

SCHEDULES

SCHEDULE 2

Article 14

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation of Schedule 2

1. In this Schedule—

“appeal documents” means the application and documents referred to in paragraph 4(2)(a) of this Schedule

“appeal parties” means the relevant planning authority, the requirement consultee and the undertaker and “appeal party” shall be construed accordingly;

“appointed person” means a person appointed by the Secretary of State to determine an appeal pursuant to paragraph 4(2)(c);

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(1); and

“requirement consultee” means any body named in a requirement in Part 2 of Schedule 1 to this Order as a body to be consulted by the relevant planning authority in discharging that requirement.

Applications made under requirements

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement in Part 2 of Schedule 1 to this Order the relevant planning authority must give notice to the undertaker of their decision on the application within a period of 30 business days beginning with—

- (a) the day immediately following that on which the application is received by the authority; or
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3;

or such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to sub-paragraph (4), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(1) 1971 c.80

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(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement in Part 2 of Schedule 1 to this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1) and—

- (a) the application is accompanied by a statement pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant planning authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement

then the application is taken to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such further information from the undertaker as is reasonably necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, then the relevant planning authority must, within 10 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 5 business days of receipt of the application.

(4) If, on receipt of a consultation pursuant to sub-paragraph (3), the requirement consultee considers further information from the undertaker is reasonably necessary to enable it to consider the consultation it must, within 10 business days of receipt of the consultation, notify the relevant planning authority in writing specifying the further information required.

(5) The relevant planning authority must notify the undertaker in writing specifying any further information requested by the requirement consultee under sub-paragraph (4) within 5 business days of receipt of such a request.

(6) In the event that the relevant planning authority does not provide the notification specified in sub-paragraph (2) or (5) or the requirement consultee does not request any further information within 10 business days of receipt of the consultation from the relevant planning authority as specified in sub-paragraph (4) the relevant planning authority is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Appeals

4.—(1) The undertaker may appeal if—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by—
 - (i) a requirement in Part 2 of Schedule 1 to this Order and any document referred to in any such requirement; or

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- (ii) any other consent, agreement or approval required under this Order, or grants it subject to conditions;
 - (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(4);
 - (c) having received a request for further information under paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
 - (d) having received any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not reasonably necessary for consideration of the application
- (2) The procedure for appeals is as follows—
- (a) the undertaker must submit to the Secretary of State a copy of the application submitted to the relevant planning authority and any supporting documents which the undertaker may wish to provide;
 - (b) the undertaker must on the same day provide copies of the appeal documents to the relevant authority and the requirement consultee (if applicable);
 - (c) as soon as is practicable after receiving the appeal documents the Secretary of State must appoint a person to determine the appeal and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person must be sent;
 - (d) the relevant authority and the requirement consultee (if applicable) may submit any written representations in respect of the appeal to the appointed person within ten business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
 - (e) the appeal parties may make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to sub-paragraph (2)(d) above; and
 - (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.
- (3) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information must be submitted, such date to be at least 7 business days after the date the appointed person sends their notification.
- (4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person unless otherwise agreed in writing between the appointed person and the appeal parties.
- (5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.
- (6) Any such representations referred to in sub-paragraph (5) above must be submitted to the appointed person and made available to all appeal parties within ten business days of the date mentioned in sub-paragraph (3).

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Outcome of appeals

5.—(1) On an appeal under paragraph 4, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant 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 the appointed person in the first instance.

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed or set by the appointed person under this paragraph.

(3) The appointed person may proceed to a decision even though no written representations have been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(5) Any consent, agreement or approval given by the appointed person pursuant to this Schedule is deemed to be an approval for the purpose of Part 2 of Schedule 1 (Requirements) as if it had been given by the relevant planning authority.

(6) The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(7) Except where a direction is given pursuant to sub-paragraph (8) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(8) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid.

(9) In considering whether to make any such direction as to the costs of the appeal parties and the terms on which it is made, the appointed person must have regard to the Planning Practice Guidance or any guidance which may from time to time replace it.