



Town and Country Planning Act 1971

1971 CHAPTER 78

PART XII

VALIDITY OF PLANNING INSTRUMENTS AND DECISIONS AND PROCEEDINGS RELATING THERETO

242 Validity of development plans and certain orders, decisions and directions

- (1) Except as provided by the following provisions of this Part of this Act, the validity of—
- (a) a structure plan, a local plan or any alteration, repeal or replacement of any such plan, whether before or after the plan, alteration, repeal or replacement has been approved or adopted ; or
 - (b) an order under any provision of Part X of this Act except section 214(1)(a), whether before or after the order has been made ; or
 - (c) an order under section 235 of this Act, whether before or after the order has been made; or
 - (d) any such order as is mentioned in subsection (2) of this section, whether before or after it has been confirmed; or
 - (e) any such action on the part of the Secretary of State as is mentioned in subsection (3) of this section,
- shall not be questioned in any legal proceedings whatsoever.
- (2) The orders referred to in subsection (1)(d) of this section are orders of any of the following descriptions, that is to say—
- (a) any order under section 45 of this Act or under the provisions of that section as applied by or under any other provision of this Act;
 - (b) any order under section 51 of this Act;
 - (c) any tree preservation order;
 - (d) any order made in pursuance of section 63(4) of this Act;
 - (e) any order under Part II of Schedule 11 to this Act.

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- (3) The action referred to in subsection (1)(e) of this section is action on the part of the Secretary of State of any of the following descriptions, that is to say—
- (a) any decision of the Secretary of State on an application for planning permission referred to him under section 35 of this Act;
 - (b) any decision of the Secretary of State on an appeal under section 36 of this Act;
 - (c) the giving by the Secretary of State of any direction under section 38 of this Act;
 - (d) any decision by the Secretary of State to confirm a completion notice under section 44 of this Act;
 - (e) any decision of the Secretary of State relating to an application for consent under a tree preservation order, or relating to an application for consent under any regulations made in accordance with section 63 of this Act, or relating to any certificate or direction under any such order or regulations, whether it is a decision of the Secretary of State on appeal or a decision on an application referred to him for determination in the first instance;
 - (f) any decision of the Secretary of State to grant planning permission under section 88 (5)(a) of this Act;
 - (g) any decision of the Secretary of State on an application for an established use certificate referred to him under subsection (1) of section 95 of this Act or on an appeal under subsection (2) of that section;
 - (h) any decision of the Secretary of State under subsection (5) (a) of section 97 of this Act to grant listed building consent for any works or under subsection (5) (b) of that section to grant planning permission in respect of any works;
 - (i) any decision of the Secretary of State to confirm a purchase notice or listed building purchase notice;
 - (j) any decision of the Secretary of State not to confirm a purchase notice or listed building purchase notice, including any decision not to confirm such a notice in respect of part of the land to which it relates, and including any decision to grant any permission, or give any direction, in lieu of confirming such a notice, either wholly or in part;
 - (k) any decision of the Secretary of State on an application referred to him under paragraph 4 of Schedule 11 to this Act (being an application for listed building consent for any works) or on an appeal under paragraph 8 of that Schedule.
- (4) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any such action as is mentioned in subsection (3) of this section.

243 Validity of enforcement notices and similar notices

- (1) Subject to the provisions of this section—
- (a) the validity of an enforcement notice shall not, except by way of an appeal under Part V of this Act, be questioned in any proceedings whatsoever on any of the grounds specified in section 88 (1)(b) to (e) of this Act;
 - (b) the validity of a listed building enforcement notice shall not, except by way of an appeal under Part V of this Act, be questioned in any proceedings whatsoever on any of the grounds specified in section 97(1) (b) or (e) of this Act.

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- (2) Subsection (1)(a) of this section shall not apply to proceedings brought under section 89(5) of this Act against a person who—
 - (a) has held an interest in the land since before the enforcement notice was served under Part V of this Act; and
 - (b) did not have the enforcement notice served on him thereunder; and
 - (c) satisfies the court that—
 - (i) he did not know and could not reasonably have been expected to know that the enforcement notice had been served ; and
 - (ii) his interests have been substantially prejudiced by the failure to serve him.
- (3) Subject to subsection (4) of this section, the validity of a notice which has been served under section 65 of this Act on the owner and occupier of the land shall not, except by way of an appeal under Part V of this Act, be questioned in any proceedings whatsoever on any of the grounds specified in section 105(1)(a) to (c) of this Act.
- (4) Subsection (3) of this section shall not apply to proceedings brought under section 104 of this Act against a person on whom the notice referred to in that subsection was not served, but who has held an interest in the land since before that notice was served on the owner and occupier of the land, if he did not appeal against the notice under Part V of this Act.
- (5) The validity of a notice purporting to be an enforcement notice shall not depend on whether any non-compliance to which the notice relates was a non-compliance with conditions, or with limitations, or with both; and any reference in such a notice to non-compliance with conditions or limitations (whether both expressions are used in the notice or only one of them) shall be construed as a reference to non-compliance with conditions, or with limitations, or both with conditions and limitations, as the case may require.

244 Proceedings for questioning validity of development plans and certain orders under Parts X and XI

- (1) If any person aggrieved by a structure plan or local plan or by any alteration, repeal or replacement of any such plan desires to question the validity of the plan, alteration, repeal or replacement on the ground that it is not within the powers conferred by Part II of this Act, or that any requirement of the said Part II or of any regulations made thereunder has not been complied with in relation to the approval or adoption of the plan, alteration, repeal or replacement, he may, within six weeks from the date of the publication of the first notice of the approval or adoption of the plan, alteration, repeal or replacement required by regulations under section 18 (1) of this Act, make an application to the High Court under this section.
- (2) On any application under this section the High Court—
 - (a) may by interim order wholly or in part suspend the operation of the plan, alteration, repeal or replacement either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings;
 - (b) if satisfied that the plan, alteration; repeal or replacement is wholly or to any extent outside the powers conferred by Part II of this Act, or that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of the said Part II or of any regulations made thereunder, may wholly or in part quash the plan, alteration, repeal or replacement, as

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the case may be, either generally or in so far as it affects any property of the applicant.

- (3) The preceding provisions of this section shall apply, subject to any necessary modifications, to an order under section 209, 211, 212 or 214(1)(a) of this Act as they apply to a structure plan, and as if, in subsection (1) of this section, for the reference to the notice therein mentioned, there were substituted a reference to the notice required by section 215(7) of this Act.
- (4) The said provisions shall apply, subject to any necessary modifications, to an order under section 210 or 214(1) (b) of this Act as they apply to a structure plan, and as if, in subsection (1) of this section, for the reference to the date on which the notice therein mentioned is first published there were substituted a reference to the date on which the notice required by paragraph 6 of Schedule 20 to this Act is first published in accordance with that paragraph.
- (5) Subsections (1) and (2) of this section shall apply, subject to any necessary modifications, to an order under section 235 of this Act as they apply to a structure plan.

245 Proceedings for questioning validity of other orders, decisions and directions

- (1) If any person—
 - (a) is aggrieved by any order to which this section applies and desires to question the validity of that order, on the grounds that the order is not within the powers of this Act, or that any of the relevant requirements have not been complied with in relation to that order; or
 - (b) is aggrieved by any action on the part of the Secretary of State to which this section applies and desires to question the validity of that action, on the grounds that the action is not within the powers of this Act, or that any of the relevant requirements have not been complied with in relation to that action,
 he may, within six weeks from the date on which the order is confirmed or the action is taken, as the case may be, make an application to the High Court under this section.
- (2) Without prejudice to subsection (1) of this section, if the authority directly concerned with any order to which this section applies, or with any action on the part of the Secretary of State to which this section applies, desire to question the validity of that order or action on any of the grounds mentioned in subsection (1) of this section, the authority may, within six weeks from the date on which the order is confirmed or the action is taken, as the case may be, make an application to the High Court under this section.
- (3) This section applies to any such order as is mentioned in subsection (2) of section 242 of this Act and to any such action on the part of the Secretary of State as is mentioned in subsection (3) of that section.
- (4) On any application under this section the High Court—
 - (a) may by interim order suspend the operation of the order or action, the validity whereof is questioned by the application, until the final determination of the proceedings;
 - (b) if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation thereto, may quash that order or action:

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Provided that paragraph (a) of this subsection shall not apply to applications questioning the validity of tree preservation orders.

- (5) In relation to a tree preservation order, or to an order made in pursuance of section 63(4) of this Act, the powers conferred on the High Court by subsection (4) of this section shall be exercisable by way of quashing or (where applicable) suspending the operation of the order either in whole or in part, as the court may determine.
- (6) References in this section to the confirmation of an order include the confirmation of an order subject to modifications as well as the confirmation of an order in the form in which it was made.
- (7) In this section "the relevant requirements", in relation to any order or action to which this section applies, means any requirements of this Act or of the Tribunals and Inquiries Act 1971 (or any enactment replaced thereby), or of any order, regulations or rules made under this Act or under that Act (or any such enactment) which are applicable to that order or action, and any reference to the authority directly concerned with any order or action to which this section applies—
 - (a) in relation to an order made by a local authority other than the local planning authority, and in relation to any decision of the Secretary of State on appeal from a decision made by such a local authority, is a reference to that local authority ;
 - (b) in relation to any such decision as is mentioned in section 242(3)(i) or (j) of this Act, is a reference to the council on whom the notice in question was served, and, in a case where the Secretary of State has modified such a notice, wholly or in part, by substituting another local authority or statutory undertakers for that council, includes a reference to that local authority or those statutory undertakers;
 - (c) in any other case, is a reference to the local planning authority:

Provided that if, in a case falling within paragraph (a) of this subsection, the order or decision in question was made in the exercise of functions delegated to the other local authority by the local planning authority, and it is agreed between the two authorities that the local planning authority shall act in the matter, the reference shall be construed as a reference to the local planning authority.

246 Appeals to High Court relating to enforcement notices and similar notices

- (1) Where the Secretary of State gives a decision in proceedings on an appeal under Part V of this Act against—
 - (a) an enforcement notice;
 - (b) a listed building enforcement notice ; or
 - (c) a notice under section 103 of this Act,the appellant or the local planning authority or any person (other than the appellant) on whom the notice was served may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State to state and sign a case for the opinion of the High Court.
- (2) At any stage of the proceedings on any such appeal as is mentioned in subsection (1) of this section, the Secretary of State may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court; and a decision of the High Court on a case stated by virtue of this subsection shall be

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deemed to be a judgment of the court within the meaning of section 27 of the Supreme Court of Judicature (Consolidation) Act 1925 (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).

- (3) In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of this section the power to make rules of court shall include power to make rules—
- (a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State; and
 - (b) providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.
- (4) Rules of court relating to any such proceedings as are mentioned in subsection (3) of this section may provide for excluding so much of section 63(1) of the said Act of 1925 as requires appeals to the High Court to be heard and determined by a Divisional Court; but no appeal to the Court of Appeal shall be brought by virtue of this section except with the leave of the High Court or the Court of Appeal.
- (5) In this section " decision " includes a direction or order, and references to the giving of a decision shall be construed accordingly.

247 Appeals to High Court against decisions under s.53

- (1) If, in the case of any decision to which this section applies, the person who made the application to which the decision relates, or the local planning authority, is dissatisfied with the decision in point of law, that person or the local planning authority (as the case may be) may, according as rules of court may provide, either appeal against the decision to the High Court or require the Secretary of State to state and sign a case for the opinion of the High Court.
- (2) This section applies to any decision of the Secretary of State—
 - (a) on an application under section 53 of this Act which is referred to the Secretary of State under the provisions of section 35 of this Act as applied by that section; or
 - (b) on an appeal from a decision of the local planning authority under section 53 of this Act, being an appeal brought under the provisions of section 36 of this Act as so applied.
- (3) Where an application under section 53 of this Act is made as part of an application for planning permission, the preceding provisions of this section shall have effect in relation to that application in so far as it is an application under the said section 53, but not in so far as it is an application for planning permission.
- (4) In relation to proceedings in the High Court or the Court of Appeal brought by virtue of this section, the power to make rules of court shall include power to make rules prescribing the powers of the High Court or the Court of Appeal with respect to—
 - (a) the giving of any decision which might have been given by the Secretary of State ;
 - (b) the remitting of the matter, with the opinion or direction of the court, for re-hearing and determination by the Secretary of State;
 - (c) the giving of directions to the Secretary of State.

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- (5) Rules of court relating to such proceedings as are mentioned in subsection (4) of this section may provide for excluding so much of section 63(1) of the Supreme Court of Judicature (Consolidation) Act 1925 as requires appeals to the High Court to be heard and determined by a Divisional Court; but no appeal to the Court of Appeal shall be brought by virtue of this section except with the leave of the High Court or the Court of Appeal.
- (6) Without prejudice to the preceding provisions of this section, the power to make rules of court in relation to proceedings in the High Court or the Court of Appeal brought by virtue of this section shall include power to make rules providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.

248 Special provisions as to decisions relating to statutory undertakers

In relation to any action which—

- (a) apart from the provisions of Part XI of this Act, would fall to be taken by the Secretary of State, and, if so taken, would be action falling within section 242(3) of this Act; but
- (b) by virtue of Part XI of this Act, is required to be taken by the Secretary of State and the appropriate Minister,

the provisions of sections 242 and 245 of this Act shall have effect (subject to section 249 of this Act) as if any reference in those provisions to the Secretary of State were a reference to the Secretary of State and the appropriate Minister.

249 Special provisions as to orders subject to special parliamentary procedure

- (1) Where an order under section 209, 211, 212 or 235 of this Act is subject to special parliamentary procedure, then—
 - (a) if the order is confirmed by Act of Parliament under section 6 of the Statutory Orders (Special Procedure) Act 1945, the provisions of sections 242 and 244 of this Act shall not apply to the order;
 - (b) in any other case, section 244 of this Act shall have effect in relation to the order as if, in subsection (1) of that section, for the reference to the date therein mentioned there were substituted a reference to the date on which the order becomes operative under section 6 of the said Act of 1945.
- (2) Where by virtue of Part XI of this Act any such action as is mentioned in section 248 of this Act is required to be embodied in an order, and that order is subject to special parliamentary procedure, then—
 - (a) if the order in which the action is embodied is confirmed by Act of Parliament under section 6 of the said Act of 1945, the provisions of sections 242 and 245 of this Act shall not apply;
 - (b) in any other case, the provisions of section 245 of this Act shall apply with the substitution, for any reference to the date on which the action is taken, of a reference to the date on which the order becomes operative under section 6 of the said Act of 1945.