

## SCHEDULE 11

Article 38

### Procedure for discharge of Requirements

#### Interpretation

**1.** In this Schedule—

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

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

“requirement consultee” means a person named in a Requirement as a person to be consulted by the relevant planning authority in discharging the Requirement;

#### Applications made under Requirements

**2.** Where an application has been made to the relevant planning authority for any consent, agreement or approval required under a Requirement, the relevant planning authority must give notice to the undertaker of its decision on the application including the reasons within a period of 8 weeks beginning with—

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

#### Further information

**3.—(1)** Where an application has been made under paragraph 2, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) If—

- (a) the Requirement to which the application relates does not specify that consultation with a requirement consultee is required; and
- (b) the relevant planning authority considers that further information is needed,

the relevant planning authority must, notify the undertaker in writing specifying the further information required within 14 business days of receipt of the application.

(3) If the Requirement to which the application relates specifies that consultation with a requirement consultee is required, the relevant planning authority must—

- (a) issue the consultation within 5 business days of receipt of the application; and
- (b) notify the undertaker in writing specifying any further information required within 3 business days of receipt of any request from a requirement consultee and in any event within 21 business days of receipt of the application.

(4) If the relevant planning authority does not give the notifications specified in sub-paragraph (2) or (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.

#### Appeals

**4.—(1)** The undertaker may appeal if the relevant planning authority—

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(1) 1971 c.80.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) refuses an application for any consent, agreement or approval required by a Requirement or grants it subject to conditions; or
  - (b) does not give notice of its decision to the undertaker within the time period specified in paragraph 2.
- (2) An appeal must be made within 42 business days following the occurrence of any of the events in sub-paragraph (1)(a) and (b).

### **Appeal process**

5.—(1) Any appeal under this Schedule must take place by written representations only, and the appeal process is as follows—

- (a) the undertaker must—
  - (i) submit to the Secretary of State a copy of the application submitted to the relevant planning authority and any supporting documents which the undertaker may wish to provide (the “appeal documentation”); and
  - (ii) on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must—
  - (i) appoint a person to determine the appeal (the “appointed person”); and
  - (ii) notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention must be sent;
- (c) the relevant planning authority and the requirement consultee (if any) must—
  - (i) submit written representations to the appointed person in respect of the appeal within 10 business days of the date on which the appeal parties are notified of the appointed person under paragraph (b)(i); and
  - (ii) ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations made under paragraph (c); and
- (e) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as practicable.

(2) The appointment of the person under sub-paragraph (1)(b)(i) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

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

(4) Any further information required under sub-paragraph (3) must be provided to the appointed person and the other appeal parties on or before the specified date.

(5) Any written representations concerning matters contained in the further information must be submitted to the appointed person and the other appeal parties within 10 business days of the specified date.

(6) On an appeal under this paragraph, the appointed person may deal with the application as if it had been made to the appointed person in the first instance and may—

- (a) allow or dismiss the appeal; or

- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not).
- (7) The appointed person must state in writing the reasons for the decision.
- (8) The appointed person must decide an appeal taking into account only such written representations as have been submitted within the relevant time limits.
- (9) The appointed person may proceed to a decision even though no written representations have been submitted within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.
- (10) 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.
- (11) If a consent, agreement or approval is given by the appointed person under this Schedule, it is deemed to be a consent, agreement or approval for the purpose of Schedule 1 as if it had been given by the relevant planning authority.
- (12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be paid by the undertaker.
- (13) On the application by the relevant planning 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.
- (14) In considering whether to give a direction under sub-paragraph (13) and the terms on which to give it, the appointed person must have regard to the Planning Practice Guidance issued by the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

## **Fees**

**6.—**(1) Where an application is made to the relevant planning authority for agreement or approval in respect of a Requirement or any defined stage within that Requirement, a fee of £97 must be paid to it.

- (2) Any fee under this Schedule must be refunded to the undertaker within 4 weeks of—
  - (a) the application being rejected as invalidly made; or
  - (b) the relevant planning authority failing to determine the application within the time period specified in paragraph 2,

unless within the period of 4 weeks the undertaker agrees in writing that the fee may be retained by the relevant planning authority and credited in respect of a future application.