



Planning etc. (Scotland) Act 2006

2006 asp 17

PART 3

DEVELOPMENT MANAGEMENT

Planning obligations and good neighbour agreements

24 Good neighbour agreements

After section 75C of the principal Act (inserted into that Act by section 23(1) of this Act) insert—

“75D Good neighbour agreements

- (1) A person may, by agreement with a community body, enter into an obligation governing operations or activities relating to the development or use of land, either permanently or during such period as may be specified in the agreement.
- (2) A body is a community body for the purposes of subsection (1) if—
 - (a) it is the community council for an area in which is situated any part of the land to which the agreement relates, or
 - (b) it has been notified by the planning authority for the area in which is situated the land to which the agreement relates that, in the opinion of the authority, it is—
 - (i) a body which falls within subsection (3), or
 - (ii) a trust which falls within subsection (4).
- (3) A body falls within this subsection if—
 - (a) its members have a substantial connection with the land to which the agreement relates, and
 - (b) the object, or function, of the body (or, as the case may be, one of its objects or functions) is to preserve or enhance the amenity of the neighbourhood in which is situated any part of the land to which the agreement relates.
- (4) A trust falls within this subsection if—

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- (a) its trustees have a substantial connection with the land to which the agreement relates, and
 - (b) the object, or function, of the trust (or, as the case may be, one of its objects or functions) is to preserve or enhance the amenity of the neighbourhood in which is situated any part of the land to which the agreement relates.
- (5) An agreement entered into under subsection (1) may be referred to as a “good neighbour agreement”.
- (6) Without prejudice to the generality of subsection (1), an obligation entered into under that subsection may—
 - (a) require operations or activities specified in the agreement to be carried out in, on, under or over the land, or
 - (b) require the land to be used in a way so specified.
- (7) The obligation—
 - (a) may be unconditional or subject to conditions,
 - (b) may require the provision to the community body of information regarding the development and use of the land to which the agreement relates, and
 - (c) is not to require the payment of money.
- (8) Without prejudice to the generality of subsection (7)(a), the agreement may provide for the postponement of the effectiveness of the obligation to a date specified in the agreement (whether the specification is of a fixed date or of a date determinable by reference to the occurrence of an event).
- (9) A good neighbour agreement to which the owner of the land is party may be recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland; and if the agreement is so recorded or registered then the obligation is (unless the agreement provides that only the person entering into that obligation is to be bound by it) enforceable at the instance of the community body—
 - (a) against the owner of the land in so far as the obligation comprises a requirement mentioned in subsection (6), and
 - (b) against—
 - (i) the owner or tenant of the land, or
 - (ii) any other person having the use of the land,in so far as the obligation comprises any other requirement.
- (10) But no such obligation is enforceable against a third party who has acquired right to the land (whether or not that person has completed title) prior to the agreement being so recorded or registered.
- (11) In this section, “owner” has the same meaning as in section 75.
- (12) For the purposes of subsection (9) it is immaterial whether the person who is owner of the land when the agreement is recorded or registered was owner when the obligation was entered into.

75E Good neighbour agreements: modification and discharge of obligations

- (1) An obligation entered into under section 75D(1) may not be modified or discharged except—
 - (a) by agreement between the community body and the person against whom the obligation is enforceable, or
 - (b) in accordance with this section and section 75F.
- (2) Where the community body and the person against whom the obligation is enforceable are unable to reach agreement regarding the modification or discharge of the obligation, either may apply to the planning authority for the area in which is situated the land to which the agreement relates.
- (3) An application under subsection (2) is one seeking the determination of the planning authority as to whether the obligation is—
 - (a) to have effect subject to such modifications as may be specified in the application, or
 - (b) to be discharged.
- (4) An application under subsection (2) is not to specify a modification imposing an obligation on any non-applicant.
- (5) On an application under subsection (2), the authority may determine that the obligation—
 - (a) is to continue to have effect without modification,
 - (b) is discharged, or
 - (c) is to have effect subject to the modifications specified in the application.
- (6) The authority are to give notice of their determination to the applicant within such period as is prescribed.
- (7) This subsection applies where—
 - (a) there is agreement such as is mentioned in subsection (1)(a), or
 - (b) a determination is made under subsection (5)(b) or (c),concerning an obligation the agreement in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (8) Where subsection (7) applies, the modification or discharge does not take effect until the date on which—
 - (a) the agreement under subsection (1)(a), or
 - (b) the notice given under subsection (6),is so recorded or as the case may be so registered.
- (9) Regulations may make provision with respect to—
 - (a) the form and content of an application under subsection (2),
 - (b) the publication of notice of any such application,
 - (c) procedures for considering any representations made with respect to any such application, and
 - (d) the form and content of any notice given under subsection (6).

Status: This is the original version (as it was originally enacted).

75F Good neighbour agreements: appeals

- (1) Where the planning authority—
 - (a) fail to comply with subsection (6) of section 75E, or
 - (b) make a determination under subsection (5) of that section,either of the parties referred to in subsection (1)(a) of that section may appeal to the Scottish Ministers.
- (2) For the purposes of an appeal under subsection (1)(a), it is to be assumed that the authority have determined that the obligation is to continue to have effect without modification.
- (3) Any appeal under subsection (1) is to be made by notice served—
 - (a) within such period, and
 - (b) in such manner,as may be prescribed.
- (4) On an appeal under subsection (1) the Scottish Ministers may determine that the obligation—
 - (a) is to continue to have effect without modification,
 - (b) is discharged, or
 - (c) is to have effect subject to the modifications specified in the application.
- (5) The Scottish Ministers are to give notice of their determination to the applicant within such period as is prescribed.
- (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to an obligation the agreement in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be is so registered.
- (8) Where the determination is under subsection (4)(c), the obligation is enforceable as modified—
 - (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and
 - (b) in any other case, from the date on which notice is given under subsection (5).
- (9) Regulations may make provision with respect to the form and content of any notice—
 - (a) served under subsection (3), or
 - (b) given under subsection (5).
- (10) Except as provided under section 239, the determination of an appeal by the Scottish Ministers under this section is final.
- (11) Schedule 4 applies to appeals under this section, including appeals under this section as applied by regulations under any other provisions of this Act.

75G Good neighbour agreements: continuing liability of former owner etc.

- (1) In so far as the obligation comprises an appropriate requirement, an owner of land does not, by virtue of ceasing to be such an owner, cease to be bound by that obligation (unless the good neighbour agreement provides that he does cease to be so bound).
- (2) The agreement may provide that, in so far as the obligation comprises any other requirement, an owner of land does not, by virtue only of ceasing to be such an owner, cease to be bound by the obligation.
- (3) For the purposes of this section, an “appropriate requirement” is a requirement mentioned in section 75D(6) which is due for performance.
- (4) A person who becomes an owner of land the development or use of which is subject to an obligation enforceable as is mentioned in section 75D(9) is, unless the agreement otherwise provides, severally liable with any former owner of the land for any appropriate requirement for which the former owner is liable.
- (5) But if that person incurs expenditure in the performance of any appropriate requirement for which a former owner is liable, he may recover an amount equal to that expenditure from the former owner.
- (6) In this section, “owner” has the same meaning as in section 75.”.