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SCHEDULES

PROSPECTIVE

SCHEDULE 13

Section 158

RESOLUTION OF DISPUTES ABOUT PLANNING OBLIGATIONS: SCHEDULE TO BE INSERTED IN THE TOWN AND COUNTRY PLANNING ACT 1990

“SCHEDULE 9A

Section 106ZA

RESOLUTION OF DISPUTES ABOUT PLANNING OBLIGATIONS

Appointment of person to help resolve disputes

- 1 (1) This paragraph applies where—
 - (a) a person (“the applicant”) has made an application for planning permission or an application of a prescribed description (“the application”) to a local planning authority in England,
 - (b) there are unresolved issues regarding what should be the terms of any section 106 instrument, and
 - (c) any prescribed conditions are met.
- (2) The Secretary of State must (subject to sub-paragraphs (6) to (8)) appoint a person to help with the resolution of the unresolved issues if—
 - (a) the Secretary of State thinks that the local planning authority would be likely to grant the application if satisfactory planning obligations were entered into, but not otherwise, and
 - (b) sub-paragraph (3), (4) or (5) applies.
- (3) This sub-paragraph applies where the applicant or the authority requests the Secretary of State to make an appointment.
- (4) This sub-paragraph applies where—
 - (a) a person of a prescribed description requests the Secretary of State to make an appointment, and
 - (b) any prescribed requirements as to the consent of the applicant or the authority are satisfied.
- (5) This sub-paragraph applies where—
 - (a) regulations require an appointment to be made, in prescribed circumstances, if the unresolved issues have not been resolved by the end of a prescribed period,
 - (b) the circumstances are as prescribed, and
 - (c) the unresolved issues have not been resolved by the end of that period.
- (6) The Secretary of State may decline to make an appointment in prescribed circumstances.

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- (7) Regulations must provide that—
- (a) no appointment is to be made under this paragraph before the end of a prescribed period;
 - (b) no appointment is to be made in response to a request under sub-paragraph (3) or (4) if the request is withdrawn before the end of that period.
- (8) No request may be made under sub-paragraph (3) or (4), and sub-paragraph (5) does not apply—
- (a) if the application has been referred to the Secretary of State under section 77;
 - (b) if the applicant has appealed to the Secretary of State under section 78(2) in respect of the application;
 - (c) if the applicant has made an application to the court, which has not been disposed of, in respect of it;
 - (d) in such other circumstances as may be prescribed.

Co-operation etc with person appointed under paragraph 1

- 2 Where a person is appointed under paragraph 1 the parties must—
- (a) co-operate with the person;
 - (b) comply with any reasonable requests by the person to provide information or documents or to take part in meetings.

Report by appointed person

- 3 (1) A person appointed under paragraph 1 must prepare a report and send it to the parties.
- (2) The report must—
- (a) identify the unresolved issues;
 - (b) indicate the steps taken since the person's appointment to try to resolve those issues.
- (3) If—
- (a) agreement is reached between the local planning authority and those who are proposing to enter into planning obligations, before the report is sent to the parties, on what are to be the terms of the section 106 instrument, and
 - (b) the appointed person is aware of the agreement,
- the report must set out the terms agreed.
- (4) Where sub-paragraph (3) does not apply, the report must set out the appointed person's recommendations as to what terms would be appropriate.
- (5) In deciding what recommendations to make under sub-paragraph (4), the appointed person must have regard to any template or model for section 106 instruments that is published by the Secretary of State.
- (6) The local planning authority must publish the report in accordance with any provision made by regulations about the manner and time of publication.

Temporary prohibition on refusal or appeal

- 4 (1) Where paragraph 1(3), (4) or (5) applies, the applicant may not appeal to the Secretary of State under section 78(2) in relation to the application before—

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- (a) the resolution process has come to an end, and
 - (b) the applicant has paid any fees or costs that the applicant is required to pay by virtue of paragraph 10(3) or (4)(c).
- (2) Where paragraph 1(3), (4) or (5) applies and the local planning authority are minded to refuse the application, they may not do so before—
- (a) the resolution process has come to an end, and
 - (b) the authority have paid any fees or costs that they are required to pay by virtue of paragraph 10(3) or (4)(c).
- (3) For the purposes of this paragraph, the resolution process comes to an end—
- (a) on the expiry of the period prescribed under paragraph 1(7), if paragraph 1(5) does not apply and the request under paragraph 1(3) or (4) is withdrawn (or, where more than one such request has been made, they are all withdrawn) before the end of that period;
 - (b) when the Secretary of State declines to appoint a person under paragraph 1, if the Secretary of State declines to make an appointment;
 - (c) when the parties agree that the process has come to an end, if they agree that it has;
 - (d) when the local planning authority publish the appointed person's report, if paragraph (a), (b) or (c) does not apply.

Effect of appointed person's report: planning obligations entered into

- 5 (1) This paragraph applies where—
- (a) a local planning authority are determining an application in connection with which—
 - (i) a report has been prepared under paragraph 3, and
 - (ii) planning obligations have been entered into, and
 - (b) the section 106 instrument satisfies the requirements of sub-paragraph (2).
- (2) A section 106 instrument satisfies the requirements of this sub-paragraph if—
- (a) the instrument is in accordance with the terms or recommendations reported under paragraph 3(3) or (4), or
 - (b) the instrument is executed before the end of a prescribed period and the local planning authority—
 - (i) are a party to it, or
 - (ii) notify the applicant, before the end of that period, that they are content with the terms of it.
- (3) The local planning authority must not refuse the application on a ground that relates to the appropriateness of the terms of the section 106 instrument.
- (4) If the local authority grant the application, the authority's power to make the grant conditional on a person undertaking—
- (a) a planning obligation other than one entered into by the section 106 instrument, or
 - (b) an obligation of some other kind,
- is subject to any limitations specified in regulations.

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Effect of appointed person's report: no planning obligations entered into

- 6 Where—
- (a) a local planning authority are determining an application in connection with which a report has been prepared under paragraph 3,
 - (b) the report records (under paragraph 3(3)) an agreement that planning obligations are to be entered into, or recommends (under paragraph 3(4)) that planning obligations are entered into, and
 - (c) no section 106 instrument is executed before the end of a prescribed period, the local planning authority must refuse the application.

Effect of appointed person's report: further provision

- 7 (1) Where a report is prepared under paragraph 3 in connection with an application—
- (a) the local planning authority determining the application must have regard to the report, to the extent that this requirement is consistent with the restrictions in paragraphs 5 and 6;
 - (b) a person determining an appeal against the authority's decision on the application, or an appeal under section 78(2) in respect of the application, must have regard to the report but is not subject to those restrictions.
- (2) Regulations may prescribe cases or circumstances in which a restriction in paragraph 5 or 6 does not apply.

Appointment in connection with two or more applications

- 8 (1) A person may be appointed under paragraph 1 in connection with two or more applications if the same or similar issues arise on both or all of them.
- (2) In such cases—
- (a) the provisions of this Schedule apply separately in relation to each application, but
 - (b) a single report may be made under paragraph 3 in relation to both or all of the applications.

Exercise of functions on behalf of the Secretary of State

- 9 (1) The Secretary of State may arrange for a function of the Secretary of State under paragraph 1 (other than a function of making regulations) to be exercised by any body or person on behalf of the Secretary of State.
- (2) A reference in this Schedule to the Secretary of State is to be read, where appropriate, as including a reference to a body or person exercising functions under any such arrangements.
- (3) Arrangements under this paragraph—
- (a) do not affect the responsibility of the Secretary of State for the exercise of the function;
 - (b) may include provision for payments to be made to the body or person exercising the function under the arrangements.

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Regulations

- 10 (1) Regulations may make provision about requests under paragraph 1(3) or (4), including in particular—
- (a) provision about when requests may be made;
 - (b) provision about the form of requests;
 - (c) provision requiring requests to be served on prescribed persons;
 - (d) provision requiring prescribed information or documents to be provided;
 - (e) provision about withdrawal of requests.
- (2) Regulations may make provision requiring the applicant or the local planning authority to notify the Secretary of State where paragraph 1(5) applies.
- (3) Regulations may make provision for the payment by the parties of fees in cases where a person is appointed under paragraph 1, including in particular provision about—
- (a) calculating the amount of the fees;
 - (b) the proportion of the fees that each party is to bear;
 - (c) when fees are to be payable.
- (4) Regulations may make further provision supplementing that made by paragraphs 1 to 9, and may in particular—
- (a) make provision about the qualifications or experience that an appointed person must have;
 - (b) require an appointed person—
 - (i) to consider or take into account prescribed matters;
 - (ii) not to consider or take into account prescribed matters;
 - (iii) to make prescribed assumptions;
 - (c) provide for a party that is in breach of paragraph 2, or otherwise behaves unreasonably, to be required by an appointed person to pay some or all of the costs incurred by another party in connection with that breach or behaviour;
 - (d) make provision for corrections or other revisions to be made to a report under paragraph 3;
 - (e) require particular steps to be taken by an appointed person or the parties for the purposes of, or otherwise in connection with, a report under paragraph 3;
 - (f) require the application to be determined no earlier than a specified period following the time when a report under paragraph 3 is sent to the parties, or no later than a specified period following that time.

Interpretation

- 11 In this Schedule—
- “the applicant” and “the application” have the meaning given by paragraph 1(1);
- “appointed person” means a person appointed under paragraph 1;
- “parties” means the applicant and the local planning authority;
- “prescribed period” means a period prescribed by, or determined in accordance with, regulations;
- “section 106 instrument” means an instrument by which planning obligations are entered into.”

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 95(1)(ia) inserted by [2023 c. 36 Sch. 1 para. 2](#)
- s. 100(7)(aa) inserted by [2023 c. 36 Sch. 1 para. 3](#)
- s. 104(1)(aa) inserted by [2023 c. 36 Sch. 1 para. 5](#)
- s. 104(2A)-(2C) inserted by [2023 c. 36 Sch. 2 para. 2](#)
- s. 105(1)(aa) inserted by [2023 c. 36 Sch. 1 para. 6](#)
- s. 105(4A)-(4C) inserted by [2023 c. 36 Sch. 2 para. 3](#)
- s. 106(1)(aa) inserted by [2023 c. 36 Sch. 1 para. 7\(b\)](#)
- s. 106(3A)-(3C) inserted by [2023 c. 36 Sch. 2 para. 4](#)
- s. 107(1)(aa) inserted by [2023 c. 36 Sch. 1 para. 8\(b\)](#)
- s. 107(4A)-(4C) inserted by [2023 c. 36 Sch. 2 para. 5\(c\)](#)
- s. 108(2A)-(2C) inserted by [2023 c. 36 Sch. 2 para. 6\(b\)](#)
- s. 108(3A) inserted by [2023 c. 36 Sch. 2 para. 6\(d\)](#)
- s. 116(7)(aa) inserted by [2023 c. 36 Sch. 1 para. 9\(b\)](#)
- s. 172(1)(a) words renumbered as s. 172(1)(a) by [2017 c. 20 s. 26\(8\)\(a\)\(i\)](#)
- s. 172(1)(b) inserted by [2017 c. 20 s. 26\(8\)\(a\)\(ii\)](#)