Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING, TREE PRESERVATION ORDER & ADVERTISEMENT APPEALS; CALLED-IN PLANNING APPLICATIONS; GRANTS OF PLANNING PERMISSION IN ENFORCEMENT NOTICE APPEALS

Depending on the circumstances, the decision may be challenged by making an application to the High Court under either or both Sections 288 and 289 of the Town and Country Planning Act 1990 (the TCP Act). There are differences between the two sections, including different time limits, which may affect your choice of which to use. These are outlined below.

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) or section 195 (Lawful Development Certificate) may be challenged under this section, as may discontinuance order, tree preservation order and advertisement appeals. Section 288 also relates to enforcement appeals, but only to decisions granting planning permission or discharging conditions. Success under section 288 alone would not alter any other aspect of an enforcement appeal decision. The enforcement notice would remain quashed unless successfully challenged under section 289 of the TCP Act or by Judicial Review.

Section 288 provides that a person who is aggrieved by the decision to grant planning permission or discharge conditions (on an enforcement appeal) or by any decision on an associated call-in under section 77, appeal under section 78 or section 195 of the TCP Act, may question the validity of that decision by making an application to the High Court.

SECTION 2: LISTED BUILDING & CONSERVATION AREA CONSENT APPEALS & CALLED-IN APPLICATIONS; LISTED BUILDING ENFORCEMENT APPEALS.

Depending on the circumstances, the decision may be challenged by making an application to the High Court under either or both sections 63 and 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act). There are differences between the two sections, including different time limits, which may affect your choice of which to use. These are outlined below.

Challenges under section 63 of the LBCA Act

Decisions on appeals made under section 20 (listed building consent) may be challenged under this section. Section 63 also relates to enforcement appeals, but only to decisions granting listed building consent or conservation area consent or discharging conditions. Success under section 63 alone would not alter any other aspect of an enforcement appeal decision. The enforcement notice would remain quashed unless successfully challenged under section 65 or by Judicial Review.

Section 63 of the LBCA Act provides that a person who is aggrieved by the decision to grant listed building or conservation area consent or discharge conditions (on an enforcement appeal) or by any decision on an associated appeal under section 20 of the LBCA Act, may question the validity of that decision by making an application to the High Court.

GROUNDS FOR APPLICATIONS UNDER SECTION 288 OF THE TCP ACT AND SECTION 63 OF THE LBCA ACT

Challenges may be made on the grounds:-

That the decision is not within the powers of the Act; or
That any of the relevant requirements have not been complied with ('relevant requirements' means any requirements of the LBCA Act or the TCP Act as appropriate, or of the Planning and Tribunals Act 1992, or of any order, regulation or rule made under any of those Acts).

These two grounds mean in effect that a decision cannot be challenged merely because someone does not agree with the Secretary of State's decision. Those challenging a decision have to be able to show that a serious mistake was made when reaching the decision; or, for example, that the inquiry, hearing or site visit was not handled correctly or that the procedures were not carried out properly. If a mistake has been made the Courts may decide not to quash the decision if the interests of the person making the challenge have not been prejudiced.

Please note that under both sections an application to the High Court must be lodged with the Crown Office within 6 weeks of the date of the decision letter. This time limit cannot be extended. Permission of the Court is not required to make these types of challenge.

CHALLENGES UNDER SECTIONS 289 OF THE TCP ACT & 65 OF THE LBCA ACT

In both planning and listed building enforcement notice appeals, and tree preservation order enforcement appeals, the appellant, the local planning authority or any person having an interest on the land (to have an interest in the land means essentially to own,

part own, lease and, in some cases, occupy the site) to which the enforcement notice relates may challenge the decision in the High Court on a point of law.

An application under either section may only proceed with the permission of the Court. An application for permission to challenge the decision must be made to the Court within 28 days of the date of the decision, unless the period is extended by the Court.

If you are not the appellant, or the local planning authority or a person with an interest in the land but you want to challenge a planning enforcement appeal decision on grounds (b) to (g) or a listed building enforcement appeal decision on grounds (a) to (d) or (f) to (k), or the decision to quash a notice, you may make an application for Judicial Review. You should seek legal advice promptly if you wish to use this non-statutory procedure. The procedure is to make an application for the permission of the Court to seek Judicial Review. The claim form must be filed promptly and in event within the period of three months after the grounds to make the claim first arose. In many planning related disputes a shorter period, say no more than 6 weeks will be regarded as prompt. The Court can extend or abridge time but will only exercise this power where it is satisfied there are very good reasons for doing so. The time may not be extended by agreement between the parties.

SECTION 3: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.