



# Town and Country Planning Act 1990

## 1990 CHAPTER 8

### PART III

#### CONTROL OVER DEVELOPMENT

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

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

- (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 [<sup>F1</sup>, 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 [<sup>F2</sup>done none of the following]—
- (a) given notice to the applicant of their decision on the application;
  - <sup>F3</sup>[(aa) given notice to the applicant that they have exercised their power under section 70A [<sup>F4</sup>or 70B][<sup>F5</sup>or 70C] 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,
- 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.

*Status: Point in time view as at 12/08/2012. This version of this provision has been superseded.*

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- (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.
- <sup>F6</sup>(4A) A notice of appeal under this section must be accompanied by such information as may be prescribed by a development order.
- <sup>F7</sup>(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.
- <sup>F7</sup>(4C) Section 333(5) does not apply in relation to a development order under subsection (4A) made by the Welsh Ministers.
- <sup>F7</sup>(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 [<sup>F8</sup>79(1) and (3)] , 253(2)(c), 266(1)(b) [<sup>F9</sup>, 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

- F1** 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](#)
- F2** 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](#))
- F3** 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](#))
- F4** 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](#)
- F5** Words in s. 78(2)(aa) inserted (6.4.2012) by [Localism Act 2011 \(c. 20\)](#), [ss. 123\(3\)](#), 240(2) (with [s. 144](#)); S.I. 2012/628, [art. 8\(b\)](#) (with [arts. 9, 12, 13, 16, 18-20](#)) (as amended (3.8.2012) by S.I. 2012/2029, [arts. 2, 4](#))
- F6** 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\(b\)](#)
- F7** 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\(b\)](#)
- F8** 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](#)
- F9** 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)

- C1** 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](#)  
S. 78 applied (with modifications) (2.8.1999) by [S.I. 1999/1892](#), [reg. 2\(1\)](#), [Sch. art. 7](#), [Sch. 2 Pt. I](#)

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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. II**
- C2** S. 78 restricted (18.12.1996) by 1996 c. 61, s. 9(5), **Sch. 6 Pt. IV para. 33**
- C3** 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**
- C4** 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**)
- C5** S. 78 restricted (22.7.2008) by Crossrail Act 2008 (c. 18), ss. 10, **Sch. 7 para. 31**
- C6** S. 78 applied (22.7.2008) by Crossrail Act 2008 (c. 18), ss. 49, **Sch. 16 para. 2(7)**

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