Department for Levelling Up, Housing & Communities



Lisa Walton
The Isles of Scilly Council
lisa.walton@scilly.gov.uk
by email only

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

**Your ref:** P/22/034/LBC

**Our ref:** PCU/LBC/Z0835/3304170

**Date:** 11th August 2022

Dear Ms Walton

**Planning (Listed Buildings and Conservation Areas) Act 1990**
**Application for Listed Building Consent**
**The Town Hall, The Parade, Hugh Town, St Mary's**
**P/22/034/LBC**

I am directed by the Secretary of State for Levelling Up, Housing and Communities to refer to your email of 28th July with enclosures, concerning your council's application for Listed Building Consent for change of use including demolition of the existing modern boiler house to provide space for the extension and reconfiguration of the existing 1970s extension including a new roof to accommodate new air source heat pumps 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, as amended by Regulation 2 of the Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2015.

The Secretary of State has considered the information submitted by your council in support of the application and noted that the Victorian Society have raised concerns regarding the proposal.

Paragraph 196 of the National Planning Policy Framework states that, *Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.*

The Secretary of State has carefully considered the proposal, including the concerns submitted by the Victorian Society but has concluded that the benefits of the proposal outweigh the harm to the heritage asset.

Planning Casework Unit
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The Secretary of State hereby grants Listed Building Consent for the works listed overleaf, subject to the following conditions:

1. The development hereby authorised shall be begun not later than three years from the date of this consent.

2. Prior to the installation of any external surface material, precise details, to include samples, of the materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to, and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

3. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be incorporated within the building unless specifically agreed in writing by the Local Planning Authority.

4. Notwithstanding the details shown on the submitted plans, all new and replacement rainwater goods shall match the existing in terms of material, profile and method of fixing, unless the existing are non-traditional, in which case traditional materials (black cast iron or aluminium) appropriate to the building are to be provided, in a scheme that shall first be submitted to and approved in writing by the Local Planning Authority, prior to the commencement of development.

5. Before development starts large scale drawings to a minimum scale of 1:20 of the external granite ‘windows’ of the Town Hall, including sections, the precise construction and method of opening of new windows and doors including materials and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority. The windows and doors shall then be constructed in accordance with the agreed details and be retained as such thereafter.

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.

Yours sincerely

*Lorraine Gamble*

**Lorraine Gamble**
**Senior Planning Casework Manager**
Encs: High Court challenge note

# 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 for permission 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 orders 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 make an application for permission to the high court to question the validity of that decision.

**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 for permission 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 by applying for permission from the High Court 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 apply for permission from the High Court to question the validity of that decision.

**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 obtain permission from theHigh Court to bring a planning statutory review must be lodged with the administrative court office wiithin 6 weeks of the date of the decision letter. This time limit cannot be extended. .

**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 6 weeks of the date of the decision.

**SECTION 3; AWARDS OF COSTS**

An application for permission to challenge the decision on an application for an award of costs which is connected with a decision under section 77 of the 1990 Act (planning), appeals under section 78 (planning) or section 195 (Lawful Development Certificate) may be made under section 288 within 6 weeks of the costs decision.

**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.

October 2015