



# Planning (Listed Buildings and Conservation Areas) Act 1990

## 1990 CHAPTER 9

### PART I

#### LISTED BUILDINGS

#### CHAPTER VI

##### MISCELLANEOUS AND SUPPLEMENTAL

##### *Validity of instruments, decisions and proceedings*

#### **62 Validity of certain orders and decisions.**

- (1) Except as provided by section 63, the validity of—
  - (a) any order under section 23 or 26 (whether before or after it has been confirmed); or
  - (b) any such decision by the Secretary of State as is mentioned in subsection (2), shall not be questioned in any legal proceedings whatsoever.
- (2) Those decisions are—
  - (a) any decision on an application referred to the Secretary of State under section 12 or on an appeal under section 20;
  - (b) any decision to confirm or not to confirm a listed building purchase notice including—
    - (i) any decision not to confirm such a notice in respect of part of the land to which it relates, and
    - (ii) any decision to grant any consent, or give any direction, in lieu of confirming such a notice, either wholly or in part;

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- (c) any decision to grant listed building consent under paragraph (a) of section 41(6) or to discharge a condition or limitation under paragraph (b) of that section.
- (3) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any such decision as is mentioned in subsection (2).

**Modifications etc. (not altering text)**

**C1** Ss. 62–65 modified by S.I. 1990/1519, reg. 13(1); applied (with modifications) by S.I. 1990/1519, reg. 12, Sch. 3

**63 Proceedings for questioning validity of other orders, decisions and directions.**

- (1) If any person is aggrieved by any such order or decision as is mentioned in section 62(1) and wishes to question its validity on the grounds—
- (a) that it is not within the powers of this Act, or
  - (b) that any of the relevant requirements have not been complied with in relation to it,
- he may make an application to the High Court under this section.
- (2) Without prejudice to subsection (1), if the authority directly concerned with any such order or decision wish to question its validity on any of those grounds, the authority may make an application to the High Court under this section.
- (3) An application under this section must be made within six weeks from the date on which the order is confirmed (or, in the case of an order under section 23 which takes effect under section 25 without confirmation, the date on which it takes effect) or, as the case may be, the date on which the action is taken.
- (4) On any application under this section the High Court—
- (a) may by interim order suspend the operation of the order or decision, the validity of which is questioned by the application, until the final determination of the proceedings; and
  - (b) if satisfied—
    - (i) that the order or decision is not within the powers of this Act, or
    - (ii) that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it,
 may quash that order or decision.
- (5) References in this section to the confirmation of an order include the confirmation of an order subject to modifications.
- (6) In this section “the relevant requirements”, in relation to any order or decision, means any requirements of this Act or of the <sup>MI</sup>Tribunals and Inquiries Act [<sup>F1</sup>1992] or of any order, regulations or rules made under either of those Acts which are applicable to that order or decision.
- (7) For the purposes of subsection (2) the authority directly concerned with an order or decision is—

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- (a) in relation to any such decision as is mentioned in section 62(2)(b)—
  - (i) the council on whom the listed building purchase notice was served, and
  - (ii) in a case where the Secretary of State has modified the notice wholly or in part by substituting another local authority or statutory undertakers for that council, also that authority or those statutory undertakers; and
- (b) otherwise, the authority who—
  - (i) made the order or decision to which the proceedings in question relate, or
  - (ii) referred the matter to the Secretary of State, or
  - (iii) if the order was made by him, are the authority named in it.

#### Textual Amendments

- F1** Words in s. 63(6) substituted (1.10.1992) by [Tribunals and Inquiries Act 1992 \(c. 53, SIF 123:1\)](#), ss. 18(1), 19(2), [Sch. 3 para.31](#)

#### Modifications etc. (not altering text)

- C2** Ss. 62–65 modified by [S.I. 1990/1519, reg. 13\(1\)](#); applied (with modifications) by [S.I. 1990/1519, reg. 12, Sch. 3](#)
- C3** S. 63 applied (28.9.2004) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), ss. 58(5), 121(1) (with s. 111); [S.I. 2004/2202, art. 3\(a\)](#)

#### Marginal Citations

- M1** 1971 c.62.

## 64 Validity of listed building enforcement notices.

The validity of a listed building enforcement notice shall not, except by way of an appeal under section 39, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

#### Modifications etc. (not altering text)

- C4** Ss. 62–65 modified by [S.I. 1990/1519, reg. 13\(1\)](#); applied (with modifications) by [S.I. 1990/1519, reg. 12, Sch. 3](#)

## 65 Appeals to High Court relating to listed building enforcement notices.

- (1) Where the Secretary of State gives a decision in proceedings on an appeal under section 39 against a listed building enforcement notice, the appellant or the local planning authority or any other person having an interest in the land to which the notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State to state and sign a case for the opinion of the High Court.
- (2) At any stage of the proceedings on any such appeal, the Secretary of State may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court.

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- (3) A decision of the High Court on a case stated by virtue of subsection (2) shall be deemed to be a judgment of the court within the meaning of section 16 of the <sup>M2</sup>Supreme Court Act 1981 (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).
- [<sup>F2</sup>(3A) In proceedings brought by virtue of this section, the High Court or, as the case may be, the Court of Appeal may, on such terms, if any, as the Court thinks fit (which may include terms requiring the local planning authority to give an undertaking as to damages or any other matter), order that the listed building enforcement notice shall have effect, or have effect to such extent as may be specified in the order, pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State.]
- (4) In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of this section the power to make rules of court shall include power to make rules—
- (a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State; and
  - (b) providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.
- [<sup>F3</sup>(5) No proceedings in the High Court shall be brought by virtue of this section except with the leave of that Court and no appeal to the Court of Appeal shall be so brought except with the leave of the Court of Appeal or of the High Court.]
- (6) In this section “decision” includes a direction or order, and references to the giving of a decision shall be construed accordingly.
- (7) In the case of a listed building enforcement notice issued by the Commission subsection (1) shall apply as if the reference to the local planning authority were a reference to the Commission.

#### Textual Amendments

- F2** S. 65(3A) added (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. I para. 8(2)**; S.I. 1991/2905, **art.3**
- F3** S. 65(5) substituted (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. I para. 8(3)**; S.I. 1991/2905, **art.3**

#### Modifications etc. (not altering text)

- C5** Ss. 62–65 modified by S.I. 1990/1519, **reg. 13(1)**; applied (with modifications) by S.I. 1990/1519, **reg. 12, Sch. 3**

#### Marginal Citations

- M2** 1981 c.54.

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**Changes to legislation:**

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