall be brought—
- (a) within 28 days of the giving of the section 36 notice, or
 - (b) in a case where the person to whom the section 36 notice was given gives notice under section 37(1)(a) above, within 70 days of the giving of the section 36 notice.
- (5) Where an appeal is brought under this section—
- (a) the section 36 notice is of no effect pending the final determination or withdrawal of the appeal, and
 - (b) section 36(3) above has effect in relation to that notice as if after the words “28 days” there were inserted the words “(beginning, in a case where an appeal is brought under section 40 below, on the date when the appeal is finally determined or, as the case may be, withdrawn)”.
- (6) If, on an appeal under this section, there is produced to the court a report that has been submitted to the local authority under section 37(1) above, the court, in making an order as to costs, may treat the expenses incurred in obtaining the report as expenses incurred for the purposes of the appeal.

Textual Amendments

F1 Words in s. 40(1) repealed (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), Sch. 8 para. 279, Sch. 10; S.I. 2005/910, art. 3(y)

41 Appeal to Crown Court.

- (1) Where a person—

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- (a) is aggrieved by an order, determination or other decision of a magistrates' court under this Part of this Act, or under Part IV of this Act as it applies in relation to this Part, and
 - (b) is not by any other enactment authorised to appeal to the Crown Court.
- he may appeal to the Crown Court.
- (2) Subsection (1) above does not confer a right of appeal in a case in which each of the parties concerned might under this Act have required that the dispute should be determined by arbitration instead of by a magistrates' court.

42 Appeal and statement of case to High Court in certain cases.

- (1) Where the Secretary of State gives a decision in proceedings—
- (a) on an appeal under section 20 or 39 above,
 - (b) on a reference under section 16 above or 50 below, or
 - (c) on an application for a direction under section 8 above where the power of giving the direction is not exercisable by the local authority,
- the relevant person or the local authority or, as the case may be, the approved inspector may appeal to the High Court against the decision on a point of law.
- (2) In subsection (1) above, “the relevant person” means—
- (a) as regards an appeal under the said section 20 or 39, the appellant,
 - (b) as regards a reference under the said section 16 or 50, the person on whose application the reference was made,
 - (c) as regards such an application as is mentioned in subsection (1)(c) above, the applicant.
- (3) At any stage of the proceedings on such an appeal, reference or application as is mentioned in subsection (1) above—
- (a) the Secretary of State may state a question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court, and
 - (b) a decision of the High Court on a case so stated is deemed to be a judgment of the court within the meaning of section 16 of the ^{M1}[F2Senior Courts Act 1981] (appeals from the High Court to the Court of Appeal).
- (4) In relation to proceedings in the High Court or the Court of Appeal brought by virtue of this section, the power to make rules of court includes power to make rules—
- (a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State, and
 - (b) providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.
- (5) No appeal to the Court of Appeal shall be brought by virtue of this section except with the leave of the High Court or the Court of Appeal.
- (6) In this section, “decision” includes a direction, and references to the giving of a decision shall be construed accordingly.

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- (7) Until such day as the Secretary of State may by order appoint, subsections (1) and (2) above have effect as if—
- (a) in subsection (1)(b), for “section 16 above or 50 below” there were substituted “section 30 above”,
 - (b) in subsection (1), the words “or, as the case may be, the approved inspector” were omitted, and
 - (c) in subsection (2)(b), for “section 16 or 50” there were substituted “section 30” and the words “(jointly with the local authority)” were inserted after “application”.

Textual Amendments

F2 Words in s. 42(3)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 11 para. 1\(2\)](#); [S.I. 2009/1604](#), art. 2(d)

Marginal Citations

M1 [1981 c. 54](#).

43 Procedure on appeal to Secretary of State on certain matters.

- (1) On an appeal to the Secretary of State under section 20 or 39 above, the Secretary of State may at his discretion afford to the appellant and the local authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (2) On determining such an appeal, the Secretary of State shall give such directions, if any, as he considers appropriate for giving effect to his determination.
- (3) Without prejudice to paragraph 10(c) of Schedule 1 to this Act, building regulations may, in connection with such an appeal, include such supplementary provisions with respect to procedure as the Secretary of State thinks fit.

Status:

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