

SCHEDULE 4

Regulations 14 and 17

MODIFICATIONS OF THE ACT

PART 1

MODIFICATIONS OF SECTION 70A OF THE ACT (POWER OF LOCAL PLANNING AUTHORITY TO DECLINE TO DETERMINE APPLICATIONS)

1. In section 70A of the Act—

(a) in subsection (1)—

(i) for “planning permission for the development of any land” substitute “express consent”;

(ii) in paragraph (a), omit the words “has refused a similar application referred to him under section 77 or”; and

(iii) for paragraph (b) substitute—

“(b) in the opinion of the authority there has been no significant change in any material consideration since the dismissal mentioned in paragraph (a).”;

(b) after subsection (1) insert the following subsection—

“(1A) A local planning authority may decline to determine an application for express consent if, by virtue of regulation 21(1) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, they have no power to grant the consent applied for.”; and

(c) in subsection (2)—

(i) after “the purposes of” insert “subsection (1) of”;

(ii) for “planning permission for the development of any land” substitute “express consent”;

(iii) for “development” substitute “subject matter of the applications”; and

(iv) for “the applications” substitute “they”.

PART 2

SECTION 70A OF THE ACT AS MODIFIED

70A.—(1) A local planning authority may decline to determine an application for express consent if—

(a) within the period of two years ending with the date on which the application is received, the Secretary of State has dismissed an appeal against the refusal of a similar application; and

(b) in the opinion of the authority there has been no significant change in any material consideration since the dismissal mentioned in paragraph (a).

(1A) A local planning authority may decline to determine an application for express consent if, by virtue of regulation 21(1) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, they have no power to grant the consent applied for.

(2) For the purposes of subsection (1) of this section an application for express consent shall be taken to be similar to a later application if the subject matter of the applications and the land to which they relate are in the opinion of the local planning authority the same or substantially the same.

PART 3

MODIFICATIONS OF SECTIONS 78 AND 79 OF THE ACT(APPLICATIONS FOR EXPRESS CONSENT)

1. In section 78 of the Act—

(a) in subsection (1), for paragraphs (a) to (c) substitute “refuse an application for express consent or grant it subject to conditions.”;

(b) for subsection (2) substitute—

“(2) A person who has made an application for express consent may also appeal to the Secretary of State if within the period of 8 weeks from the date when the application was received by the local planning authority, that authority have neither given him notice of their decision on it nor given him notice that they have exercised their power under section 70A to decline to determine the application.”;

(c) for subsection (3) substitute the following subsections—

“(3) Any appeal under subsection (1) or (2) shall be made by notice served within 8 weeks from the date of receipt of the local planning authority’s decision, or, as the case may be, within 8 weeks from the expiry of the period mentioned in subsection (2), or within such longer period as the Secretary of State may in either case at any time allow.

(3A) The notice mentioned in subsection (3) shall be accompanied by a copy of each of the following documents—

- (a) the application made to the local planning authority;
- (b) all relevant plans and particulars submitted to them;
- (c) the notice of the authority’s decision (if any); and
- (d) any other relevant correspondence with the authority.”;

(d) for subsection (4) substitute—

“(4) Where an appeal is made to the Secretary of State as mentioned in subsection (3), he may require the appellant or the local authority to submit to him, within such period as he may specify, a statement in writing in respect of such matters relating to the application as he may specify, and if, after considering the grounds of appeal and any such statement, the Secretary of State is satisfied that he has sufficient information to enable him to determine the appeal he may, with the agreement in writing of both the appellant and the local planning authority, determine the appeal without complying with section 79(2).”;

(e) in subsection (5), omit the references to sections 253(2)(c) and 266(1)(b).

2. In section 79 of the Act—

(a) after subsection (1) insert—

“(1A) The Secretary of State may, in granting an express consent, specify that its term shall run for such longer or shorter period than 5 years as he considers expedient, having regard to the interests of amenity (including aural amenity) and public safety, and taking into account—

- (a) relevant provisions of any applicable development plan;

- (b) the factors referred to in regulation 3 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007; and
- (c) any period specified in the application for consent.”;
- (b) omit subsection (4);
- (c) in subsection (5), for “such an appeal shall be final”, substitute “an appeal under section 78 shall be final, and shall otherwise have effect as if it were a decision of the local planning authority”;
- (d) in subsection (6)—
 - (i) omit “such”; and
 - (ii) for the words from “an application for planning permission” to “planning permission for that development”, substitute “in respect of an application for express consent, the Secretary of State forms the opinion that, having regard to the Regulations mentioned in subsection (1A) and to any direction given under them, consent”;
- (e) in subsection (6A), after the word “appeal”, the first time it appears, insert “as is mentioned in subsection (6)”.

PART 4

SECTIONS 78 AND 79 OF THE ACT AS MODIFIED

78.—(1) Where a local planning authority refuse an application for express consent or grant it subject to conditions, the applicant may by notice appeal to the Secretary of State.

(2) A person who has made an application for express consent may also appeal to the Secretary of State if within the period of 8 weeks from the date when the application was received by the local planning authority, that authority have neither given him notice of their decision on it nor given him notice that they have exercised their power under section 70A to decline to determine the application.

(3) Any appeal under subsection (1) or (2) shall be made by notice served within 8 weeks from the date of receipt of the local planning authority’s decision, or, as the case may be, within 8 weeks from the expiry of the period mentioned in subsection (2), or within such longer period as the Secretary of State may in either case at any time allow.

(3A) The notice mentioned in subsection (3) shall be accompanied by a copy of each of the following documents—

- (a) the application made to the local planning authority;
- (b) all relevant plans and particulars submitted to them;
- (c) the notice of the authority’s decision (if any); and
- (d) any other relevant correspondence with the authority.

(4) Where an appeal is made to the Secretary of State as mentioned in subsection (3), he may require the appellant or the local planning authority to submit to him, within such period as he may specify, a statement in writing in respect of such matters relating to the application as he may specify, and if, after considering the grounds of appeal and any such statement, the Secretary of State is satisfied that he has sufficient information to enable him to determine the appeal he may, with the agreement in writing of both the appellant and the local planning authority, determine the appeal without complying with section 79(2).

(5) For the purposes of the application of sections 79(1) and 288(10)(b) in relation to an appeal under subsection (2), it shall be assumed that the authority decided to refuse the application in question.

Status: This is the original version (as it was originally made).

79.—(1) On appeal under section 78 the Secretary of State may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the local 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.

(1A) The Secretary of State may, in granting an express consent, specify that its term shall run for such longer or shorter period than 5 years as he considers expedient, having regard to the interests of amenity (including aural amenity) and public safety, and taking into account—

- (a) relevant provisions of any applicable development plan;
- (b) the factors referred to in regulation 3 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007; and
- (c) any period specified in the application for consent.

(2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the local planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(3) Subsection (2) does not apply to an appeal referred to a Planning Inquiry Commission under section 101.

...

(5) The decision of the Secretary of State on an appeal under section 78 shall be final, and shall otherwise have effect as if it were a decision of the local planning authority.

(6) If, before or during the determination of an appeal in respect of an application for express consent, the Secretary of State forms the opinion that, having regard to the Regulations mentioned in subsection (1A) and to any direction given under them, consent—

- (a) could not have been granted by the local planning authority; or
- (b) could not have been granted otherwise than subject to the conditions imposed,

he may decline to determine the appeal or to proceed with the determination.

(6A) If at any time before or during the determination of such an appeal as is mentioned in subsection (6) it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may—

- (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
- (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.

(7) Schedule 6 applies to appeals under section 78, including appeals under that section as applied by or under any other provision of this Act.

PART 5

MODIFICATIONS OF THE ACT (DISCONTINUANCE NOTICES)

1. In section 78, for subsections (1) to (5) substitute—

“(1) Where a discontinuance notice has been served on any person by a local planning authority under regulation 8 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 that person may, if he is aggrieved by the notice, appeal by notice under this section to the Secretary of State.

(2) Notice of appeal shall be given in writing to the Secretary of State at any time before the date on which the discontinuance notice is due to take effect under regulation 8(4), taking account where appropriate of any extension of time under regulation 8(6), of those Regulations, or such longer period as the Secretary of State may allow.

(3) A notice of appeal shall be accompanied by a copy of each of the following documents—

- (a) the discontinuance notice;
- (b) any notice of variation; and
- (c) any relevant correspondence with the authority.

(4) Where an appeal is brought under this section, the Secretary of State may require the appellant or the local planning authority to submit to him, within such period as he may specify, a statement in writing in respect of such matters relating to the discontinuance notice as he may specify and if, after considering the grounds of appeal and any such statement, the Secretary of State is satisfied that he has sufficient information to enable him to determine the appeal, he may, with the agreement in writing of both the appellant and the local planning authority, determine the appeal without complying with section 79(2).”

2. In section 79—

(a) for subsection (1) substitute—

“(1) Where an appeal is brought in respect of a discontinuance notice the Secretary of State may—

- (a) allow or dismiss the appeal, or
- (b) subject to subsection (1A)—
 - (i) correct any defect, error or misdescription in the discontinuance notice; or
 - (ii) reverse or vary any part of the notice (whether the appeal relates to that part of it or not),

and deal with the matter as if an application for express consent had been made and refused for the reasons stated for the taking of discontinuance action.

(1A) The Secretary of State may take any action mentioned in subsection (1)(b) only if he is satisfied that the correction, reversal or variation will not cause injustice to the appellant or the local planning authority.”

(b) for subsection (4) substitute—

“(4) On the determination of an appeal under section 78 the Secretary of State shall give such directions as may be necessary for giving effect to his determination including, where appropriate, directions for quashing the discontinuance notice or for varying its terms.”;

(c) omit subsection (6); and

(d) in subsection (6A), after the word “appeal”, the first time it appears, insert “in respect of a discontinuance notice”.