



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;
 - [^{F1}(aa) refuse an application for permission in principle;]
 - (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 [^{F2}, 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 [^{F3}to the local planning authority] may also appeal to the Secretary of State if the local planning authority have [^{F4}done none of the following]—
- (a) given notice to the applicant of their decision on the application;
 - [^{F5}(aa) given notice to the applicant that they have exercised their power under section 70A [^{F6}or 70B][^{F7}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.

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(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.

^{F8}(4A) A notice of appeal under this section must be accompanied by such information as may be prescribed by a development order.

[An appeal under this section may not be brought or continued against the refusal of ^{F9}(4AA) an application for planning permission if—

- (a) the land to which the application relates is in Wales,
- (b) granting the application would involve granting planning permission in respect of matters specified in an enforcement notice as constituting a breach of planning control, and
- (c) on the determination of an appeal against that notice under section 174, planning permission for those matters was not granted under section 177.

(4AB) An appeal under this section may not be brought or continued against the grant of an application for planning permission subject to a condition, if—

- (a) the land to which the application relates is in Wales,
- (b) an appeal against an enforcement notice has been brought under section 174 on the ground that the condition ought to be discharged, and
- (c) on the determination of that appeal, the condition was not discharged under section 177.]

^{F10}(4B)

[Once notice of an appeal under this section to the Welsh Ministers has been served, ^{F11}(4BA) the application to which it relates may not be varied, except in such circumstances as may be prescribed by a development order.

(4BB) A development order which makes provision under subsection (4BA) must provide for an application which is varied to be subject to such further consultation as the Welsh Ministers consider appropriate.]

^{F10}(4C)

^{F10}(4D)]

(5) For the purposes of the application of sections [^{F12}79(1) and (3)], 253(2)(c), 266(1)(b) [^{F13}, 288(10)(b) [^{F14}, 319A(7)(b) and 319B(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 S. 78(1)(aa) inserted (13.7.2016) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), [Sch. 12 para. 21](#); [S.I. 2016/733](#), reg. 3(d)

F2 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

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- 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
- F3** Words in s. 78(2) inserted (9.5.2013 for E. for specified purposes, 1.10.2013 for specified purposes, 1.10.2014 in so far as not already in force) by Growth and Infrastructure Act 2013 (c. 27), s. 35(1), **Sch. 1 para. 8**; S.I. 2013/1124, art. 2; S.I. 2013/2143, art. 2(1)(a); S.I. 2014/1531, art. 2
- F4** 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)
- F5** 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)
- F6** 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**
- F7** 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)
- F8** 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)
- F9** S. 78(4AA)(4AB) inserted (6.9.2015 for specified purposes, 16.3.2016 as otherwise not in force) by Planning (Wales) Act 2015 (anaw 4), **ss. 45, 58(2)(b)(4)(b)**; The Planning (Wales) Act 2015 (Commencement No. 3 and Transitional Provisions) Order 2016 (S.I. 2016/52), art. 5(c) (with art. 15)
- F10** S. 78(4B)-(4D) omitted (6.9.2015) by virtue of Planning (Wales) Act 2015 (anaw 4), s. 58(2)(a), **Sch. 7 para. 7(2)**
- F11** S. 78(4BA)(4BB) inserted (6.9.2015 for specified purposes, 5.5.2017 in so far as not in force) by Planning (Wales) Act 2015 (anaw 4), **ss. 47(1), 58(2)(b)(4)(b)**; The Planning (Wales) Act 2015 (Commencement No. 4 and Transitional Provisions) Order 2017 (SI 2017/546), art 3(b) (with art. 4)
- F12** 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**
- F13** 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**
- F14** Words in s. 78(5) substituted (11.11.2014) by The Town and Country Planning (Determination of Procedure) (Wales) Order 2014 (S.I. 2014/2773), art. 1(2), **Sch. 1 para. 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**
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)**
- C7** S. 78 applied (26.9.2012) by The Network Rail (Ipswich Chord) Order 2012 (S.I. 2012/2284), **arts. 1, 35(a)** (with art. 26(2))
- C8** S. 78 applied (in part) (6.11.2012) by The Network Rail (North Doncaster Chord) Order 2012 (S.I. 2012/2635), **arts. 1, 7(1)(a)** (with art. 35(2))
- C9** S. 78 applied (with modifications) (28.2.2013) by The Rookery South (Resource Recovery Facility) Order 2011 2013 (S.I. 2013/680), **art. 4(1)(a)**

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- C10** S. 78 applied (13.3.2013) by The Brechfa Forest West Wind Farm Order 2013 (S.I. 2013/586), arts. 1, **4(1)**
- C11** Ss. 78, 79 applied (15.6.2013) by The Galloper Wind Farm Order 2013 (S.I. 2013/1203), arts. 1, **6(1)** (with arts. 11, 12)
- C12** Ss. 78, 79 applied (31.7.2013) by The East Northamptonshire Resource Management Facility Order 2013 (S.I. 2013/1752), arts. 1, **5(1)(a)**
- C13** Ss. 78, 79 applied (15.8.2013) by The North Blyth Biomass Power Station Order 2013 (S.I. 2013/1873), arts. 1, **4(a)** (with art. 30)
- C14** S. 78 applied (with modifications) (20.11.2013) by The M1 Junction 10a (Grade Separation) Order 2013 (S.I. 2013/2808), arts. 1, **39(1)(a)**
- C15** S. 78 applied in part (with modifications) (21.11.2013) by The Network Rail (Redditch Branch Enhancement) Order 2013 (S.I. 2013/2809), arts. 1, **37** (with arts. 27(2), 39, Sch. 10 para. 4)
- C16** S. 78 applied in part (21.4.2014) by The Network Rail (Norton Bridge Area Improvements) Order 2014 (S.I. 2014/909), arts. 1, **45(1)(a)** (with art. 34(2))
- C17** S. 78 modified (7.7.2014) by The East Anglia ONE Offshore Wind Farm Order 2014 (S.I. 2014/1599), arts. 1, **35(3)** (with arts. 37, 38, Sch. 9 para. 19)
- C18** S. 78 applied (with modifications) (24.7.2014) by The Daventry International Rail Freight Interchange Alteration Order 2014 (S.I. 2014/1796), arts. 1, **8** (with art. 24(2), Sch. 6 para. 3)
- C19** S. 78 applied (with modifications) (6.8.2014) by The Rampion Offshore Wind Farm Order 2014 (S.I. 2014/1873), arts. 1, **6(1)(a)** (with arts. 12, 13, Sch. 12)
- C20** S. 78 applied (2.10.2014) by The Clocaenog Forest Wind Farm Order 2014 (S.I. 2014/2441), arts. 1, **4(1)** (with art. 33)
- C21** S. 78 applied (21.10.2014) by The Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 (S.I. 2014/2637), arts. 1, **40(1)(a)**
- C22** S. 78 applied (with modifications) (23.10.2014) by The South Hook Combined Heat and Power Plant Order 2014 (S.I. 2014/2846), arts. 1, **4(1)(a)**
- C23** S. 78 applied (with modifications) (29.10.2014) by The Able Marine Energy Park Development Consent Order 2014 (S.I. 2014/2935), **art. 58(1)(a)** (with arts. 30(4), 53)
- C24** S. 78 applied (28.11.2014) by The Walney Extension Offshore Wind Farm Order 2014 (S.I. 2014/2950), arts. 1, **9(1)(a)** (with arts. 38, 39)
- C25** S. 78 applied (31.12.2014) by The Hornsea One Offshore Wind Farm Order 2014 (S.I. 2014/3331), arts. 1, **32(a)** (with arts. 37, 38)
- C26** Ss. 78, 79 modified (7.1.2015) by The Willington C Gas Pipeline Order 2014 (S.I. 2014/3328), arts. 1, **3(3)**
- C27** S. 78 applied (11.3.2015) by The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (S.I. 2015/318), arts. 1, **6(1)(a)** (with arts. 40, 41, Sch. 12)
- C28** Ss. 78, 79 applied (9.6.2015) by The White Moss Landfill Order 2015 (S.I. 2015/1317), arts. 1, **7(1)(a)** (with art. 5)
- C29** Ss. 78, 79 applied (23.6.2015) by The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015 (S.I. 2015/1347), arts. 1, **45(4)(a)**
- C30** Ss. 78, 79 applied (30.6.2015) by The Swansea Bay Tidal Generating Station Order 2015 (S.I. 2015/1386), arts. 1, **48(1)(a)** (with arts. 51, 53)
- C31** Ss. 78, 79 applied (26.8.2015) by The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 (S.I. 2015/1592), arts. 1, **6(1)(a)** (with arts. 40, 41)
- C32** Ss. 78, 79 applied (2.2.2016) by The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (S.I. 2016/17), arts. 1, **8(1)(2)** (with art. 8(4))
- C33** S. 78 applied (with modifications) (12.2.2016) by The Palm Paper Mill Generating Station Order 2016 (S.I. 2016/166), arts. 1, **4(1)(a)**
- C34** Ss. 78, 79 applied (with modifications) (18.2.2016) by The A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 (S.I. 2016/73), arts. 1, **42(1)(a)** (with art. 37)
- C35** Ss. 78, 79 applied (25.3.2016) by The Thorpe Marsh Gas Pipeline Order 2016 (S.I. 2016/297), arts. 1, **11(2)(a)** (with art. 39)

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- C36** Ss. 78, 79 applied (10.8.2016) by [The York Potash Harbour Facilities Order 2016 \(S.I. 2016/772\)](#), arts. 1, **9(1)** (with arts. 9(3), 35, 36)
- C37** S. 78 applied (7.9.2016) by [The Hornsea Two Offshore Wind Farm Order 2016 \(S.I. 2016/844\)](#), arts. 1(2), **33** (with arts. 37, 38)
- C38** S. 78 applied (with modifications) (29.3.2017) by [The Glyn Rhonwy Pumped Storage Generating Station Order 2017 \(S.I. 2017/330\)](#), art. 1, **Sch. 7 para. 5(2)** (with art. 31)
- C39** S. 78 applied (with modifications) (2.8.1999) by S.I. 1999/1892, reg. 2(1), Sch. art. 7, **Sch. 2 Pt. I** (as amended (W.) (5.5.2017) by [The Town and Country Planning \(Trees\) \(Amendment\) \(Wales\) Regulations 2017 \(S.I. 2017/548\)](#), regs. 1(1), **2(2)(b)** (with reg. 3))
- C40** S. 78 applied (with modifications) (6.4.1992) by S.I. 1992/666, reg. 15(1)(3), Sch. 4 Pts. 1, 4, **5** (as amended (W.) (5.5.2017) by [The Town and Country Planning \(Control of Advertisements\) \(Amendment\) \(Wales\) Regulations 2017 \(S.I. 2017/553\)](#), regs. 1(1), **2(3)-(5)** (with reg. 3))
- C41** Ss. 78, 79 modified (29.8.2017) by [The East Anglia THREE Offshore Wind Farm Order 2017 \(S.I. 2017/826\)](#), arts. 1, **34(2)** (with arts. 34(3), 36, 37, Sch. 8 para. 34)
- C42** S. 78 applied (26.7.2019) by [The Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019 \(S.I. 2019/1091\)](#), arts. 1, **10**
- C43** S. 78(1) applied (with modifications) (7.7.2014) by [The East Anglia ONE Offshore Wind Farm Order 2014 \(S.I. 2014/1599\)](#), arts. 1, **35(2)** (with arts. 37, 38, Sch. 9 para. 19)
- C44** S. 78(1) applied (with modifications) (7.1.2015) by [The Willington C Gas Pipeline Order 2014 \(S.I. 2014/3328\)](#), arts. 1, **3(2)**
- C45** S. 78(1) applied (with modifications) (29.8.2017) by [The East Anglia THREE Offshore Wind Farm Order 2017 \(S.I. 2017/826\)](#), arts. 1, **34(1)** (with arts. 34(3), 36, 37, Sch. 8 para. 34)

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