

2002 No. 2683

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002

Made - - - - - *23rd October 2002*

Laid before Parliament *1st November 2002*

Coming into force - - *23rd December 2002*

The First Secretary of State, in exercise of the powers conferred on him by sections 175 and 323 of the Town and Country Planning Act 1990(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement, and extent

1.—(1) These Regulations may be cited as the Town and Country Planning (Enforcement)(Written Representations Procedure)(England) Regulations 2002 and shall come into force on 23rd December 2002.

(2) These Regulations extend to England only.

Interpretation

2. In these Regulations—

“the appellant” means a person giving notice of appeal to the Secretary of State;

“document” includes a photograph, map or plan;

“enforcement notice” means a notice issued under section 172(1) of the Planning Act or section 38(1) of the Listed Buildings Act;

“the Enforcement Notices and Appeals Regulations” means the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002(b);

“the Listed Buildings Act” means the Planning (Listed Buildings and Conservation Areas) Act 1990(c);

“local planning authority” means the body who issued the relevant enforcement notice;

“notice of appeal” means a notice of appeal under section 174(3) of the Planning Act or section 39(2) of the Listed Buildings Act;

“the Planning Act” means the Town and Country Planning Act 1990;

(a) 1990 c. 8: the functions of the Secretary of State under sections 175 and 323 were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672; see entry in Schedule 1 to the Town and Country Planning Act 1990 (c. 8). Section 175 has amendments not relevant to these Regulations. Section 323 was amended by paragraph 26 of Schedule 3 to the Tribunals and Inquiries Act 1992.

(b) S.I. 2002/2682.

(c) 1990 c.9: section 39 was amended by paragraph 3 of Schedule 3 to the Planning and Compensation Act 1991 (c. 34), Schedule 3 was amended by section 25 and Schedule 3, Part II, paragraph 28 of that Act and by S.I. 1997/2971. Section 12 was amended by section 17 of the Transport and works Act 1992 (c. 42). There are other amendments not relevant to these Regulations.

“questionnaire” means a document in the form supplied by the Secretary of State to local planning authorities for the purpose of proceedings under these Regulations;

“starting date” means the date of the Secretary of State’s written notice to the appellant and the local planning authority under regulation 4;

“written representations” includes supporting documents.

Application

3.—(1) These Regulations apply where, after they come into force, an appellant informs the Secretary of State in the notice of appeal that he wishes the appeal to be disposed of on the basis of written representations.

(2) Where an appeal under section 174 of the Planning Act or section 39 of the Listed Buildings Act is not being disposed of on the basis of written representations and the appellant and the local planning authority inform the Secretary of State that they wish it to be disposed of on that basis, these Regulations apply to the proceedings to such extent as the Secretary of State may specify having regard to any steps already taken in relation to those proceedings.

(3) These Regulations cease to apply to proceedings if the Secretary of State informs the appellant and the local planning authority that he will give them an opportunity of appearing before and being heard by a person appointed by him for the purpose.

Notification of receipt of appeal

4. The Secretary of State shall, as soon as practicable after receipt of the written notice of appeal, advise the appellant and the local planning authority in writing of—

- (a) the starting date;
- (b) the reference number allocated to the appeal;
- (c) the address to which written communications to the Secretary of State about the appeal are to be sent; and
- (d) the ground, or grounds, under section 174(2) of the Planning Act or section 39(1) of the Listed Buildings Act, as the case may be, on which the appeal has been brought.

Notice to interested parties

5.—(1) The local planning authority shall, within 2 weeks of the starting date, give written notice of the appeal to any—

- (a) person on whom a copy of the enforcement notice has been served;
- (b) occupier of property in the locality in which the land to which the enforcement notice relates is situated; and
- (c) other person who in the opinion of the local planning authority is affected by the breach of planning control or contravention of listed building or conservation area control which is alleged in the enforcement notice.

(2) The notice given under paragraph (1) shall include—

- (a) the name of the appellant and the address of the land to which the appeal relates;
- (b) the starting date;
- (c) the reference number allocated to the appeal;
- (d) a description of the alleged breach of control;
- (e) in the case of an appeal against an enforcement notice under section 172 of the Planning Act, a statement setting out the additional matters specified in regulation 4 of the Enforcement Notices and Appeals Regulations;
- (f) the ground, or grounds, under section 174(2) of the Planning Act or section 39(1) of the Listed Buildings Act, as the case may be, on which the appeal is made;
- (g) a statement that representations may be submitted to the Secretary of State within 6 weeks of the starting date and the address to which such representations should be sent;
- (h) a statement that any representations made by any person mentioned in paragraph (1) will be sent to the appellant and the local planning authority; and
- (i) a statement that any such representations will be considered by the Secretary of State when determining the appeal unless any person mentioned in paragraph (1) withdraws them within 6 weeks of the starting date.

Questionnaire

6.—(1) The local planning authority shall within 2 weeks of the starting date submit to the Secretary of State, and copy to the appellant—

- (a) a completed questionnaire; and
- (b) a copy of each of the documents referred to in it.

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

Representations

7.—(1) The notice of appeal, the documents accompanying it and any statement submitted under regulation 6 of the Enforcement Notices and Appeals Regulations shall comprise the appellant's representations in relation to the appeal.

(2) The local planning authority may elect to treat the questionnaire, the documents submitted with it and the statement submitted under regulation 9 of the Enforcement Notices and Appeals Regulations as their representations in relation to the appeal; and, where they do so, they shall notify the Secretary of State and the appellant accordingly when submitting the questionnaire or sending the copy in accordance with regulation 6.

(3) If the appellant wishes to make any further representations to those in paragraph (1), he shall submit 2 copies of those further representations to the Secretary of State within 6 weeks of the starting date.

(4) Where the local planning authority does not elect as described in paragraph (2), they shall submit 2 copies of their written representations to the Secretary of State within 6 weeks of the starting date and these shall include—

- (a) a summary of the local planning authority's response to each of the grounds on which the appeal is brought; and
- (b) a statement as to whether they would be prepared to grant planning permission for the matters alleged in the enforcement notice to constitute a breach of planning control, or to grant listed building consent or conservation area consent for the works to which the listed building enforcement notice or conservation area enforcement notice relates, as the case may be, and, if so, particulars of the conditions, if any, which they would wish to impose on the permission or consent.

(5) Any representations made to the Secretary of State under paragraphs (3) or (4) should be dated and submitted to the Secretary of State on the date they bear.

(6) The Secretary of State shall, as soon as practicable after receipt, send a copy of any representations made to him by the local planning authority to the appellant and shall send a copy of any representations made to him by the appellant to the local planning authority.

(7) The appellant and the local planning authority shall submit 2 copies of any comments they have on each other's representations to the Secretary of State within 9 weeks of the starting date; and the Secretary of State shall, as soon as practicable after receipt, send a copy of these further comments to the other party.

(8) The Secretary of State may disregard further information from the appellant and the local planning authority which was not submitted within 9 weeks of the starting date unless that further information has been requested by him.

Third party representations

8.—(1) If an interested person notified under regulation 5(1) wishes to submit representations to the Secretary of State, he shall do so within 6 weeks of the starting date.

(2) The Secretary of State shall—

- (a) send to the appellant and the local planning authority, as soon as practicable after receipt, a copy each of all of the representations received from interested persons; and
- (b) specify a period of not less than 2 weeks within which any comments on the representations must be submitted.

(3) The Secretary of State may disregard comments made by the local planning authority under paragraph 2(b), where they failed to notify interested persons in accordance with regulation 5.

Allowing further time

9. The Secretary of State may in a particular case give directions setting later time limits than those prescribed by the Regulations.

Decision on Appeal

10.—(1) The Secretary of State may proceed to a decision on an appeal taking into account only such written representations as have been submitted within the relevant time limits.

(2) The Secretary of State may, after giving the appellant and the local planning authority written notice of his intention to do so, proceed to a decision on an appeal notwithstanding that no written representations have been made within the relevant time limits if it appears to him that he has sufficient material before him to enable him to reach a decision on the merits of the case.

(3) In this regulation “relevant time limits” means the time limits prescribed by these Regulations or, where the Secretary of State has exercised his power under regulation 9, any later time limits.

Transitional provisions

11.—(1) Subject to paragraph (2), any appeal to which the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1991(a) (“the 1991 Regulations”) applied which has not been determined on the date when these Regulations come into force, shall be continued under the 1991 Regulations.

(2) Where an appeal to which the 1991 Regulations applied is subsequently remitted to the Secretary of State for redetermination in proceedings before any court, and is to be disposed of on the basis of written representations, the decision shall be redetermined in accordance with these Regulations.

Signed by the authority of the First Secretary of State

23rd October 2002

Jeff Rooker
Minister of State,
Office of the Deputy Prime Minister

(a) SI 1991/2804, as amended by SI 2002/2802, 1992/1904 and 1991/1492.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 174 of the Town and Country Planning Act 1990 and section 39 of the Listed Buildings Act 1990 confers a right of appeal against an enforcement notice and a listed building enforcement notice on a person having an interest in the land to which the enforcement notice relates or is a relevant occupier.

An appellant and local planning authority are entitled in any appeal proceedings to appear before and be heard by a person appointed by the Secretary of State but they may agree to the appeal being determined on the basis of written representations and supporting documents.

These Regulations lay down the procedure and time limits in connection with appeals against enforcement notices which are to be disposed of on the basis of written representations.

The main steps in the procedure are—

- (a) Upon receipt of a notice of appeal the Secretary of State will inform the appellant and the local planning authority of the starting date, the appeal reference number, the address to which written representations may be sent and the grounds on which the appeal is brought (regulation 4).
- (b) The local planning authority shall within 2 weeks of the starting date notify interested parties of the appeal (regulation 5), and shall submit a completed questionnaire and any documents referred to in it to the Secretary of State (regulation 6).
- (c) The local planning authority may elect to treat the questionnaire, documents submitted with it, and the statement provided under regulation 9 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, as their written representations, but where they do not so elect they have 6 weeks from the starting date to submit written representations to the Secretary of State (regulation 7).
- (d) The appellant's representations are the notice of appeal, documents accompanying it and any statement submitted under regulation 6 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, however they may submit further representations within 6 weeks of the starting date to the Secretary of State (regulation 7).
- (e) The appellant and local planning authority have 9 weeks from the starting date to submit to the Secretary of State representations on each others representations (regulation 7).
- (f) An interested party, notified under regulation 5 of these Regulations, has 6 weeks from the starting date to submit representations to the Secretary of State (regulation 8).
- (g) The Secretary of State is given power to disregard written representations not submitted within the relevant time limit and he may proceed to a decision without receiving any written representations within the time limits after giving notice to the appellant and local planning authority of his intention to do so (regulation 10).

A Regulatory Impact Assessment has been prepared in relation to the Regulations. It has been placed in the Library of Each House of Parliament and copies may be obtained from Development Control Policy Division, Office of the Deputy Prime Minister, Eland House, Bressenden Place, London SW1E 5DU (Telephone 020 7944 3969).

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