



# 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),<sup>[F1]</sup>or
  - (c) a relevant costs order made in connection with any such order or decision,]
- 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;
  - <sup>[F2]</sup>(aa) any decision to approve or reject a local listed building consent order or part of such an order;
  - (ab) any decision on an appeal under section 26K;]
  - (b) any decision to confirm or not to confirm a listed building purchase notice including—

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- (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;
  - (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;
  - [<sup>F3</sup>(d) any decision on an application for listed building consent under section 82B.]
- [<sup>F4</sup>(2A) In this section, “relevant costs order” means an order made under section 250(5) of the Local Government Act 1972 (orders as to costs of parties), as applied by virtue of any provision of this Act.]
- (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).

#### Textual Amendments

- F1** S. 62(1)(c) and word inserted (26.10.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\), s. 95\(1\), Sch. 16 para. 5\(a\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))
- F2** S. 62(2)(aa)(ab) inserted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 17 para. 11](#); S.I. 2014/416, art. 3(e)
- F3** S. 62(2)(d) inserted (6.8.2004 for specified purposes, otherwise 7.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\), ss. 83\(2\), 121\(1\)](#) (with s. 111); S.I. 2004/2097, art. 2; S.I. 2006/1281, art. 2(a)
- F4** S. 62(2A) inserted (26.10.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\), s. 95\(1\), Sch. 16 para. 5\(b\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))

#### 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](#)
- C2** Ss. 62–65 modified (W.) (30.4.2012) by [The Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012 \(No. 793\), regs. 1, 16, Sch. 3](#)
- C3** S. 62 applied (with modifications) (E.) (6.4.2014) by [The Planning \(Listed Buildings and Conservation Areas\) \(Heritage Partnership Agreements\) Regulations 2014 \(S.I. 2014/550\), regs. 1\(1\), 7](#)

### 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 [<sup>F5</sup>section 62(1)(a) or (b)] 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.
- [<sup>F6</sup>(1A) If a person is aggrieved by a relevant costs order made in connection with an order or decision mentioned in section 62(1)(a) or (b) and wishes to question its validity, the person may make an application to the High Court under this section (whether or not as part of an application made by virtue of subsection (1)) on the grounds—
- (a) that the relevant costs order is not within the powers of this Act, or

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- (b) that any of the relevant requirements have not been complied with in relation to the order.]
- (2) Without prejudice to subsection (1) [<sup>F7</sup>or (1A)], if the authority directly concerned with any [<sup>F8</sup>order or decision mentioned in section 62(1)] wish to question its validity on any of [<sup>F9</sup>the grounds mentioned in subsection (1) or (1A) (as the case may be)], the authority may make an application to the High Court under this section.
- [<sup>F10</sup>(3) An application under this section may not be made without the leave of the High Court.
- (3A) An application for leave for the purposes of subsection (3) must be made before the end of the period of six weeks beginning with the day after—
  - (a) in the case of an application relating to an order under section 23 that takes effect under section 25 without confirmation, the date on which the order takes effect;
  - (b) in the case of an application relating to any other order mentioned in section 62(1)(a), the date on which the order is confirmed;
  - (c) in the case of an application relating to a decision mentioned in section 62(1)(b) or a relevant costs order, the date on which the decision or order is made.
- (3B) When considering whether to grant leave for the purposes of subsection (3), the High Court may make an interim order suspending the operation of any order or decision the validity of which the person or authority concerned wishes to question, until the final determination of—
  - (a) the question of whether leave should be granted, or
  - (b) where leave is granted, the proceedings on any application under this section made with such leave.]
- (4) On any application under this section [<sup>F11</sup>(other than an application for leave)] the High Court—
  - (a) may by interim order suspend the operation of [<sup>F12</sup>any 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 [<sup>F13</sup>any such 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.
- [<sup>F14</sup>(6) In this section—
  - “relevant costs order” has the same meaning as in section 62;
  - “the relevant requirements”—
    - (a) in relation to an order or decision mentioned in section 62(1)(a) or (b), means any requirements of this Act or of the Tribunals and Inquiries Act 1992, or of any order, regulations or rules made under either of those Acts, which are applicable to the order or decision;
    - (b) in relation to a relevant costs order, means any requirements of this Act, of the Local Government Act 1972 or of the Tribunals and Inquiries Act

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1992, or of any order, regulations or rules made under any of those Acts, which are applicable to the order.]

- (7) For the purposes of subsection (2) the authority directly concerned with an order or decision is—
- (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

- F5** Words in s. 63(1) substituted (26.10.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 16 para. 6\(2\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))
- F6** S. 63(1A) inserted (26.10.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 16 para. 6\(3\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))
- F7** Words in s. 63(2) inserted (26.10.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 16 para. 6\(4\)\(a\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))
- F8** Words in s. 63(2) substituted (26.10.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 16 para. 6\(4\)\(b\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))
- F9** Words in s. 63(2) substituted (26.10.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 16 para. 6\(4\)\(c\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))
- F10** S. 63(3)-(3B) substituted for s. 63(3) (26.10.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 16 para. 6\(5\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))
- F11** Words in s. 63(4) inserted (26.10.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 16 para. 6\(6\)\(a\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))
- F12** Words in s. 63(4)(a) substituted (26.10.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 16 para. 6\(6\)\(b\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))
- F13** Words in s. 63(4)(b)(i) substituted (26.10.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 16 para. 6\(6\)\(c\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))
- F14** S. 63(6) substituted (26.10.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 16 para. 6\(7\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))

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

- C2** Ss. 62-65 modified (W.) (30.4.2012) by [The Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012 \(No. 793\)](#), regs. 1, 16, [Sch. 3](#)
- 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](#)
- C5** 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\(a\)](#)
- C6** S. 63 applied (with modifications) (E.) (6.4.2014) by [The Planning \(Listed Buildings and Conservation Areas\) \(Heritage Partnership Agreements\) Regulations 2014 \(S.I. 2014/550\)](#), regs. 1(1), 7

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## 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)

- C2 Ss. 62–65 modified (W.) (30.4.2012) by [The Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012 \(No. 793\)](#), regs. 1, 16, [Sch. 3](#)
- C7 Ss. 62–65 modified by [S.I. 1990/1519](#), [reg. 13\(1\)](#); applied (with modifications) by [S.I. 1990/1519](#), reg. 12, [Sch. 3](#)
- C8 [S. 64](#) applied (Isles of Scilly) (with modifications) (2.10.2013) by [The Town and Country Planning \(Isles of Scilly\) Order 2013 \(S.I. 2013/2148\)](#), arts. 1(1), 3, [Sch. 1](#) (with art. 1(2))

## 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.
- (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>M1</sup>[<sup>F15</sup>Senior Courts Act 1981] (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).
- <sup>F16</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.

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- <sup>F17</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

- F15** Words in s. 65(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59(5), 148(1), [Sch. 11 para. 1\(2\)](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F16** S. 65(3A) added (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. 1 para. 8\(2\)](#); S.I. 1991/2905, [art.3](#)
- F17** S. 65(5) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. 1 para. 8\(3\)](#); S.I. 1991/2905, [art.3](#)

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

- C2** Ss. 62–65 modified (W.) (30.4.2012) by [The Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012 \(No. 793\)](#), regs. 1, 16, [Sch. 3](#)
- C9** Ss. 62–65 modified by S.I. 1990/1519, [reg. 13\(1\)](#); applied (with modifications) by S.I. 1990/1519, [reg. 12](#), [Sch. 3](#)
- C10** S. 65 applied (Isles of Scilly) (with modifications) (2.10.2013) by [The Town and Country Planning \(Isles of Scilly\) Order 2013 \(S.I. 2013/2148\)](#), arts. 1(1), 3, [Sch. 1](#) (with art. 1(2))

#### Marginal Citations

- M1** 1981 c.54.

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