

SCHEDULES

SCHEDULE 3

Article 18

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Application of this Schedule

1. This Schedule applies to an application made by the undertaker to the planning authority (referred to in this Schedule as “the authority”) for an approval, consent or agreement required by any of the requirements.

Decision Period

2.—(1) The authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In sub-paragraph (1), “the decision period” means—

- (a) where the authority does not give written notice under paragraph 3(1) or (2) requiring further information, the period of eight weeks from the later of—
 - (i) the day immediately following the day on which the authority receives the application, and
 - (ii) the day on which the authority receives the fee payable under paragraph 4; or
- (b) where the authority gives written notice under paragraph 3(1) or (2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or
- (c) such longer period as may be agreed in writing by the undertaker and the authority.

Further information

3.—(1) If the authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant requirement requires that authority to consult a person (referred to in this Schedule as a “consultee”) in relation to the application—

- (a) the authority must consult the consultee within five business days from the day on which it receives the application;
- (b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the authority, specifying what further information is required, within 18 business days from the day on which the authority received the application; and
- (c) within five business days from the day on which it receives any such notification from the consultee, the authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the authority under sub-paragraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice

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to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the authority does not give written notice in accordance with sub-paragraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

Fees

4.—(1) The undertaker must pay the authority a fee of £116, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under sub-paragraph (1) to the undertaker, within the relevant period, if it—

- (a) rejects the application as being invalidly made;
- (b) fails to give the written notice required by paragraph 2(1).

(3) Sub-paragraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In sub-paragraphs (2) and (3) “the relevant period” means the period of eight weeks from, as the case may be—

- (a) the day on which the authority rejects the application as being invalidly made;
- (b) the day after the day on which the decision period expires.

Appeal to the Secretary of State (procedure)

5.—(1) The undertaker may appeal to the Secretary of State against—

- (a) the authority’s refusal of an application;
- (b) the authority’s grant subject to conditions of an application;
- (c) the authority’s failure to give the written notice required by paragraph 2(1);
- (d) a written notice given by the authority under paragraph 3(1), (2) or (3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

- (a) its grounds of appeal;
- (b) a copy of the application submitted to the authority;
- (c) any supporting documentation which it wishes to provide.

(3) In sub-paragraph (2), “the relevant day” means—

- (a) in the case of an appeal under sub-paragraph (1)(a) or (b), the day on which the undertaker is notified by the authority of its decision;
- (b) in the case of an appeal under sub-paragraph (c), the day after the day on which the decision period expires;
- (c) in the case of an appeal under sub-paragraph (1)(d), the day on which the undertaker receives the authority’s notice.

(4) At the same time as it sends the documents mentioned in sub-paragraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.

(5) As soon as reasonably practicable following receipt of the documents mentioned in sub-paragraph (2), the Secretary of State must—

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- (a) appoint a person (referred to in this Schedule as “the appointed person”) to determine the appeal on his behalf;
 - (b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person’s address for correspondence in relation to the appeal.
- (6) Within 20 business days from the day on which the Secretary of State gives notice under sub-paragraph (5)(b), the authority and any consultee—
- (a) may submit written representations in respect of the appeal to the appointed person; and
 - (b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.
- (7) Within 10 business days from the last day on which representations are submitted to the appointed person under sub-paragraph (6), any party—
- (a) may make further representations to the appointed person in response to the representations of another party; and
 - (b) must, at the same time, send a copy of any such further representations to each other party.

Appeal to the Secretary of State (powers of the appointed person)

- 6.—(1) The appointed person may—
- (a) allow or dismiss the appeal;
 - (b) reverse or vary any part of the authority’s decision, irrespective of whether the appeal relates to that part;
 - (c) make a decision on the application as if it had been made to the appointed person in the first instance.
- (2) The appointed person—
- (a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;
 - (b) if he gives such a notice, must—
 - (i) at the same time send a copy of it to each other party, and
 - (ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.
- (3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

Appeal to the Secretary of State (supplementary)

- 7.—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.
- (2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.
- (3) Subject to sub-paragraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.
- (4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.

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(5) In considering an application under sub-paragraph (4) the appointed person must have regard to the National Planning Practice Guidance: Advice on planning appeals and the award costs or any circular or guidance which may from time to time replace it.