



# Historic Environment (Wales) Act 2023

2023 asc 3

## PART 5

### SUPPLEMENTARY PROVISION ABOUT BUILDINGS OF SPECIAL INTEREST AND CONSERVATION AREAS

#### CHAPTER 3

##### VALIDITY AND CORRECTION OF DECISIONS

###### *Validity of decisions and orders*

#### **182 Validity of certain decisions and orders relating to buildings**

- (1) The validity of a decision or order to which this section applies may not be questioned in any legal proceedings except an application for statutory review under section 183.
- (2) The decisions to which this section applies are—
  - (a) a decision on a review under section 81 (review of listing decision);
  - (b) a decision on an application referred to the Welsh Ministers under section 94 (reference of application for listed building consent or conservation area consent or for the variation or removal of conditions);
  - (c) a decision on an appeal under section 100 (appeal against decision or failure to make decision on application for consent, for the variation or removal of conditions or for approval of details);
  - (d) a decision on an application for listed building consent or conservation area consent made to the Welsh Ministers under section 106 (urgent works on Crown land);
  - (e) a decision under paragraph 2 of Schedule 9 to confirm or not to confirm a purchase notice, including—
    - (i) a decision to confirm the notice in relation to only part of the land to which it relates, and

- (ii) a decision to grant listed building consent or conservation area consent, or direct that consent must be granted, instead of confirming the notice in relation to the land or any part of it;
  - (f) a decision under section 128(3)(a) or (b) (determination of appeal against enforcement notice) to grant listed building consent or conservation area consent or remove a condition of consent.
- (3) The orders to which this section applies are—
- (a) an order under section 107 (modification or revocation of consent) made by a planning authority (whether or not it has been confirmed by the Welsh Ministers) or the Welsh Ministers;
  - (b) an order under section 115 (termination of listed building partnership agreement or provision of agreement) made by a planning authority or the Welsh Ministers;
  - (c) an order under section 181 (orders relating to costs of parties) made in connection with a decision mentioned in subsection (2) or an order mentioned in paragraph (a) or (b).
- (4) This section does not prevent any court exercising any jurisdiction in relation to a refusal or failure to make a decision to which this section applies.

### **183 Application to High Court for statutory review of decision or order**

- (1) A person aggrieved by a decision or order to which section 182 applies, or the authority directly concerned with such a decision or order, may make an application for statutory review.
- (2) An application for statutory review is an application to the High Court questioning the validity of the decision or order on the grounds that—
  - (a) it is not within the powers conferred by this Act, or
  - (b) a requirement of this Act, or of subordinate legislation made under it, has not been complied with in relation to the decision or order.
- (3) An application for statutory review may only be made with the permission of the High Court.
- (4) An application for permission must be made before the end of 6 weeks beginning with the day after—
  - (a) in the case of an application relating to a decision mentioned in section 182(2), the day the decision is made;
  - (b) in the case of an application relating to an order made by a planning authority under section 107 and confirmed by the Welsh Ministers (with or without modifications), the day the order is confirmed;
  - (c) in the case of any other application relating to an order under section 107, the day the order takes effect;
  - (d) in the case of an application relating to an order made by a planning authority under section 115, the day the order is confirmed;
  - (e) in the case of an application relating to any other order mentioned in section 182(3), the day the order is made.
- (5) When considering whether to give permission, the High Court may make an interim order suspending the operation of the decision or order to which the proposed

- application for statutory review relates until the final determination of the proceedings on—
- (a) the application for permission, or
  - (b) where permission is given, the application for statutory review.
- (6) On an application for statutory review the High Court—
- (a) may make an interim order suspending the operation of the decision or order to which the application relates until the proceedings are finally determined;
  - (b) may quash that decision or order if satisfied that—
    - (i) it is not within the powers conferred by this Act, or
    - (ii) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement of this Act, or of subordinate legislation made under it, in relation to the decision or order.
- (7) For the purposes of this section the authority directly concerned with a decision or order is—
- (a) in the case of a decision on an application referred to the Welsh Ministers under section 94, the planning authority that made the reference;
  - (b) in the case of a decision on an appeal under section 100, the planning authority to which the application to which the appeal relates was made;
  - (c) in the case of a decision to confirm or not to confirm a purchase notice—
    - (i) the planning authority on which the purchase notice was served (see section 109), and
    - (ii) if the Welsh Ministers have modified the notice wholly or in part by substituting another local authority or statutory undertaker for the planning authority, that other local authority or statutory undertaker;
  - (d) in the case of a decision under section 128(3)(a) or (b) on an appeal against an enforcement notice issued by a planning authority, the authority that issued the notice;
  - (e) in the case of an order under section 107, the planning authority in whose area the building to which the order relates is situated;
  - (f) in the case of an order under section 115, any planning authority that is or was a party to the listed building partnership agreement to which the order relates;
  - (g) in the case of an order made under section 181 in connection with a decision or order mentioned in paragraphs (a) to (f), the authority directly concerned with that decision or order.

#### **184 Appeal to High Court against decision relating to enforcement notice**

- (1) Rules of court must provide either—
- (a) that an interested person may appeal to the High Court on a point of law against a relevant decision made by the Welsh Ministers, or
  - (b) that where the Welsh Ministers make a relevant decision an interested person may require them to state and sign a case for the opinion of the High Court.
- (2) For the purposes of this section—
- (a) a relevant decision is any decision (including a direction or order) made in proceedings on an appeal under section 127 against an enforcement notice, other than a decision under section 128(3)(a) or (b) to grant consent or remove a condition of consent;

- (b) the following are interested persons—
  - (i) the person who made the appeal,
  - (ii) the planning authority in whose area the building to which the enforcement notice relates is situated, and
  - (iii) any other person who has an interest in the building.
- (3) At any stage of the proceedings on an appeal under section 127, the Welsh Ministers may state a question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court.
- (4) A decision of the High Court on a case stated under subsection (3) is to be treated as a judgment of the court for the purposes of section 16 of the [Senior Courts Act 1981 \(c. 54\)](#) (jurisdiction of Court of Appeal to hear and determine appeals from judgments or orders of High Court).
- (5) Where proceedings are brought by virtue of this section, the High Court or the Court of Appeal (as the case may be) may order that the enforcement notice is to have effect, either in full or to the extent specified in the order, pending the final determination of the proceedings and any re-hearing and determination of the appeal by the Welsh Ministers.
- (6) An order under subsection (5) may be made on whatever terms the court considers appropriate, which may include terms requiring the planning authority to give an undertaking as to damages or any other matter.
- (7) Rules of court may make provision—
  - (a) for the Welsh Ministers to be a party to proceedings in the High Court or the Court of Appeal brought by virtue of this section, either generally or in circumstances specified in the rules;
  - (b) about the powers of the High Court or the Court of Appeal to remit the matter to the Welsh Ministers for re-hearing and determination in accordance with the opinion or direction of the court.
- (8) Proceedings in the High Court under this section may only be brought with the permission of the High Court.
- (9) An appeal to the Court of Appeal by virtue of this section may only be brought with the permission of the High Court or the Court of Appeal.