
STATUTORY INSTRUMENTS

2012 No. 605

The Town and Country Planning (Tree Preservation)(England) Regulations 2012

PART 5

APPEALS

Application of Part 5 and interpretation

18.—(1) This Part applies in relation to every appeal—

- (a) under regulation 19 (“a tree preservation order appeal”); or
- (b) against a notice served under section 207(1)(1) (enforcement of duties as to replacement of trees) (“a tree replacement notice appeal”),

which is to be disposed of without a hearing or inquiry to which rules under section 9 of the Tribunals and Inquiries Act 1992(2) (procedure in connection with statutory inquiries) apply.

(2) In this Part—

“appointed person” means a person appointed by the Secretary of State under Schedule 6 to the Town and Country Planning Act 1990 to determine an appeal;

“parties” in relation to an appeal, means the appellant and the relevant authority;

“preliminary information” means the documents supplied by the relevant authority in accordance with regulation 20;

“questionnaire” means a document in the form supplied by the Secretary of State for the purposes of this Part; and

“relevant authority” in relation to an appeal, means the local planning authority that made the decision (including any failure to determine the application) or served the notice which is the subject of the appeal.

Appeals

19.—(1) Where the authority—

- (a) refuse an application for consent under an order or grant consent subject to conditions;
- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under an order, or grant such an application subject to conditions; or
- (c) fail to determine any such application as is referred to in sub-paragraphs (a) and (b) within the period of 8 weeks beginning with the day after the date on which the application was received by the authority,

(1) Section 207(1) was amended by section 192(8) of, and paragraphs 7 and 12 of Schedule 8 to, the Planning Act 2008.
(2) 1992 c.53; there are amendments to section 9 but none is relevant to these Regulations.

the applicant may by notice appeal to the Secretary of State.

(2) Any appeal under this regulation shall be made by notice in writing addressed to the Secretary of State and such notice shall be served—

- (a) in respect of a matter mentioned in paragraph (1)(a) or (b), within the period of 28 days from the receipt of notification of the authority's decision or such longer period as the Secretary of State may allow;
- (b) in respect of such a failure as is mentioned in paragraph (1)(c)—
 - (i) where the authority have informed the applicant that the application has been refused or granted subject to conditions before an appeal has been made, within the period of 28 days from the receipt of notification of the authority's decision or such longer period as the Secretary of State may allow; or
 - (ii) where the authority have not so informed the applicant, at any time after the expiration of the period mentioned in paragraph (1)(c).

(3) In the case of such failure as is mentioned in paragraph (1)(c) and where the authority have informed the applicant that the application has been refused or granted subject to conditions before an appeal has been made, an appeal may only be made against that refusal or grant.

(4) The appellant shall send to the relevant authority a copy of the notice of appeal, and shall do so at the same time as the appellant gives written notice to the Secretary of State of the tree preservation order appeal or tree replacement notice appeal, as the case may be.

(5) Schedule 6 to the Town and Country Planning Act 1990 (determination of certain appeals by person appointed by Secretary of State) applies to appeals under this regulation.

Preliminary information

20. The relevant authority shall, as soon as practicable after receiving notification of an appeal, send copies of the following to the Secretary of State—

- (a) in the case of a tree preservation order appeal—
 - (i) the application for consent, where relevant; and
 - (ii) the decision of the relevant authority, if any, including any condition made by the authority in relation to the decision;
- (b) in the case of a tree replacement notice appeal—
 - (i) the notice issued under section 207(1);
 - (ii) where the notice has been issued following a failure to plant replacement trees under a condition of consent, the original application and consent;
 - (iii) where the notice has been issued as a result of a contravention of these regulations within section 206(1)(a)(3) (removal, uprooting or destruction of tree in contravention of tree preservation regulations), the date of that breach, if not included in the notice; and
 - (iv) where the notice has been issued as a result of a failure to replace a protected tree removed under the exception in section 206(1)(b)(4) (dead or dangerous tree), the date of the alleged failure, if not included in the notice.

(3) Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008.

(4) For the meaning of "prescribed time" in section 206(1)(b), see regulation 25 below.

Questionnaire

21.—(1) The Secretary of State shall, as soon as practicable after receipt of the preliminary information, supply a questionnaire to the relevant authority.

(2) The relevant authority shall, within such period as the Secretary of State may specify in writing, being not less than 21 days from the date on which the questionnaire was supplied, submit to the Secretary of State and copy to the appellant a completed questionnaire and a copy of the documents referred to in that questionnaire.

(3) The questionnaire shall state the date on which it is submitted to the Secretary of State.

Further information

22.—(1) The Secretary of State or the appointed person (as the case may be) may in writing require the parties to provide such further information, including any representations, relevant to the appeal as the Secretary of State or the appointed person may specify.

(2) Such information must be provided in writing within such period as the Secretary of State or the appointed person may specify.

Determination

23.—(1) Where an appeal is made under regulation 19 the Secretary of State may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the 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 the Secretary of State in the first instance.

(2) Before determining an appeal under regulation 19 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by an appointed person.

(3) Where under regulation 22, information is required to be provided within a specified period, the Secretary of State or the appointed person (as the case may be) may proceed to a decision on an appeal taking into account only such information as has been submitted within the specified period.

(4) Subject to paragraph (2), the provisions of regulations 17(1) and 17(3) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under regulation 19 as they apply in relation to an application for consent under regulation 17 which falls to be determined by the authority.

(5) The decision of the Secretary of State on an appeal shall be final.

(6) For the purposes of the application of paragraph (1) in relation to an appeal made under paragraph 19(1)(c), it shall be assumed that the authority decided to refuse the application in question.

(7) Where an appeal is made using electronic communications, the appellant shall be taken to have agreed—

- (a) to the use of such communications by the Secretary of State for the purposes of that appeal;
- (b) that the address for that purpose is the address incorporated into, or otherwise logically associated with, that appeal; and
- (c) that deemed agreement under this paragraph shall subsist until the appellant gives notice in writing—
 - (i) withdrawing any address notified to the Secretary of State for that purpose; or
 - (ii) revoking that deemed agreement,

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and such withdrawal or revocation shall be final and shall take effect on the date specified by the person in the notice being not less than seven days after the date on which the notice is given.