

SCHEDULE 3

Article 45

DISCHARGE OF REQUIREMENTS

Applications made under requirements

1.—(1) Where an application has been made to a relevant authority for any consent, agreement or approval required by a requirement included in Schedule 2, the relevant authority must give notice to the undertaker of its decision on the application within a period of 28 days beginning with—

- (a) the first business day immediately following that on which the application is received by the relevant authority; or
- (b) such longer period as may be agreed by the undertaker and the relevant authority.

(2) Where an application has been made under sub-paragraph (1) the relevant authority may request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.

(3) If the relevant authority considers further information is necessary the relevant authority must, within 7 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(4) If notification is given under sub-paragraph (3) the undertaker must, within 7 business days of receipt of the notification either—

- (a) supply the further information requested, or
- (b) provide an explanation as to why such a request for further information is unreasonable or cannot be provided.

(5) If the relevant authority does not give the notification mentioned in sub-paragraph (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Fees

2.—(1) Where an application is made to a relevant planning authority for any consent, agreement or approval in respect of one or more requirements included in Schedule 2 to this Order, a fee of £97 or such other fee as may be prescribed (under sections 303 and 333(2A) of the 1990 Act for the discharge of conditions attached to a planning permission) shall be paid to the relevant planning authority.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 28 days of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within 28 days from the date on which it is received,

unless within that period the undertaker agrees in writing that the fee may be retained by the relevant planning authority and credited in respect of a future application.

Appeals

3.—(1) The undertaker may appeal if—

- (a) the relevant authority refuses an application for any consent, agreement or approval required by articles 11, 14, 15 or 17 or required by a requirement included in Schedule 2 or grants it subject to conditions; or
- (b) the relevant authority does not give notice of its decision to the undertaker within the time period specified in paragraph 1;

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- (c) having received a request for further information under paragraph 1(3) the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
 - (d) having received any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.
- (2) The procedure for appeals is as follows—
- (a) the undertaker must submit to the Secretary of State a copy of the application submitted to the relevant authority and any supporting documents which the undertaker may wish to provide (“the appeal documents”);
 - (b) the undertaker must on the same day provide copies of the appeal documents to the relevant authority and the requirement consultee (if applicable);
 - (c) as soon as is practicable after receiving the appeals documents the Secretary of State (or persons appointed by the Secretary of State for this purpose) must appoint a person to determine the appeal (“the appointed person”) and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person should be sent;
 - (d) the relevant authority and the requirement consultee (if applicable) may submit any written representations in respect of the appeal to the appointed person within a period of 10 business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to the undertaker on the day on which they are submitted to the appointed person;
 - (e) the appeal parties may make any counter-submissions to the appointed person within a period of 10 business days beginning with the first day immediately following the date of receipt by them of written representations pursuant to sub-paragraph (2)(d) above; and
 - (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) If the appointed person considers that further information is necessary to enable them to consider the appeal the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information must be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information may be submitted to the appointed person within a period of 10 business days beginning with the first day immediately following that date and any person submitting any such written representation must ensure that a copy of it is sent to all other appeal parties on the day on which it is submitted to the appointed person.

Outcome of appeals

- 4.—(1) On an appeal under paragraph 3, the appointed person may—
- (a) allow or dismiss the appeal; or
 - (b) reverse or vary any part of the decision of the relevant 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 appointed person in the first instance.

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(2) The appointed person when deciding an appeal may disregard such written representations as have been sent after the deadline prescribed or set by the appointed person under paragraph 3.

(3) The appointed person may proceed to a decision even though no written representations have been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review within 6 weeks of the date of the decision.

(5) Any consent, agreement or approval referred to in paragraph 1(1) given by the appointed person pursuant to this Schedule is deemed to be an approval for the purpose of this Order as if it had been given by the relevant authority.

(6) Except where a direction is given pursuant to sub-paragraph (7) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(7) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is made, the appointed person must have regard to such guidance (if any) as issued by the Secretary of State as guidance to decision-makers on applications for costs in appeals made under the 1990 Act.

Interpretation of Schedule 3

5. In this Schedule—

“the appeal parties” means the relevant authority, requirement consultee and the undertaker;

“business day” means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971(1) is a bank holiday in England and Wales;

“relevant authority” means the relevant planning authority, relevant highway authority, relevant street authority, Environment Agency or relevant owner of a watercourse, sewer or drain as may be appropriate to the consent or approval sought; and

“requirement consultee” means any body named in a requirement included in Schedule 2 or required by articles 11, 14, 15 or 17 which is the subject of an appeal as a body to be consulted in discharging that requirement.

(1) 1971 c. 80. There are amendments to this Act not relevant to this Order.