



Town and Country Planning Act 1968

1968 CHAPTER 72

PART III

APPEALS

21 Determination of planning and similar appeals by persons appointed by the Minister.

- (1) An appeal to which this section applies, being an appeal of a prescribed class, shall, except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Minister, be determined by a person appointed by the Minister for the purpose instead of by the Minister.
- (2) This section applies to—
 - (a) appeals under section 23 of the principal Act (planning decisions), as originally enacted or as applied by or under any other provision of that Act;
 - (b) appeals under section 14 of the Civic Amenities Act 1967 (default powers and appeals in connection with tree preservation orders);
 - (c) appeals under section 16 of this Act, as originally enacted or as applied by regulations under any provision of the principal Act;
 - (d) appeals under section 18(2) of this Act;
 - (e) appeals under Schedule 5 to this Act.
- (3) Regulations made for the purpose of this section may provide for the giving of publicity to any directions given by the Minister under subsection (1) above.
- (4) Subsection (1) above shall not affect any provision contained in this Act or the principal Act or any instrument thereunder that an appeal shall lie to, or a notice of appeal shall be served on, the Minister.
- (5) A person appointed under this Part of this Act to determine an appeal shall have the like powers and duties in relation to the appeal as the Minister under whichever are relevant of the following provisions, that is to say—

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- (a) in relation to appeals under section 23 of the principal Act, subsections (4) and (6) of that section;
 - (b) in relation to appeals under section 14 of the Civic Amenities Act 1967, sections 16(4) and (5) above ;
 - (c) in relation to appeals under section 16 of this Act, subsections (4) to (6) of that section;
 - (d) in relation to appeals under section 18 of this Act, subsections (2) and (3) of that section ;
 - (e) in relation to appeals under paragraph 7 of Schedule 5 to this Act, sub-paragraph (3) of that paragraph;
 - (f) in relation to appeals under paragraph 18 of that Schedule, sub-paragraphs (4) and (5) of that paragraph.
- (6) The provisions of section 23(5) of the principal Act, sections 16(2) and 18(4) above and paragraphs 7(4) and 18(2) of the said Schedule 5, relating to the affording of an opportunity of appearing before, and being heard by, a person appointed by the Minister, shall not apply to an appeal which falls to be determined by a person appointed under this Part of this Act, but before the determination of any such appeal the Minister shall ask the applicant or appellant, as the case may require, and the local planning authority whether they wish to appear before and be heard by the person so appointed, and—
- (a) the appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard as aforesaid ; and
 - (b) the person so appointed shall, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of so doing.
- (7) Where an appeal to which this section applies has been determined by a person appointed under this Part of this Act, his decision shall be treated as that of the Minister and—
- (a) except as provided by Part XI of the principal Act, the validity of his decision shall not be questioned in any proceedings whatsoever;
 - (b) it shall not be a ground of application to the High Court under section 179 of that Act, or of appeal to the High Court under section 180 or 181 thereof, that the appeal ought to have been determined by the Minister and not by that person, unless the challenge to the person's power to determine the appeal was made (either by the appellant or the local planning authority) before his decision on the appeal was given.
- (8) Where in any enactment (including this Act) there is a reference to the Minister in a context relating or capable of relating to an appeal to which this section applies, or to any thing done or authorised or required to be done by, to or before the Minister on or in connection with any such appeal, then so far as the context permits it shall be construed, in relation to an appeal determined or falling to be determined by a person appointed under this Part of this Act, as a reference to that person.

22 Determination of appeals by the Minister.

- (1) The Minister may, if he thinks fit, direct that an appeal which, by virtue of section 21 above and apart from this subsection, falls to be determined by a person appointed by the Minister shall instead be determined by the Minister.

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- (2) A direction under this section shall state the reasons for which it is given and shall be served on the person, if any, so appointed, the applicant or appellant, the local planning authority and any person who has made representations relating to the subject matter of the appeal which the authority are required to take into account under section 17(3) (a) of the principal Act (representations by owners and agricultural tenants).
- (3) Where in consequence of a direction under this section an appeal to which section 21 above applies falls to be determined by the Minister, whichever of the following provisions are relevant, that is to say those of—
 - the principal Act;
 - section 16 of this Act;
 - section 18(2) to (5) of this Act;
 - Part I of Schedule 5 to this Act; and
 - section 14 of the Civic Amenities Act 1967,shall, subject to the following provisions of this section, apply to the appeal as if section 21 above had never applied thereto.
- (4) Where in consequence of a direction under this section the Minister determines an appeal himself, he shall afford to the applicant or appellant, the local planning authority and any person who has made any such representations as aforesaid an opportunity of appearing before and being heard by a person appointed by the Minister for that purpose either—
 - (a) if the reasons for the direction raise matters with respect to which either the applicant or appellant, or the local planning authority or any such person, have not made representations; or
 - (b) if the applicant or appellant or the local planning authority had not been asked in pursuance of section 21(6) above whether they wished to appear before and be heard by a person appointed to hear the appeal, or had been asked that question and had expressed no wish in answer thereto, or had expressed a wish to appear and be heard as aforesaid, but had not been afforded an opportunity of doing so.
- (5) Except as provided by subsection (4) above, where the Minister determines an appeal in consequence of a direction under this section, he shall not be obliged to afford any person an opportunity of appearing before and being heard by a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made; and in determining the appeal the Minister may take into account any report made to him by any person previously appointed to determine it.

23 Appointment of another person to determine an appeal.

- (1) Where the Minister has appointed a person to determine an appeal under section 21 above, the Minister may, at any time before the determination of the appeal, appoint another person to determine it instead of the first-mentioned person.
- (2) If before the appointment of a person under this section to determine an appeal, the Minister had with reference to the person previously appointed, asked the question referred to in section 21(6) above, the question need not be asked again with reference to the person appointed under this section and any answers to the question shall be treated as given with reference to him, but—
 - (a) the consideration of the appeal or any inquiry or other hearing in connection therewith, if already begun, shall be begun afresh ; and

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- (b) it shall not be necessary to afford any person an opportunity of making fresh representations or modifying or withdrawing any representations already made.

24 Local inquiries and hearings.

- (1) A person appointed under this Part of this Act to determine an appeal may (whether or not the parties have asked for an opportunity to appear and be heard) hold a local inquiry in connection with the appeal and shall hold such an inquiry if the Minister directs him to do so.
- (2) Subject to subsection (3) below, the costs—
 - (a) of any hearing held by virtue of section 21 (6) (b) above ; and
 - (b) of any inquiry held by virtue of this section,
 shall be defrayed by the Minister.
- (3) Subsections (2) to (5) of section 290 of the Local Government Act 1933 (evidence and costs at local inquiries) shall apply in relation to an inquiry held under this section as they apply in relation to an inquiry caused to be held by a department under subsection (1) of that section, with the substitution for references to a department (other than the first reference in subsection (4)) of references to the Minister.

25 Stopping of appeals.

If before or during the determination, whether by the Minister or otherwise, of an appeal under section 23 of the principal Act (appeals against planning decisions) in respect of an application for planning permission to develop land, the Minister forms the opinion that, having regard to the provisions of sections 17(1), 18(1) and 38 of that Act (planning permission and industrial development certificates), of section 1(3) of the Control of Office and Industrial Development Act 1965 (office development permits) and of the development order and to any directions given under that order, planning permission for that development—

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

he may decline to determine the appeal or to proceed with the determination or, as the case may be, may direct that the determination shall not be begun or proceeded with.

26 Supplementary.

- (1) The Tribunals and Inquiries Act 1958 shall apply to a local inquiry or other hearing held in pursuance of this Part of this Act as it applies to a statutory inquiry held by the Minister, but as if in section 12(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Minister were a reference to a decision taken by a person appointed to determine the relevant appeal under this Part of this Act.
- (2) The functions of determining an appeal and doing anything in connection therewith conferred by this Part of this Act on a person appointed to determine an appeal thereunder who is an officer of the Ministry of Housing and Local Government or the Welsh Office shall be treated for the purposes of the Parliamentary Commissioner Act 1967—

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- (a) if he was appointed by the Minister of Housing and Local Government, as functions of that Ministry ; and
- (b) if he was appointed by the Secretary of State, as functions of the Welsh Office.