EP HPK/2012/0617

Department for Communities and Local Government

HIGH PEAK BOROUGH COUNCIL
POST ROOM
REC'D 28 JAN 2013

Elizabeth Pleasant
High Peak Borough Council
Town Hall, Market Place
Buxton, Derbyshire
SK17 6EL

Please ask for: Daniel Barker
Tel: 0303 444 8063
Email: daniel.barker@communities.gsi.gov.uk

Your ref: EP/HPK/2012/0617

Our ref: NPCU/LBC/T1030/71505

Date: 25th January 2013

Dear Ms Pleasant

Planning (Listed Buildings and Conservation Areas) Act 1990
Application no. HPK/2012/0617 for Listed Building Consent
The Old Cross, Glossop SK13 7RX

I am directed by the Secretary of State for Communities and Local Government to refer to your letter of 19th December 2012 with enclosures, concerning your Council's application for Listed Building Consent for repairs to the damaged cross at the above address. The application was made in accordance with the provisions of Regulation 13 of the Planning (Listed Buildings and Conservation Area) Regulations 1990.

The Secretary of State has considered the information submitted by your Council in support of the application and noted that English Heritage has no objections, and no representations or objections were made by Amenity Societies or other third parties to the proposals.

Therefore the Secretary of State hereby grants Listed Building Consent for the above works subject to the following conditions:

1. This Listed Building Consent is granted subject to the condition that the works to which it relates must be begun not later than the expiration of three years

2. All works of external repair, restoration and replacement are to exactly match the original features, unless otherwise agreed with the Local Planning Authority in writing.

3. No development shall commence until samples of any new stone to be used in the repair works hereby permitted have been submitted to and approved in writing by the local

National Planning Casework Unit
Department for Communities and Local Government
5 St Philips Place
Colmore Row
Birmingham B3 2PW

Tel: 0303 44 48050
npcu@communities.gsi.gov.uk

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planning authority. The development shall be carried out in accordance with the approved details.

4. Before works to re-point the development are carried out, a sample area of pointing shall be carried out and agreed in writing with the Local Planning Authority. All new pointing shall be carried out in full accordance with the approved sample area.

5. Before development commences the location and details of the brass plaque if required shall be submitted to and agreed in writing with the Local Planning Authority. The plaque shall be installed in full accordance with the approved details.

This letter does not convey any consent or approval required under any enactment, byelaw, order, or regulation, other than Section 8 and 17 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

A separate Note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged in the High Court.

Attention is also drawn to the enclosed Note relating to the provisions of the Chronically Sick and Disabled Persons Act 1970.

Yours sincerely

KMRose

Karen Rose
Planning Casework Manager

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only. 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 1990 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 1990 Act

Decisions on called-in applications under section 77 of the 1990 Act (planning), appeals under section 78 (planning) or section 195 (Lawful Development Certificate) may be challenged under this section, as may 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 1990 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 1990 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 1990 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 1990 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 1990 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. This should be done promptly, and in any event within 3 months of the date of the decision.

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.

January 2001

CHRONICALLY SICK AND DISABLED PERSONS ACT 1970

The above Act requires persons undertaking the provisions of certain buildings or premises to make provision for the needs of disabled people. Your development is affected if it would result in the provision of one or more of the following:

1. A building or premises to which section 4 of the Chronically Sick and Disabled Persons Act 1970 applies (buildings or premises to which the public are to be admitted whether on payment or otherwise);

2. Any of the following, being in each case; premises in which persons are employed to work:-

i. Office premises, shop premises and railway premises to which the Offices, Shops and Railway premises Act 1963 applies;
ii. Premises which are deemed to be such premises for the purposes of that act; or
iii. Factories as defined by section 175 of the Factories Act.

3. A building intended for the purposes:

i. of a university, university college or college, or of a school or hall of a university ; or

ii. of a school within the meaning of the Education Act 1944, a teacher training college maintained by a local education authority in England or Wales or any other institution providing further education pursuant to a scheme under section 42 of that Act.

If your development comes within category (1) above, your attention is drawn to the provisions of section 4 and 7 of the Chronically Sick and Disabled Persons Act 1970 and to the British Standards Institution Code of Practice for access for the Disabled to Buildings (BS 8300:2009).

If your development comes within category (2) above, your attention is drawn to the provisions of section 7 and 8A of the 1970 Act and to the BSI code of practice (BS 8300:2009).

If your development comes within the category (3) above, your attention is drawn to the provisions of sections 7 and 8 of the 1970 Act and to Building Bulletin 102 "Designing for disabled children and children with Special Educational Needs", published in 2008 on behalf of the Secretary of State for Children, Schools and Families.