



2011 CHAPTER 25

PART 4

ADDITIONAL PLANNING CONTROL

CHAPTER 1

LISTED BUILDINGS AND CONSERVATION AREAS

Power to decline to determine application for listed building consent

Power to decline to determine subsequent application for listed building consent

92.—(1) A council may decline to determine an application for listed building consent if—

- (a) one or more of the conditions in subsections (2) to (4) is satisfied; and
- (b) the council thinks there has been no significant change in any material considerations since the relevant event.

(2) The condition is that in the period of two years ending with the date on which the application mentioned in subsection (1) is received the Department has refused a similar application made under section 88.

(3) The condition is that in that period the planning appeals commission has dismissed an appeal—

- (a) against the refusal of a similar application; or
- (b) under section 97 in respect of a similar application.

(4) The condition is that—

- (a) in that period the council has refused more than one similar application;
and
 - (b) there has been no appeal to the planning appeals commission against any such refusal or, if there has been such an appeal, it has been withdrawn.
- (5) The relevant event is—
- (a) for the purposes of subsections (2) and (4) the refusal of the similar application;
 - (b) for the purposes of subsection (3) the dismissal of the appeal.
- (6) An application for listed building consent is similar to another application if (and only if) the council thinks that the building and works to which the applications relate are the same or substantially the same.

Power to decline to determine overlapping application for listed building consent

93.—(1) A council may decline to determine an application for listed building consent which is—

- (a) made on the same day as a similar application; or
 - (b) made at a time when any of the conditions in subsections (2) to (4) applies in relation to a similar application.
- (2) The condition is that a similar application is under consideration by the council and the determination period for that application has not expired.
- (3) The condition is that a similar application is under consideration—
- (a) by the Department under section 88 and the Department has not issued its decision; or
 - (b) by the planning appeals commission on an appeal under section 96 or 97 and the commission has not issued its decision.
- (4) The condition is that a similar application—
- (a) has been granted by the council;
 - (b) has been refused by the council; or
 - (c) has not been determined by the council within the determination period, and the time within which an appeal could be made to the planning appeals commission under section 96 or 97 has not expired.
- (5) If a council exercises its power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, it may not also exercise that power to decline to determine the similar application.
- (6) An application for listed building consent is similar to another application if (and only if) the council thinks that the building and works to which the applications relate are the same or substantially the same.

- (7) The determination period is—
- (a) the period prescribed for the determination of the application; or
 - (b) such longer period as the applicant and the council have agreed for the determination of the application.

Duration of listed building consent

94.—(1) Subject to the provisions of this section, every listed building consent must be granted subject to the condition that the works to which it relates must be begun not later than—

- (a) 5 years beginning with the date on which the consent is granted; or
- (b) such other period (whether longer or shorter) beginning with that date as the council or, as the case may be, the Department may direct, being a period which the council or the Department considers appropriate having regard to any material considerations.

(2) If listed building consent is granted without the condition required by subsection (1), it shall be deemed to have been granted subject to the condition that the works to which it relates must be begun not later than the expiration of 5 years beginning with the date of the grant.

(3) Nothing in this section applies to any consent to the retention of works granted under section 85(3).

Consent to execute works without compliance with conditions previously attached

95.—(1) This section applies to applications for listed building consent for the execution of works to a building without complying with conditions subject to which a previous listed building consent was granted.

(2) Regulations may make provision with respect to—

- (a) the form and content of such applications; and
- (b) the procedure to be followed in connection with such applications.

(3) On such an application the authority which granted the previous listed building consent must consider only the question of the conditions subject to which listed building consent should be granted, and—

- (a) if the council or the Department decides that listed building consent should be granted subject to conditions differing from those subject to which the previous consent was granted, or that it should be granted unconditionally, the council or, as the case may be, the Department must grant listed building consent accordingly; and
- (b) if the council or the Department decides that listed building consent should be granted subject to the same conditions as those subject to which the

previous consent was granted, the council or, as the case may be, the Department must refuse the application.

(4) This section does not apply where the application is made after the previous listed building consent has become time-expired, that is to say, the previous consent having been granted subject to a condition as to the time within which the works to which it related were to be begun, that time has expired without the works having been begun.

(5) Listed building consent shall not be granted under this section to the extent that it has effect to change a condition subject to which a previous listed building consent was granted by extending the time limit within which the works must be begun.

Appeal against decision

96.—(1) Where an application is made to a council—

- (a) for listed building consent; or
- (b) for any approval of the council required by a condition imposed on a grant of listed building consent,

then, if that consent or approval is refused or is granted subject to conditions, the applicant may by notice in writing under this subsection appeal to the planning appeals commission.

(2) Subsection (1) does not apply to any application referred to the Department under section 88.

(3) Any notice under this section must be served on the planning appeals commission within 4 months from the date of notification of the decision to which it relates or such other period as may be prescribed.

(4) Where an appeal is brought under this section from a decision of a council, the planning appeals commission, subject to subsections (5) and (6), may allow or dismiss the appeal or may reverse or vary any part of the decision whether the appeal relates to that part of the decision or not and may deal with the application as if it had been made to it in the first instance.

(5) Before determining an appeal under this section, the planning appeals commission must, if either the applicant or the council so wishes, afford to each of them an opportunity of appearing before and being heard by the commission.

(6) Sections 87 and 95 and any provisions made under regulations made in accordance with section 86(4)(a) shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this subsection as they apply to an application for listed building consent.

Appeal against failure to take decision

97. Where any such application as is mentioned in section 96(1) is made to a council, then unless within such period as may be prescribed, or within such extended period as may be agreed upon in writing between the applicant and the council, the council gives notice to the applicant of its decision on the application or gives notice to the applicant that it has exercised its power under section 92 or 93 to decline to determine the application, section 96 shall apply in relation to the application—

- (a) as if the consent or approval to which it relates had been refused by the council; and
- (b) as if notification of the council's decision had been received by the applicant at the end of the prescribed period, or at the end of the extended period, as the case may be.

Revocation or modification of listed building consent by council

98.—(1) If it appears to a council, having regard to the local development plan and to any other material considerations, that it is expedient to revoke or modify listed building consent in respect of any works to a building within its district, being consent granted on an application made under this Part, the council may, subject to subsection (2), by order revoke or modify the consent to such extent as (having regard to those matters) it considers expedient.

(2) The power conferred by this section to revoke or modify listed building consent in respect of any works may be exercised at any time before those works have been completed, but the revocation or modification shall not affect so much of those works as has been previously carried out.

Procedure for section 98 orders: opposed cases

99.—(1) Except as provided in section 100, an order made by a council under section 98 shall not take effect unless it is confirmed by the Department.

(2) Where a council submits such an order to the Department for confirmation it must serve notice on—

- (a) the owner of the building affected;
- (b) the occupier of that building; and
- (c) any other person who in the opinion of the council will be affected by the order.

(3) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by the planning appeals commission.

(4) If within that period a person on whom the notice is served so requires, the Department must give such an opportunity both to that person and to the council before it confirms the order.

(5) The Department may confirm an order submitted to it under this section either without modification or subject to such modifications as it considers expedient.

Procedure for section 98 orders: unopposed cases

100.—(1) This section applies where—

- (a) a council has made an order under section 98 revoking or modifying a listed building consent granted by it; and
- (b) the owner and occupier of the land and all persons who in the council's opinion will be affected by the order have notified the council in writing that they do not object to the order.

(2) Where this section applies, instead of submitting the order to the Department for confirmation the council must—

- (a) advertise in the prescribed manner the fact that the order has been made, specifying in the advertisement—
 - (i) the period within which persons affected by the order may give notice to the Department that they wish for an opportunity of appearing before and being heard by the planning appeals commission; and
 - (ii) the period at the end of which, if no such notice is given to the Department, the order may take effect by virtue of this section without being confirmed by the Department;
- (b) serve notice to the same effect on the persons mentioned in subsection (1)(b);
- (c) send a copy of any such advertisement to the Department not more than 3 days after its publication.

(3) The period referred to in subsection (2)(a)(i) must not be less than 28 days from the date on which the advertisement first appears.

(4) The period referred to in subsection (2)(a)(ii) must not be less than 14 days from the end of the period referred to in subsection (2)(a)(i).

(5) If—

- (a) no person claiming to be affected by the order has given notice to the Department as mentioned in subsection (2)(a)(i) within the period referred to in that subsection; and
- (b) the Department has not directed within that period that the order be submitted to it for confirmation,

the order shall take effect at the end of the period referred to in subsection (2) (a)(ii) without being confirmed by the Department as required by section 99(1).

Revocation or modification of listed building consent by the Department

101.—(1) If it appears to the Department that it is expedient that an order should be made under section 98 revoking or modifying any listed building consent granted on an application under this Part, it may make such an order revoking or modifying the consent to such extent as it considers expedient.

(2) In performing its functions under subsection (1) the Department must have regard to any material considerations.

(3) The Department must not make an order under that subsection without consulting the appropriate council.

(4) Where the Department proposes to make such an order it must serve notice on—

- (a) the owner of the building affected;
- (b) the occupier of that building; and
- (c) any other person who in its opinion will be affected by the order.

(5) The notice must specify the period (which shall not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by the planning appeals commission.

(6) If within that period a person on whom it is served so requires, before the Department makes the order it must give such an opportunity both to that person and to the council.

(7) The power conferred by this section to revoke or modify listed building consent in respect of any works may be exercised at any time before those works have been completed, but the revocation or modification shall not affect so much of those works as has been previously carried out.

(8) An order under this section shall have the same effect as if it had been made by the council under section 98 and confirmed by the Department under section 99.

Applications to determine whether listed building consent required

102.—(1) If any person who proposes to execute or cause to be executed any works to a listed building wishes to have it determined whether those works would involve the alteration or extension of the building in any manner which would affect its character as a building of special architectural or historic interest, that person may apply to the council to determine that question.

(2) The provisions of sections 86(1), 96 and 97 shall, subject to any necessary modifications, apply in relation to any application under this section, and

to the determination of that application, as those sections apply in relation to applications for listed building consent and to the determination of such applications.

(3) Where an application for listed building consent is made to a council and it appears to the council that the execution of the works specified in the application does not involve the alteration or extension of a listed building in any manner which would affect its character as a building of special architectural or historic interest, the council may treat the application for listed building consent as an application under this section and may make an appropriate determination.

Acts causing or likely to result in damage to listed buildings

103.—(1) Where a building, not being a building excluded by subsection (8) of section 85 from the operation of that section, is included in a list compiled under section 80, then, if any person who, but for this section, would be entitled to do so—

- (a) does or permits the doing of any act which causes or is likely to result in damage to the building (other than an act for the execution of excepted works); and
- (b) does or permits the act with the intention of causing such damage,

that person shall be guilty of an offence and liable—

- (i) on summary conviction to a fine not exceeding the statutory maximum; or
- (ii) on conviction on indictment, to a fine.

(2) In subsection (1) “excepted works” means—

- (a) works authorised by planning permission granted in pursuance of an application under this Act; or
- (b) works for which listed building consent has been given under this Act.

(3) Where a person convicted under this section fails to take such reasonable steps as may be necessary to prevent any damage or further damage resulting from the offence, that person shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.