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Town and Country Planning Act 1990

1990 CHAPTER 8

PART III **E+W**

CONTROL OVER DEVELOPMENT

Secretary of State's powers as respects planning applications and decisions

[^{F1}76A Major infrastructure projects **E+W**

- (1) This section applies to—
 - (a) an application for planning permission;
 - (b) an application for the approval of a local planning authority required under a development order,if the Secretary of State thinks that the development to which the application relates is of national or regional importance.
- (2) The Secretary of State may direct that the application must be referred to him instead of being dealt with by the local planning authority.
- (3) If the Secretary of State gives a direction under subsection (2) he may also direct that any application—
 - (a) under or for the purposes of the planning Acts, and
 - (b) which he thinks is connected with the application mentioned in subsection (1),must also be referred to him instead of being dealt with by the local planning authority.
- (4) If the Secretary of State gives a direction under this section—
 - (a) the application must be referred to him;
 - (b) he must appoint an inspector to consider the application.
- (5) If the Secretary of State gives a direction under subsection (2) the applicant must prepare an economic impact report which must—
 - (a) be in such form and contain such matter as is prescribed by development order;

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- (b) be submitted to the Secretary of State in accordance with such provision as is so prescribed.
- (6) For the purposes of subsection (5) the Secretary of State may, by development order, prescribe such requirements as to publicity and notice as he thinks appropriate.
- (7) A direction under this section or section 76B may be varied or revoked by a subsequent direction.
- (8) The decision of the Secretary of State on any application referred to him under this section is final.
- (9) Regional relates to a region listed in Schedule 1 to the Regional Development Agencies Act 1998 (c. 45).
- (10) The following provisions of this Act apply (with any necessary modifications) to an application referred to the Secretary of State under this section as they apply to an application which falls to be determined by a local planning authority—
 - (a) section 70;
 - (b) section 72(1) and (5);
 - (c) section 73;
 - (d) section 73A.
- (11) A development order may apply (with or without modifications) any requirements imposed by the order by virtue of section 65 or 71 to an application referred to the Secretary of State under this section.
- (12) This section does not apply to an application which relates to the development of land in Wales.

Textual Amendments

F1 Ss. 76A, 76B inserted (6.8.2004 for certain purposes, 24.8.2005 for E. and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 44, 121**; S.I. 2004/2097, **art. 2**; S.I. 2005/2081, **art. 2** (subject to savings in [art. 4](#))

76B Major infrastructure projects: inspectors **E+W**

- (1) This section applies if the Secretary of State appoints an inspector under section 76A(4)(b) (the lead inspector).
- (2) The Secretary of State may direct the lead inspector—
 - (a) to consider such matters relating to the application as are prescribed;
 - (b) to make recommendations to the Secretary of State on those matters.
- (3) After considering any recommendations of the lead inspector the Secretary of State may—
 - (a) appoint such number of additional inspectors as he thinks appropriate;
 - (b) direct that each of the additional inspectors must consider such matters relating to the application as the lead inspector decides.
- (4) An additional inspector must—

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- (a) comply with such directions as to procedural matters as the lead inspector gives;
 - (b) report to the lead inspector on the matters he is appointed to consider.
- (5) A copy of directions given as mentioned in subsection (4)(a) must be given to—
- (a) the person who made the application;
 - (b) the local planning authority;
 - (c) any other person who requests it.
- (6) If the Secretary of State does not act under subsection (3) he must direct the lead inspector to consider the application on his own.
- (7) In every case the lead inspector must report to the Secretary of State on—
- (a) his consideration of the application;
 - (b) the consideration of the additional inspectors (if any) of the matters mentioned in subsection (3)(b).
- (8) The function of the lead inspector in pursuance of subsection (2)—
- (a) may be exercised from time to time;
 - (b) includes making recommendations as to the number of additional inspectors required from time to time.
- (9) The power of the Secretary of State under subsection (3) to appoint an additional inspector includes power to revoke such an appointment.]

Textual Amendments

- F1** Ss. 76A, 76B inserted (6.8.2004 for certain purposes, 24.8.2005 for E. and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [ss. 44, 121](#); [S.I. 2004/2097](#), [art. 2](#); [S.I. 2005/2081](#), [art. 2](#) (subject to savings in [art. 4](#))

77 Reference of applications to Secretary of State. **E+W**

- (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^[F2], a local development order or a neighbourhood 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), where an application for planning permission is referred to the Secretary of State under this section, sections ^[F3]70, 72(1) and (5), 73 and 73A] shall apply, with any necessary modifications, as they apply to such an application which falls to be determined by the local planning authority ^[F4]and a development order may apply, with or without modifications, to an application so referred any requirements imposed by such an order by virtue of section 65 or 71].

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- (5) Before determining an application referred to him under this section, the Secretary of State shall, if either the applicant or the local planning authority wish, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (6) Subsection (5) does not apply to an application for planning permission referred to a Planning Inquiry Commission under section 101.
- (7) The decision of the Secretary of State on any application referred to him under this section shall be final.

Textual Amendments

- F2** Words in s. 77(1) substituted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes, 6.4.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), s. 240(5)(j), [Sch. 12 para. 10](#); [S.I. 2012/57](#), art. 4(1)(h) (with arts. 6, 7, 9-11); [S.I. 2012/628](#), art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by [S.I. 2012/2029](#), arts. 2, 4); [S.I. 2012/2029](#), arts. 2, 3(a) (with art. 5) (as amended (6.4.2013) by [S.I. 2013/797](#), art. 4); [S.I. 2013/797](#), arts. 1(2), 2
- F3** Words in s. 77(4) substituted (2.1.1992 so far as relating to the inclusion of a reference to s. 73A otherwise 17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para.18](#) (with s. 84(5)); [S.I. 1991/2905](#), art. 3, [Sch.1](#) (subject to art. 5) and [S.I. 1992/1491](#), art.2, [Sch.1](#)
- F4** Words in s. 77(4) inserted (17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 18](#) (with s. 84(5)); [S.I. 1992/1491](#), art. 2, [Sch.1](#)

Modifications etc. (not altering text)

- C1** S. 77 extended (3.11.1994) by [1994 c. 33](#), [ss. 80\(3\)](#), 172(4)
- C2** S. 77 applied (with modifications) (6.4.2007) by [The Town and Country Planning \(Control of Advertisements\) \(England\) Regulations 2007 \(S.I. 2004/783\)](#), [reg. 10](#)
- C3** S. 77(5) excluded (27.5.1997) by [1997 c. 8](#), [ss. 70\(4\)](#), 278(2), [Sch. 7 para. 7](#) (with [ss. 20](#), 64, 219)

78 **Right to appeal against planning decisions and failure to take such decisions.** E

+W

- (1) Where a local planning authority—
 - (a) refuse an application for planning permission or grant it subject to conditions;
 - (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grant it subject to conditions; or
 - (c) refuse an application for any approval of that authority required under a development order^{F5}, a local development order or a neighbourhood development order] or grant it subject to conditions,
 the applicant may by notice appeal to the Secretary of State.
- (2) A person who has made such an application may also appeal to the Secretary of State if the local planning authority have ^{F6}done none of the following]—
 - (a) given notice to the applicant of their decision on the application;
 - ^{F7}[(aa) given notice to the applicant that they have exercised their power under section 70A ^{F8}or 70B] to decline to determine the application;]
 - (b) given notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 77,

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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 authority.

- (3) Any appeal under this section shall be made by notice served within such time and in such manner as may be prescribed by a development order.
- (4) The time prescribed for the service of such a notice must not be less than—
- (a) 28 days from the date of notification of the decision; or
 - (b) in the case of an appeal under subsection (2), 28 days from the end of the period prescribed as mentioned in subsection (2) or, as the case may be, the extended period mentioned in that subsection.

[^{F9}(4A) A notice of appeal under this section must be accompanied by such information as may be prescribed by a development order.

(4B) The power to make a development order under subsection (4A) is exercisable by—

- (a) the Secretary of State, in relation to England;
- (b) the Welsh Ministers, in relation to Wales.

(4C) Section 333(5) does not apply in relation to a development order under subsection (4A) made by the Welsh Ministers.

(4D) A development order under subsection (4A) made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.]

- (5) For the purposes of the application of sections [^{F10}79(1) and (3)] , 253(2)(c), 266(1)(b) [^{F11}, 288(10)(b) and 319A(7)(b)] in relation to an appeal under subsection (2), it shall be assumed that the authority decided to refuse the application in question.

Textual Amendments

- F5** Words in s. 78(1)(c) substituted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes, 6.4.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), s. 240(5)(j), [Sch. 12 para. 11](#); [S.I. 2012/57](#), art. 4(1)(h) (with arts. 6, 7, 9-11); [S.I. 2012/628](#), art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by [S.I. 2012/2029](#), arts. 2, 4); [S.I. 2012/2029](#), arts. 2, 3(a) (with art. 5) (as amended (6.4.2013) by [S.I. 2013/797](#), art. 4); [S.I. 2013/797](#), arts. 1(2), 2
- F6** Words in s. 78(2) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34\)](#), SIF 123:1), [s. 17\(2\)](#) (with s. 84(5)); [S.I. 1991/2067](#), [art.3](#) (subject to art. 4)
- F7** S. 78(2)(aa) substituted (25.9.1991) for 'nor' by [Planning and Compensation Act 1991 \(c. 34\)](#), SIF 123:1), [s. 17\(2\)](#) (with s. 84(5)); [S.I. 1991/2067](#), [art. 3](#) (subject to art. 4)
- F8** Words in s. 78(2)(aa) inserted (6.4.2009 for E. and otherwise prosp.) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [ss. 43\(2\)](#), 121 (with s. 111); [S.I. 2009/384](#), [art. 2](#)
- F9** S. 78(4A)-(4D) inserted (6.4.2009 for E., 30.4.2012 for W.) by [Planning Act 2008 \(c. 29\)](#), s. 241(3)(4), [Sch. 11 para. 2](#) (with s. 226); [S.I. 2009/400](#), art. 5(d); [S.I. 2012/802](#), art. 2(b)
- F10** Words in s. 78(5) substituted (6.4.2009 for certain purposes and otherwise prosp.) by [Planning Act 2008 \(c. 29\)](#), [ss. 196](#), 241, [Sch. 10 para. 3\(a\)](#) (with s. 226); [S.I. 2009/400](#), [art. 3](#)
- F11** Words in s. 78(5) substituted (6.4.2009 for certain purposes and otherwise prosp.) by [Planning Act 2008 \(c. 29\)](#), [ss. 196](#), 241, [Sch. 10 para. 3\(b\)](#) (with s. 226); [S.I. 2009/400](#), [art. 3](#)

Modifications etc. (not altering text)

- C4** S. 78 modified by [S.I. 1989/670](#), [reg. 15](#) as amended by [S.I. 1990/1562](#), [regs. 2](#), 3, 6
S. 78 applied (with modifications) (6.4.1992) by [S.I. 1992/666](#), [reg. 15\(1\)\(3\)](#), [Sch. 4 Pts. I, IV, V](#)

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- S. 78 applied (with modifications) (2.8.1999) by S.I. 1999/1892, reg. 2(1), Sch. art. 7, **Sch. 2 Pt. I**
 S. 78 applied (with modifications) (2.8.1999) by S.I. 1999/1892, reg. 2(1), Sch. art. 7, **Sch. 2 Pt. II**
C5 S. 78 restricted (18.12.1996) by 1996 c. 61, s. 9(5), **Sch. 6 Pt. IV para. 33**
C6 S. 78 applied (7.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), ss. 89, 121, **Sch. 4 para. 5(3)** (with s. 111); S.I. 2006/1281, **art. 2**
C7 Ss. 78, 79 applied (with modifications) (6.4.2007) by The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (S.I. 2007/783), reg. 17, **Sch. 4** (as amended (1.10.2013) by S.I. 2013/2114, regs. 1(1), 3)
C8 S. 78 restricted (22.7.2008) by Crossrail Act 2008 (c. 18), ss. 10, **Sch. 7 para. 31**
C9 S. 78 applied (22.7.2008) by Crossrail Act 2008 (c. 18), ss. 49, **Sch. 16 para. 2(7)**

[^{F12}78A Appeal made: functions of local planning authorities **E+W**

- (1) This section applies if a person who has made an application mentioned in section 78(1)(a) appeals to the Secretary of State under section 78(2).
- (2) At any time before the end of the additional period the local planning authority may give the notice referred to in section 78(2).
- (3) If the local planning authority give notice as mentioned in subsection (2) that their decision is to refuse the application—
 - (a) the appeal must be treated as an appeal under section 78(1) against the refusal;
 - (b) the Secretary of State must give the person making the appeal an opportunity to revise the grounds of the appeal;
 - (c) the Secretary of State must give such a person an opportunity to change any option the person has chosen relating to the procedure for the appeal.
- (4) If the local planning authority give notice as mentioned in subsection (2) that their decision is to grant the application subject to conditions the Secretary of State must give the person making the appeal the opportunity—
 - (a) to proceed with the appeal as an appeal under section 78(1) against the grant of the application subject to conditions;
 - (b) to revise the grounds of the appeal;
 - (c) to change any option the person has chosen relating to the procedure for the appeal.
- (5) The Secretary of State must not issue his decision on the appeal before the end of the additional period.
- (6) The additional period is the period prescribed by development order for the purposes of this section and which starts on the day on which the person appeals under section 78(2).]

Textual Amendments

- F12** S. 78A inserted (6.8.2004 for certain purposes and otherwise prosp.) by Planning and Compulsory Purchase Act 2004 (c. 5), **ss. 50(1), 121** (with s. 111); S.I. 2004/2097, **art. 2**

79 Determination of appeals. **E+W**

- (1) On an appeal under section 78 the Secretary of State may—
 - (a) allow or dismiss the appeal, or

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- (b) reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not),
and may deal with the application as if it had been made to him in the first instance.
- (2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the local planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- ^{F13}(3) Subsection (2) does not apply to—
- (a) an appeal referred to a Planning Inquiry Commission under section 101; or
 - (b) an appeal against a decision of a local planning authority in England.]
- (4) Subject to subsection (2), the provisions of sections ^{F14}70, 72(1) and (5), 73 and 73A] and Part I of Schedule 5 shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for planning permission which falls to be determined by the local planning authority ^{F15}and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of section 65 or 71].
- (5) The decision of the Secretary of State on such an appeal shall be final.
- (6) If, before or during the determination of such an appeal 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 70 and 72(1), the development order and 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 otherwise than subject to the conditions imposed,
- he may decline to determine the appeal or to proceed with the determination.
- ^{F16}[(6A) If at any time before or during the determination of such an appeal it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may—
- (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
 - (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.]
- (7) Schedule 6 applies to appeals under section 78, including appeals under that section as applied by or under any other provision of this Act.

Textual Amendments

- F13** S. 79(3) substituted (6.4.2009 for certain purposes and otherwise prosp.) by [Planning Act 2008 \(c. 29\)](#), ss. 196, 241, [Sch. 10 para. 4](#) (with s. 226); S.I. 2009/400, [art. 3](#)
- F14** Words in s. 79(4) substituted (2.1.1992 so far as relating to the inclusion of a reference to s. 73A and otherwise 17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 19](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#), [Sch. 1](#) (subject to art .5); S.I. 1992/1491, [art. 2](#), [Sch. 1](#)
- F15** Words at end of s. 79(4) inserted (17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 19](#) (with s. 84(5)); S.I. 1992/1491, [art. 2](#), [Sch. 1](#)

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F16 S. 79(6A) inserted (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), **s. 18** (with s. 84(5)); S.I. 1991/2067, **art. 3** (subject to art. 4)

Modifications etc. (not altering text)

- C10** Ss. 78, 79 modified by S.I. 1989/670, **reg. 15** as amended by S.I. 1990/1562, **regs. 2, 3, 6**
Ss. 78, 79 applied (with modifications) (6.4.1992) by S.I. 1992/666, **reg. 15(1)(3)**, Sch. 4 Pts. I, IV, V
S. 79 applied (with modifications) (2.8.1999) by S.I. 1999/1892, **reg. 2(1)**, Sch. art. 7, **Sch. 2 Pt. I**
S. 79 applied (with modifications) (2.8.1999) by S.I. 1999/1892, **reg. 2(1)**, Sch. art. 7, **Sch. 2 Pt. II**
- C11** Ss. 78, 79 applied (with modifications) (6.4.2007) by The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (S.I. 2007/783), **reg. 17**, **Sch. 4** (as amended (1.10.2013) by S.I. 2013/2114, **regs. 1(1), 3**)
- C12** S. 79(2) excluded (27.5.1997) by 1997 c. 8, **ss. 70(4), 278(2)**, **Sch. 7 para. 7** (with ss. 20, 64, 219)

^{F17}**80** **E+W**

Textual Amendments

F17 S. 80 repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), **ss. 31, 84(6)**, Sch. 6 para. 11, **Sch. 19, Pt.II** (with s. 84(5)); S.I. 1991/2067, **art.3** (subject to art. 4)

^{F18}**81** **E+W**

Textual Amendments

F18 S. 81 repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), **ss. 31, 84(6)**, Sch. 6 para. 11, **Sch. 19, Pt.II**; S.I. 1991/2067, **art.3** (subject to art. 4)

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