

SCHEDULES

SCHEDULE 17

CONDITIONS OF DEEMED PLANNING PERMISSION

PART 3

APPROVALS: SUPPLEMENTARY

Requests for planning approval

- 15 A planning authority may only grant approval under Part 1 of this Schedule at the request of the nominated undertaker.
- 16 (1) A planning authority need not consider a request for approval under Part 1 of this Schedule unless—
- (a) the nominated undertaker has deposited with the authority a document setting out its proposed programme with respect to the making of requests under that Part to the authority, and
 - (b) the request is accompanied by a document explaining how the matters to which the request relates fit into the overall scheme of the works authorised by this Act.
- (2) Sub-paragraph (1) does not apply to a request for approval of additional details.

Fees for requests for approval

- 17 (1) The appropriate Ministers may by regulations make provision about fees for requests to a planning authority for approval under Part 1 of this Schedule.
- (2) Regulations under this paragraph may, in particular, make provision—
- (a) for the payment of a fee and for the amount of a fee;
 - (b) about when a fee must be paid;
 - (c) for circumstances in which a fee is to be treated as paid;
 - (d) for the remission or refunding of a fee in whole or part;
 - (e) about the consequences of non-payment of a fee, including provision for the termination of the application concerned or any appeal against its refusal;
 - (f) for the resolution of disputes.
- (3) Regulations under this paragraph may make such supplementary, incidental or consequential provision as the appropriate Ministers think fit.
- (4) Nothing in regulations under section 303 of TCPA 1990 (fees for planning applications) applies to a request for approval under Part 1 of this Schedule.

Consultation on requests for approval

- 18 (1) This paragraph applies where a planning authority considers that a request for approval under Part 1 of this Schedule relates to matters which may affect any of the following—
- (a) nature conservation,
 - (b) the conservation of the natural beauty or amenity of the countryside,
 - (c) the conservation of the natural beauty or amenity of inland or coastal waters or land associated with them,
 - (d) the conservation of flora or fauna which are dependent on an aquatic environment,
 - (e) the use of inland or coastal waters, or land associated with them, for recreational purposes, or
 - (f) a site of archaeological or historic interest.
- (2) The planning authority must, within 5 days of receiving the request, invite the appropriate body or bodies to make representations.
- (3) The appropriate body is—
- (a) for the matters in sub-paragraph (1)(a) and (b), Natural England,
 - (b) for the matters in sub-paragraph (1)(c) and (e), Canal & River Trust so far as the matters relate to inland waters owned or managed by the Trust or land associated with such waters,
 - (c) for the matters in sub-paragraph (1)(c) and (e) other than as mentioned in paragraph (b), the Environment Agency,
 - (d) for the matter in sub-paragraph (1)(d), the Environment Agency, and
 - (e) for the matter in sub-paragraph (1)(f), the Historic Buildings and Monuments Commission for England.
- (4) Where under sub-paragraph (2) a planning authority has invited a body to make representations about a request for approval under Part 1 of this Schedule, it must not make any decision about the request until—
- (a) it has received representations from the body about the request,
 - (b) it has been informed by the body that it does not wish to make any representations, or
 - (c) 21 days have elapsed since the date of the invitation.
- (5) An invitation under sub-paragraph (2) must specify the time limit for making representations.

Directions restricting powers of approval

- 19 (1) The appropriate Ministers may by directions restrict a planning authority's powers in relation to the giving of approval under Part 1 of this Schedule.
- (2) Directions under this paragraph may—
- (a) be given in relation to a specified approval or approvals of a specified description,
 - (b) be expressed to have effect without a time-limit or during a specified period, and
 - (c) revoke or vary previous directions under this paragraph.

Compulsory reference of requests for approval

- 20 (1) The appropriate Ministers may by directions require a planning authority to refer any request for approval under Part 1 to them.
- (2) In determining a request referred to them under this paragraph, the appropriate Ministers have the same powers as the authority making the reference.
- (3) The determination by the appropriate Ministers of a request referred to them under this paragraph is final.
- (4) Directions under this paragraph may—
- (a) be given in relation to a specified request or requests of a specified description, and
 - (b) revoke or vary previous directions under this paragraph.

Non-material changes to approvals

- 21 (1) A planning authority may at the request of the nominated undertaker make a non-material change to any approval given under Part 1 of this Schedule.
- (2) In deciding whether a change is material, a planning authority must have regard to the effect of the change, together with any previous changes made under this paragraph, on the approval as originally given.
- (3) The power under sub-paragraph (1) includes power to impose new conditions or to alter or remove existing conditions.
- (4) The approval as changed must represent an approval the authority could have given originally.
- (5) The consultation requirements in this Part of this Schedule do not apply to a change under this paragraph.

Termination of approval relating to road transportation arrangements

- 22 (1) An approval under paragraph 6 of arrangements relating to transportation ceases to have effect at the end of the relevant period if the nominated undertaker gives a termination notice to the planning authority which approved the arrangements.
- (2) In sub-paragraph (1)—
- (a) “termination notice” is a written notice that the arrangements in question are to cease to have effect;
 - (b) “the relevant period” means the period of 28 days beginning with the day on which the termination notice is given.

Appeals

- 23 (1) Where the nominated undertaker is aggrieved by a decision of a planning authority on a request for approval under Part 1 (including a decision to require additional details), it may appeal to the appropriate Ministers by giving notice of the appeal in the prescribed form to them and to the authority whose decision is appealed against within 42 days of notification of the decision.

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

- (2) On an appeal under this paragraph, the appropriate Ministers may allow or dismiss the appeal or vary the decision of the authority whose decision is appealed against, but may only make a determination involving—
- (a) the refusal of approval, or
 - (b) the imposition of conditions on approval,
- on a ground open to that authority.
- (3) Where, following receipt by a planning authority of a request by the nominated undertaker for approval under Part 1, the authority does not notify the undertaker within the appropriate period—
- (a) of its decision on the request, or
 - (b) that the request has been referred to the appropriate Ministers in accordance with directions under paragraph 20,
- this paragraph applies as if the authority had refused the request and notified the undertaker of its decision on the last day of the appropriate period.
- (4) For the purposes of sub-paragraph (3), the appropriate period is—
- (a) the period of 8 weeks beginning with the date on which the request was received by the planning authority, or
 - (b) such extended period as may be agreed upon in writing between the authority and the nominated undertaker.
- (5) The appropriate Ministers may by regulations make provision for the extension of the appropriate period for the purposes of sub-paragraph (3) in connection with the payment of fees by means of cheque.
- (6) An agreement under sub-paragraph (4)(b) may be made after, as well as before, the end of the appropriate period.
- (7) No agreement may be made under sub-paragraph (4)(b) to extend a period after it has ended if the nominated undertaker has given notice of appeal against the refusal which is deemed under sub-paragraph (3) to have occurred because of the ending of the period.
- (8) Where an agreement under sub-paragraph (4)(b) to extend a period is made after the period has ended, sub-paragraph (3) is to be treated as not having applied when the period ended.
- (9) In this paragraph, “prescribed” means prescribed by regulations made by the appropriate Ministers.
- (10) No appeal under section 78 of TCPA 1990 (right to appeal against planning decisions and failure to take such decisions) may be made against a decision, or failure to notify a decision, in relation to which a right of appeal arises under this paragraph.
- 24 (1) Unless the appropriate Ministers direct otherwise, their functions in relation to the determination of an appeal under paragraph 23 must, instead of being carried out by them, be carried out by a person appointed by them for the purpose.
- (2) The appropriate Ministers may by a further direction revoke a direction under sub-paragraph (1) at any time before the determination of the appeal.
- (3) A direction under sub-paragraph (1) or (2) must be served on the nominated undertaker and the planning authority whose decision is appealed against.

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

- (4) At any time before the determination of an appeal by a person appointed for the purpose under this paragraph, the appropriate Ministers may revoke the appointment and appoint another person to determine the appeal instead.
- (5) Where the function of determining an appeal under paragraph 23 is transferred from one person to another, the person to whom the function is transferred must consider the matter afresh, but the fact that the function is transferred does not entitle any person to make fresh representations or to modify or withdraw any representations already made.
- (6) If the appropriate Ministers determine an appeal which another person was previously appointed to determine, they may, in determining it, take into account any report made to them by that person.
- 25 The decision of the person appointed under paragraph 24 or, as the case may be, of the appropriate Ministers on an appeal under paragraph 23 is final.
- 26 (1) An appeal under paragraph 23 is to be dealt with on the basis of written representations, unless the person deciding the appeal directs otherwise.
- (2) Subject to that, the appropriate Ministers may by regulations make such provision as they think fit about procedure in relation to appeals under paragraph 23.
- (3) Regulations under this paragraph may, in particular—
- (a) make provision for a time limit within which any person entitled to make representations must submit them in writing and any supporting documents,
 - (b) empower the person deciding an appeal to proceed to a decision taking into account only such written representations and supporting documents as were submitted within the time limit, and
 - (c) empower the person deciding an appeal, after giving written notice of intention to do so to the nominated undertaker and the planning authority whose decision is appealed against, to proceed to a decision notwithstanding that no written representations were made within the time limit, if it appears to the person that there is sufficient material before the person to enable a decision on the merits of the case.
- (4) Regulations under this paragraph may, in relation to such a time limit as is mentioned in sub-paragraph (3)(a)—
- (a) prescribe the time limit in regulations, or
 - (b) enable the appropriate Ministers to give directions setting the time limit in a particular case or class of case.

Guidance by Secretary of State

- 27 (1) The Secretary of State may give guidance to planning authorities in relation to the exercise of their functions under this Schedule.
- (2) A planning authority must have regard to the guidance.
- (3) The guidance may make different provision for different cases.
- (4) The guidance may be varied or revoked.