

## SCHEDULE 9

Article 35(2)

### Discharge of requirements

#### **Applications made under requirement**

1. Where an application has been made to the relevant planning authority for any agreement or approval required pursuant to a Requirement included in this Order, the relevant planning authority must give notice to the undertaker of their decision including the reasons on the application, within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority; or
- (b) such longer period as may be agreed by the undertaker and the relevant planning authority.

#### **Further information**

2.—(1) Where an application has been made under paragraph 1 the relevant planning authority shall have the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) If the relevant planning authority considers further information is needed, and the requirement does not specify that consultation with a requirement consultee is required, it must, within 14 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement indicates that consultation must take place with a requirement consultee the relevant planning authority must issue the consultation to the requirement consultee within 5 business day of receipt of the application and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 3 business day of receipt of such a request and in any event within 21 business days of receipt of the application.

(4) In the event that the relevant planning authority does not give such notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter be entitled to request further information without the prior agreement of the undertaker.

#### **Appeals**

3. The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions; or
- (b) the relevant planning authority does not give notice of its decision to the undertaker within the time period specified in paragraph 1;

and any appeal must be made within 42 business days following the occurrence of any of the events in sub-paragraphs (a) and (b).

#### **Appeal process**

4.—(1) Any appeal under this Schedule shall take place by written representations only. The appeal process shall be 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 (“the appeal documentation”) and must on the same day provide

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

copies of the appeal documentation to the relevant planning authority and any requirement consultee;

- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State shall appoint a person to determine the appeal (“the appointed person”) and shall notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (c) the relevant planning authority and the requirement consultee (if any) must submit written representations to the appointed person in respect of the appeal within 10 business days of the date on which the appeal parties are notified of the appointed person under paragraph (b) 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;
- (d) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to paragraph (c); and
- (e) the appointed person shall make a decision and notify it to the appeal parties, with reasons, as soon as practicable.

(2) The appointment of the person pursuant to sub-paragraph (1)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he shall, as soon as practicable, notify the appeal parties in writing specifying the further information required, the party from whom the information is sought and the date by which the information is to be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided to the appointed person and the other appeal parties on or before the date specified by the appointed person. Any written representations concerning matters contained in the further information must be provided to the appointed person and the other appeal parties within 10 business days of that date.

(5) On an appeal under this paragraph, 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 him in the first instance and must state in writing the reasons for any decision.

(6) 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 set by the appointed person under this paragraph.

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

(8) 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.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 to this Order as if it had been given by the relevant planning authority.

(10) Save where a direction is given pursuant to sub-paragraph (11) 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.

(11) 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. In considering whether to make any such direction and the terms on which it is to be made, the appointed person is to have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replaces it.

## **Fees**

**5.**—(1) Where an application is made to the relevant planning authority for agreement or approval in respect of a requirement a fee of £97.00 is to be paid to it.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within the period determined under sub-paragraph (1);

unless within that period the undertaker agrees in writing that the fee is to be retained by the relevant planning authority and credited in respect of a future application.

## **Interpretation of Schedule 9**

**6.** In this Schedule—

“the appeal parties” means the relevant planning authority, the requirement consultee and the undertaker;

“business day” means a day other than 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);

“requirement consultee” means any body named in a Requirement which is the subject of an appeal as a body to be consulted by the relevant planning authority in discharging that Requirement.

---

(1) 1971 c. 80. There are amendments to this Act which are not relevant to this Order.