



Town and Country Planning Act 1962

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PART XI

VALIDITY OF PLANNING INSTRUMENTS AND DECISIONS, AND PROCEEDINGS RELATING THERETO

176 Validity of development plans and of certain orders, decisions and directions

- (1) Except as provided by the following provisions of this Part of this Act, the validity of—
- (a) a development plan or an amendment of a development plan, whether before or after it has been approved or made, or
 - (b) an order under section one hundred and fifty-three of this Act, whether before or after the order has been made, or
 - (c) an order under section one hundred and sixty-eight of this Act, whether before or after the order has been made, or
 - (d) any such order as is mentioned in subsection (2) of this section, whether before or after it has been confirmed, or
 - (e) any such action on the part of the Minister as is mentioned in subsection (3) of this section,
- shall not be questioned in any legal proceedings whatsoever.
- (2) The orders referred to in paragraph (d) of the preceding subsection are orders of any of the following descriptions, that is to say—
- (a) any order under section twenty-seven of this Act or under the provisions of that section as applied by or under any other provision of this Act;
 - (b) any order under section twenty-eight of this Act;
 - (c) any tree preservation order ;
 - (d) any building preservation order;
 - (e) any order made in pursuance of subsection (4) of section thirty-four of this Act.

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- (3) The action referred to in paragraph (e) of subsection (1) of this section is action on the part of the Minister of any of the following descriptions, that is to say—
- (a) any decision of the Minister on an application for planning permission referred to him under section twenty-two of this Act;
 - (b) any decision of the Minister on an appeal under section twenty-three of this Act;
 - (c) any decision of the Minister to confirm a purchase notice;
 - (d) any decision of the Minister not to confirm a purchase notice, including any decision not to confirm a purchase notice in respect of part of the land to which it relates, and including any decision to grant any permission, or give any direction, in lieu of confirming a purchase notice, either wholly or in part;
 - (e) any decision of the Minister relating to an application for consent under a tree preservation order or building preservation order, or relating to an application for consent under any regulations made in accordance with section thirty-four of this Act, or relating to any certificate or direction under any such order or regulations, whether it is a decision of the Minister on appeal or a decision on an application referred to him for determination in the first instance;
 - (f) the giving by the Minister of any direction under section twenty-five of this Act.
- (4) 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 Minister to take any such action as is mentioned in the last preceding subsection.

177 Validity of enforcement notices and similar notices

- (1) Subject to the next following subsection, the validity of an enforcement notice which has been served under Part IV of this Act on the owner and occupier of the land shall not, except by way of an appeal under Part IV of this Act, be questioned in any proceedings whatsoever on any of the grounds specified in paragraphs (b) to (e) of subsection (1) of section forty-six of this Act.
- (2) The preceding subsection shall not apply to proceedings brought under subsection (5) of section forty-seven of this Act against a person who—
 - (a) has held an interest in the land since before the enforcement notice was served under Part IV of this Act, and
 - (b) did not have the enforcement notice served on him thereunder, and
 - (c) did not appeal against that notice under Part IV of this Act.
- (3) The validity of a notice which has been served under section fifty-two of this Act on the owner and occupier of the building to which the notice relates shall not, except by way of an appeal under Part IV of this Act, be questioned in any proceedings whatsoever on the grounds that the works to which the notice relates were not, or were not wholly, works in contravention of subsection (1) of section thirty-three of this Act.
- (4) Subject to the next following subsection, the validity of a notice which has been served under section thirty-six of this Act on the owner and occupier of the land shall not, except by way of an appeal under Part IV of this Act, be questioned in any proceedings whatsoever on any of the grounds specified in paragraphs (a) to (c) of subsection (1) of section fifty-seven of this Act.

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- (5) The last preceding subsection shall not apply to proceedings brought under section fifty-six of this Act against a person on whom the notice referred to in that subsection was not served, but who has held an interest in the land since before that notice was served on the owner and occupier of the land, if he did not appeal against the notice under Part IV of this Act.
- (6) The validity of a notice purporting to be an enforcement notice shall not depend on whether any non-compliance to which the notice relates was a non-compliance with conditions, or with limitations, or with both; and any reference in such a notice to non-compliance with conditions or limitations (whether both expressions are used in the notice or only one of them) shall be construed as a reference to non-compliance with conditions, or with limitations, or both with conditions and limitations, as the case may require.

178 Proceedings for questioning validity of development plans and of orders under ss.153 and 168

- (1) If any person aggrieved by a development plan, or by an amendment of a development plan, desires to question the validity thereof or of any provision contained therein on the grounds that it is not within the powers of this Act, or that any requirement of this Act or of any regulation made thereunder has not been complied with in relation to the approval or making of the plan, or, as the case may be, in relation to the making of the amendment, he may, within six weeks from the date on which the notice required by subsection (1) of section eleven of this Act is first published, make an application to the High Court under this section.
- (2) On any application under this section the High Court—
 - (a) may by interim order suspend the operation of the plan or amendment, as the case may be, or of any provision contained therein, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings;
 - (b) if satisfied that the plan or amendment, or any provision contained therein, is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement of this Act or of any regulation made thereunder, may quash the plan or amendment or any provision contained therein, either generally or in so far as it affects any property of the applicant.
- (3) The preceding provisions of this section shall apply to an order under section one hundred and fifty-three of this Act as they apply to a development plan, as if, in subsection (1) of this section, for the reference to the notice therein mentioned, there were substituted a reference to the notice required by subsection (6) of section one hundred and fifty-four of this Act.
- (4) Subsections (1) and (2) of this section shall apply, subject to any necessary modifications, to an order under section one hundred and sixty-eight of this Act as they apply in relation to a development plan.

179 Proceedings for questioning validity of other orders, decisions and directions

- (1) If any person—
 - (a) is aggrieved by any order to which this section applies and desires to question the validity of that order, on the grounds that the order is not within the powers

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of this Act, or that any of the relevant requirements have not been complied with in relation to that order, or

- (b) is aggrieved by any action on the part of the Minister to which this section applies and desires to question the validity of that action, on the grounds that the action is not within the powers of this Act, or that any of the relevant requirements have not been complied with in relation to that action,

he may, within six weeks from the date on which the order is confirmed or the action is taken, as the case may be, make an application to the High Court under this section.

- (2) Without prejudice to the preceding subsection, if the authority directly concerned with any order to which this section applies, or with any action on the part of the Minister to which this section applies, desire to question the validity of that order or action on any of the grounds mentioned in the preceding subsection, the authority may, within six weeks from the date on which the order is confirmed or the action is taken, as the case may be, make an application to the High Court under this section.
- (3) This section applies to any such order as is mentioned in subsection (2) of section one hundred and seventy-six of this Act and to any such action on the part of the Minister as is mentioned in subsection (3) of that section.
- (4) On any application under this section the High Court—
 - (a) may by interim order suspend the operation of the order or action, the validity whereof is questioned by the application, until the final determination of the proceedings ;
 - (b) if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation thereto, may quash that order or action:

Provided that paragraph (a) of this subsection shall not apply to applications questioning the validity of tree preservation orders or building preservation orders.

- (5) In relation to a tree preservation order, or to an order made in pursuance of subsection (4) of section thirty-four of this Act, the powers conferred on the High Court by the last preceding subsection shall be exercisable by way of quashing or (where applicable) suspending the operation of the order either in whole or in part, as the court may determine.
- (6) References in this section to the confirmation of an order do not include the provisional confirmation of an order in pursuance of subsection (6) of section twenty-nine of this Act or in pursuance of subsection (2) of section thirty-one thereof, but (with that exception) include the confirmation of an order subject to modifications as well as the confirmation of an order in the form in which it was made.
- (7) In this section “the relevant requirements ”, in relation to any order or action to which this section applies, means any requirements of this Act or of the Tribunals and Inquiries Act, 1958, or of any order, regulations or rules made under this Act or under that Act, which are applicable to that order or action, and any reference to the authority directly concerned with any order or action to which this section applies—
 - (a) in relation to an order made by a local authority other than the local planning authority, and in relation to any decision of the Minister on appeal from a decision made by such a local authority, is a reference to that local authority;
 - (b) in relation to any such decision as is mentioned in paragraph (c) or paragraph (d) of subsection (3) of section one hundred and seventy-six of

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this Act, is a reference to the council on whom the notice in question was served, and, in a case where the Minister has modified such a notice, wholly or in part, by substituting another local authority or statutory undertakers for that council, includes a reference to that local authority or those statutory undertakers;

- (c) in any other case, is a reference to the local planning authority:

Provided that if, in a case falling within paragraph (a) of this subsection, the order or decision in question was made in the exercise of functions delegated to the other local authority by the local planning authority, and it is agreed between the two authorities that the local planning authority shall act in the matter, the reference shall be construed as a reference to the local planning authority.

180 Appeals to High Court relating to enforcement notices and similar notices

- (1) Where the Minister gives a decision in proceedings on an appeal under Part IV of this Act against an enforcement notice, the appellant or the local planning authority or any person (other than the appellant) on whom the enforcement notice was served under Part IV of this Act 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 Minister to state and sign a case for the opinion of the High Court.
- (2) Where the Minister gives a decision in proceedings on an appeal under Part IV of this Act against a notice served under section fifty-two of this Act, the appellant or the local planning authority or any person (other than the appellant) on whom the notice was served may appeal to the High Court against the decision on a point of law.
- (3) At any stage of the proceedings on any such appeal as is mentioned in either of the preceding subsections, the Minister 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; and a decision of the High Court on a case stated by virtue of this subsection shall be deemed to be a judgment of the court within the meaning of section twenty-seven of the Supreme Court of Judicature (Consolidation) Act, 1925 (which relates to the jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).
- (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 Minister, and
 - (b) providing for the Minister, 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.
- (5) Rules of court relating to any such proceedings as are mentioned in the last preceding subsection may provide for excluding so much of subsection (1) of section sixty-three of the Supreme Court of Judicature (Consolidation) Act, 1925, as requires appeals to the High Court to be heard and determined by a Divisional Court; but no appeal to the Court of Appeal shall be brought by virtue of this section except with the leave of the High Court or the Court of Appeal.

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- (6) In this section “decision ” includes a direction or order, and references to the giving of a decision shall be construed accordingly.

181 Appeals to High Court against decisions under s.43

- (1) If, in the case of any decision to which this section applies, the person who made the application to which the decision relates, or the local planning authority, is dissatisfied with the decision in point of law, that person or the local planning authority (as the case may be) may, according as rules of court may provide, either appeal against the decision to the High Court or require the Minister to state and sign a case for the opinion of the High Court.
- (2) This section applies to any decision of the Minister—
- (a) on an application under section forty-three of this Act which is referred to the Minister under the provisions of section twenty-two of this Act as applied by that section, or
 - (b) on an appeal from a decision of the local planning authority under section forty-three of this Act, being an appeal brought under the provisions of section twenty-three of this Act as so applied.
- (3) Where an application under section forty-three of this Act is made as part of an application for planning permission, the preceding provisions of this section shall have effect in relation to that application in so far as it is an application under the said section forty-three, but not in so far as it is an application for planning permission.
- (4) In relation to 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 prescribing the powers of the High Court or the Court of Appeal with respect to—
- (a) the giving of any decision which might have been given by the Minister;
 - (b) the remitting of the matter, with the opinion or direction of the court, for re-hearing and determination by the Minister;
 - (c) the giving of directions to the Minister.
- (5) Rules of court relating to such proceedings as are mentioned in the last preceding subsection may provide for excluding so much of subsection (1) of section sixty-three of the Supreme Court of Judicature (Consolidation) Act, 1925, as requires appeals to the High Court to be heard and determined by a Divisional Court; but no appeal to the Court of Appeal shall be brought by virtue of this section except with the leave of the High Court or the Court of Appeal.
- (6) Without prejudice to the preceding provisions of this section, the power to make rules of court in relation to proceedings in the High Court or the Court of Appeal brought by virtue of this section shall include power to make rules providing for the Minister, 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.

182 Special provision as to decisions relating to statutory undertakers

In relation to any action which—

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- (a) apart from the provisions of Part X of this Act, would fall to be taken by the Minister, and, if so taken, would be action falling within subsection (3) of section one hundred and seventy-six of this Act, but
- (b) by virtue of Part X of this Act, is required to be taken by the Minister and the appropriate Minister,

the provisions of sections one hundred and seventy-six and one hundred and seventy-nine of this Act shall have effect (subject to the next following section) as if any reference in those provisions to the Minister were a reference to the Minister and the appropriate Minister.

183 Special provisions as to orders subject to special parliamentary procedure

- (1) Where in accordance with subsection (4) of section five of this Act any land to which a development plan relates is designated as subject to compulsory acquisition in pursuance of an order which is subject to special parliamentary procedure, then—
 - (a) if that order is confirmed by Act of Parliament under section six of the Statutory Orders (Special Procedure) Act, 1945, the provisions of sections one hundred and seventy-six and one hundred and seventy-eight of this Act shall not apply to the plan in so far as it so designates that land;
 - (b) in any other case, section one hundred and seventy-eight of this Act shall have effect in relation to the plan, in so far as it so designates that land, as if in subsection (1) of that section, for the reference to the date therein mentioned, there were substituted a reference to the date on which the order becomes operative under section six of the said Act of 1945.
- (2) Where an order under section one hundred and fifty-three or section one hundred and sixty-eight of this Act is subject to special parliamentary procedure, then—
 - (a) if the order is confirmed by Act of Parliament under section six of the said Act of 1945, the provisions of sections one hundred and seventy-six and one hundred and seventy-eight of this Act shall not apply to the order;
 - (b) in any other case, section one hundred and seventy-eight of this Act shall have effect in relation to the order as if, in subsection (1) of that section, for the reference to the date therein mentioned, there were substituted a reference to the date on which the order becomes operative under section six of the said Act of 1945.
- (3) Where by virtue of Part X of this Act any such action as is mentioned in the last preceding section is required to be embodied in an order, and that order is subject to special parliamentary procedure, then—
 - (a) if the order in which the action is embodied is confirmed by Act of Parliament under section six of the said Act of 1945, the provisions of sections one hundred and seventy-six and one hundred and seventy-nine of this Act shall not apply;
 - (b) in any other case, the provisions of section one hundred and seventy-nine of this Act shall apply with the substitution, for any reference to the date on which the action is taken, of a reference to the date on which the order becomes operative under section six of the said Act of 1945.