



# 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*

#### **79 Determination of appeals.**

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

[<sup>F1</sup>(1A) On an appeal under section 78, the Welsh Ministers may decide whether a requirement imposed under subsection (3) of section 62 in relation to the application complies with subsection (4A) of that section.

(1B) But subsection (1A) does not apply if the Welsh Ministers have previously decided whether the requirement complies with section 62(4A) on an appeal under section 62ZB.]

- (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.

[<sup>F2</sup>(3) Subsection (2) does not apply to—

- an appeal referred to a Planning Inquiry Commission under section 101; or
- an appeal against a decision of a local planning authority in England.]

[<sup>F3</sup>(3A) Subsection (2) does not apply to an appeal to the Welsh Ministers.]

- (4) Subject to [<sup>F4</sup>subsection (2)—

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- (a) sections [F5]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 [F6]in respect of an application within section 78(1)(a), (b) or (c)] as they apply in relation to an application for planning permission which falls to be determined by the [F7]local planning authority;
- (b) section 70 shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 in respect of an application for permission in principle as it applies in relation to such an application which falls to be determined by the local planning authority;
- and [F8]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.
- [F9](6ZA) If, before or during the determination of such an appeal in respect of an application for permission in principle to develop land, the Secretary of State forms the opinion that, having regard to the provisions of section 70 and the development order, permission in principle for that development could not have been granted by the local planning authority, he may decline to determine the appeal or to proceed with the determination.]
- [F10](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

- F1** S. 79(1A)(1B) inserted (6.9.2015 for specified purposes, 16.3.2016 in so far as not already in force) by [Planning \(Wales\) Act 2015 \(anaw 4\)](#), **ss. 29(3)**, 58(2)(b)(4)(b); S.I. 2016/52, art. 5(a) (with art. 10)
- F2** 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**
- F3** S. 79(3A) inserted (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. 4**
- F4** Words in s. 79(4) substituted (13.7.2016) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), **Sch. 12 para. 23(2)(a)**; S.I. 2016/733, reg. 3(d)

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- F5** 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**
- F6** Words in s. 79(4) inserted (13.7.2016) by Housing and Planning Act 2016 (c. 22), s. 216(3), **Sch. 12 para. 23(2)(b)**; S.I. 2016/733, reg. 3(d)
- F7** Words in s. 79(4) substituted (13.7.2016) by Housing and Planning Act 2016 (c. 22), s. 216(3), **Sch. 12 para. 23(2)(c)**; S.I. 2016/733, reg. 3(d)
- F8** 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**
- F9** S. 79(6ZA) inserted (13.7.2016) by Housing and Planning Act 2016 (c. 22), s. 216(3), **Sch. 12 para. 23(3)**; S.I. 2016/733, reg. 3(d)
- F10** 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)**

- C1** 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**
- C2** 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)
- C3** S. 79 applied (26.9.2012) by The Network Rail (Ipswich Chord) Order 2012 (S.I. 2012/2284), arts. 1, **35(a)** (with art. 26(2))
- C4** S. 79 applied (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))
- C5** S. 79 applied (with modifications) (28.2.2013) by The Rookery South (Resource Recovery Facility) Order 2011 2013 (S.I. 2013/680), **art. 4(1)(a)**
- C6** S. 79 applied (13.3.2013) by The Brechfa Forest West Wind Farm Order 2013 (S.I. 2013/586), arts. 1, **4(1)**
- C7** 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)
- C8** 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)**
- C9** 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)
- C10** S. 79 applied (with modifications) (20.11.2013) by The M1 Junction 10a (Grade Separation) Order 2013 (S.I. 2013/2808), arts. 1, **39(1)(a)**
- C11** S. 79 applied (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)
- C12** S. 79 applied (21.4.2014) by The Network Rail (Norton Bridge Area Improvements) Order 2014 (S.I. 2014/909), arts. 1, **45(1)(b)** (with art. 34(2))
- C13** S. 79 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)
- C14** S. 79 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)
- C15** S. 79 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)
- C16** S. 79 applied (2.10.2014) by The Clocaenog Forest Wind Farm Order 2014 (S.I. 2014/2441), arts. 1, **4(1)** (with art. 33)
- C17** S. 79 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)**

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- C18** S. 79 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)**
- C19** S. 79 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)
- C20** S. 79 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)
- C21** S. 79 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)
- C22** Ss. 78, 79 modified (7.1.2015) by The Willington C Gas Pipeline Order 2014 (S.I. 2014/3328), arts. 1, **3(3)**
- C23** S. 79 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)
- C24** 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)
- C25** 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)**
- C26** 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)
- C27** 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)
- C28** 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))
- C29** S. 79 applied (with modifications) (12.2.2016) by The Palm Paper Mill Generating Station Order 2016 (S.I. 2016/166), arts. 1, **4(1)(a)**
- C30** 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)
- C31** 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)
- C32** 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)
- C33** S. 79 applied (7.9.2016) by The Hornsea Two Offshore Wind Farm Order 2016 (S.I. 2016/844), **art. 33**
- C34** S. 79 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)
- C35** S. 79 applied (with modifications) (2.8.1999) by S.I. 1999/1892, reg. 2(1), Sch. art. 7, **Sch. 2 Pt. 2** (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)(c)** (with reg. 3))
- C36** S. 79 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))
- C37** 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)
- C38** S. 79 applied (26.7.2019) by The Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019 (S.I. 2019/1091), arts. 1, **10**
- C39** Ss. 78, 79 modified (22.1.2021) by The Hornsea Three Offshore Wind Farm Order 2020 (S.I. 2020/1656), arts. 1, **38(2)** (with arts. 40, 41, Sch. 9 Pt. 5 para. 18)
- C40** 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)

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