



Land Compensation (Scotland) Act 1963

1963 CHAPTER 51

PART IV

CERTIFICATION BY PLANNING AUTHORITIES OF APPROPRIATE ALTERNATIVE DEVELOPMENT

25 Certification of appropriate alternative development

- (1) Where an interest in land is proposed to be acquired by an authority possessing compulsory purchase powers, and that land or part thereof does not consist or form part of—
 - (a) an area defined in the development plan as an area of comprehensive development, or
 - (b) an area shown in the development plan as an area allocated primarily for a use which is of a residential, commercial or industrial character, or for a range of two or more uses any of which is of such a character,then, subject to subsection (2) of this section, either of the parties directly concerned may apply to the local planning authority for a certificate under this section.
- (2) If, in the case of an interest in land falling within subsection (1) of this section, the authority proposing to acquire it have served a notice to treat in respect thereof, or an agreement has been made for the sale thereof to that authority, and a reference has been made to the official arbiter to determine the amount of the compensation payable in respect of that interest, no application for a certificate under this section shall be made by either of the parties directly concerned after the date of that reference except either—
 - (a) with the consent in writing of the other of those parties, or
 - (b) with the leave of the official arbiter.
- (3) An application under this section made by either of the said parties—
 - (a) shall specify one or more classes of development appearing to the applicant to be classes of development which would be appropriate for the land in question if it were not proposed to be acquired by any authority possessing compulsory purchase powers ; and

- (b) shall be accompanied by a statement specifying the date on which a copy of the application has been or will be served upon the other of those parties.
- (4) Where an application is made to the local planning authority for a certificate under this section in respect of an interest in land, the local planning authority shall, not earlier than twenty-one days after the date specified in the statement mentioned in subsection (3)(b) of this section, issue to the applicant a certificate stating that, in the opinion of the local planning authority in respect of the land in question, either—
- (a) planning permission for development of one or more classes specified in the certificate (whether specified in the application or not) might reasonably have been expected to be granted; or
 - (b) planning permission could not reasonably have been expected to be granted for any development other than the development (if any) which is proposed to be carried out by the authority by whom the interest is proposed to be acquired.
- (5) Where, in the opinion of the local planning authority, planning permission might reasonably have been expected to be granted as mentioned in subsection (4)(a) of this section, but would only have been granted subject to conditions, or at a future time, or both subject to conditions and at a future time, the certificate shall specify those conditions, or that future time, or both, as the case may be, in addition to the other matters required to be contained in the certificate.
- (6) For the purposes of subsection (5) of this section, a local planning authority may formulate general requirements applicable to such classes of case as may be described therein; and any conditions required to be specified in the certificate in accordance with that subsection may, if it appears to the local planning authority to be convenient to do so, be specified by reference to those requirements, subject to such special modifications thereof (if any) as may be set out in the certificate.
- (7) In determining, for the purposes of the issue of a certificate under this section, whether planning permission for any particular class of development might reasonably have been expected to be granted in respect of any land, the local planning authority shall not treat development of that class as development for which planning permission would have been refused by reason only that it would have involved development of the land in question (or of that land together with other land) otherwise than in accordance with the provisions of the development plan relating thereto.
- (8) Where an application for a certificate under this section relates to land of which part (but not the whole) consists or forms part of such an area as is mentioned in subsection (1)(a) or subsection (1)(b) of this section, any certificate issued under this section in pursuance of that application shall be limited to so much of that land as does not fall within any such area.
- (9) On issuing to either of the parties directly concerned a certificate under this section in respect of an interest in land, the local planning authority shall serve a copy of the certificate on the other of those parties.

26 Appeals against certificates under s. 25

- (1) Where the local planning authority have issued a certificate under section 25 of this Act in respect of an interest in land.—
- (a) the person for the time being entitled to that interest, or
 - (b) any authority possessing compulsory purchase powers by whom that interest is proposed to be acquired,

may appeal to the Secretary of State against that certificate.

- (2) On any appeal under this section against a certificate the Secretary of State shall consider the matters to which the certificate relates as if the application for a certificate under section 25 of this Act had been made to him in the first instance, and shall either confirm the certificate, or vary it, or cancel it and issue a different certificate in its place, as he may consider appropriate.
- (3) Before determining any such appeal the Secretary of State shall, if any such person or authority as is mentioned in subsection (1)(a) or subsection (1)(b) of this section so desires, afford to each such person or authority and to the local planning authority an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (4) Where an application is made for a certificate under section 25 of this Act, and at the expiry of the time prescribed by a development order for the issue thereof (or, if an extended period is at any time agreed upon in writing by the parties directly concerned and the local planning authority, at the end of that period) no certificate has been issued by the local planning authority in accordance with that section, the preceding provisions of this section shall apply as if the local planning authority had issued such a certificate containing such a statement as is mentioned in subsection (4) (b) of that section.

27 Extension of ss. 25 and 26 to special cases

- (1) Where an interest in land is proposed to be acquired in the circumstances mentioned in section 25 (1) of this Act, and, by reason that the person entitled to the interest is absent from the United Kingdom or cannot be found, the compensation payable in respect of the interest falls to be determined by the valuation of a valuator under section 56 of the Land Clauses Consolidation (Scotland) Act 1845, the valuator, before carrying out his valuation, may apply to the local planning authority for a certificate under section 25 of this Act; and the provisions of that section and of section 26 of this Act shall apply in relation to an application made by virtue of this subsection as they apply in relation to an application made by virtue of the said section 25(1).
- (2) Where, in pursuance of an application made by virtue of subsection (1) of this section, the local planning authority issue a certificate to the valuator, the authority shall serve copies of the certificate on both the parties directly concerned.
- (3) Where an interest in land is proposed to be acquired in the circumstances mentioned in the said section 25(1), and that interest is the *dominium utile* of the land, an application to the local planning authority for a certificate under that section may be made by any person entitled to any feu-duty or ground annual or other annual or recurring payment or incumbrance out of the land (not being stipend or standard charge in lieu of stipend) in the like circumstances and in the like manner as such an application may be made by the person entitled to the interest.
- (4) Where, in pursuance of an application made by virtue of the last preceding subsection, the local planning authority issue a certificate to the applicant, the authority shall serve copies of the certificate on both the parties directly concerned.
- (5) An application for a certificate made by virtue of subsection (1) or subsection (3) of this section shall specify the matters referred to in section 25(3)(a) of this Act, and shall be accompanied by a statement specifying the date on which a copy of the application has been or will be served on each of the parties directly concerned; and,

in relation to such an application, subsection (4) of that section shall have effect with the substitution, for the reference to the date specified in the statement mentioned in subsection (3)(b) of that section of a reference to the date specified in accordance with this subsection, or, where more than one date is so specified, the later of those dates.

- (6) Where a certificate has been issued in pursuance of an application made by virtue of subsection (3) of this section, or in a case where an application for a certificate could have been made thereunder, the provisions of section 26 of this Act shall apply as if any reference to the person entitled to the interest in question, or to the parties directly concerned, included a reference to the person who made or could have made that application as the case may be.

28 Power to prescribe matters relevant to Part IV

The provisions which may be made by a development order shall include provision for regulating the manner in which applications under section 25 or 27 of this Act and appeals under section 26 of this Act are to be made and dealt with respectively, and other procedural matters ancillary to such applications and appeals, and in particular—

- (a) for prescribing (subject to the provisions of section 25(4) of this Act) the time within which a certificate is required to be issued under that section ;
- (b) for prescribing the manner in which notices of appeals under section 26 of this Act are to be given, and the time for giving any such notice ;
- (c) for requiring local planning authorities to furnish the Secretary of State, and such other persons (if any) as may be prescribed by or under the order, with such information as may be so prescribed with respect to applications under the said section 25 or the said section 27, including information whether any such application has been made in respect of any particular land and information as to the manner in which any such application has been dealt with, together, in such cases as may be so prescribed, with copies of certificates issued under the said section 25;
- (d) for requiring a local planning authority, on issuing a certificate specifying conditions by reference to general requirements in accordance with subsection (6) of the said section 25, to supply a copy of those requirements (or of so much thereof as is relevant to the certificate) with each copy of the certificate, unless, before the certificate is issued, the requirements in question have been made available to the public in such manner as may be specified in the development order;
- (e) for requiring an authority possessing compulsory purchase powers who—
 - (i) propose to acquire the *dominium utile* of any land (where the land or part thereof does not consist or form part of any such area as is mentioned in section 25(1)(a) or section 25(1)(b) of this Act), and
 - (ii) also propose to require the discharge of the land from any such feu-duty or incumbrance as is; mentioned in section 27(3) of this Act,
 to serve, at such time as may be specified in the order, notice of the proposals on the person entitled to the feu-duty or incumbrance;
- (f) for requiring an authority possessing compulsory purchase powers, when serving a notice to treat in relation to, or purchasing, the *dominium utile* of any land (where the land or part thereof does not consist or form part of any such area as is mentioned in section 25(1)(a) or section 25(1)(b) of this Act) to give notice of the fact that they have done so to such persons as may be

prescribed in the order, being persons who might be entitled to apply under section 26(3) of this Act for a certificate relating to the land.

29 Proceedings for challenging validity of decision on appeal under s. 26

- (1) If any person aggrieved by a decision of the Secretary of State under section 26 of this Act or the local planning authority desires to question the validity of that decision on the ground that it is not within the powers of this Act or that any of the requirements of this Act or of a development order or of the Tribunals and Inquiries Act 1958 or rules made thereunder have not been complied with in relation to it, that person or authority may, within six weeks from the date of the decision, make an application to the Court of Session, and the Court of Session—
 - (a) may by interim order suspend the operation of the decision until the determination of the proceedings;
 - (b) if satisfied that the decision is not within the powers of this Act or that the interests of the applicant have been substantially prejudiced by a failure to comply with the said requirements, may quash the decision.
- (2) Subject to subsection (1) of this section, the validity of a decision on an appeal under section 26 of this Act shall not be questioned in any legal proceedings whatsoever.
- (3) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to give a decision on an appeal under section 26 of this Act.

30 Interpretation of Part IV

- (1) In this Part of this Act " the parties directly concerned ", in relation to an interest in land, means the person entitled to the interest and the authority by whom it is proposed to be acquired.
- (2) For the purposes of sections 25 and 26 of this Act, an interest in land shall be taken to be an interest proposed to be acquired by an authority possessing compulsory purchase powers in the following (but no other) circumstances, that is to say—
 - (a) where, for the purposes of a compulsory acquisition by that authority of land consisting of or including land in which that interest subsists, a notice required to be published or served in connection with that acquisition, either by an Act or by any Standing Order of either House of Parliament relating to petitions for private bills, has been published or served in accordance with that Act or Order; or
 - (b) where a notice requiring the purchase of that interest has been served under any enactment, and in accordance with that enactment that authority are to be deemed to have served a notice to treat in respect of that interest; or
 - (c) where an offer in writing has been made by or on behalf of that authority to negotiate for the purchase of that interest.
- (3) For the purpose of determining whether an application can be made at any time in relation to any land under section 25(1) or under section 27 of this Act, any reference in the said section 25(1) to the development plan shall be construed as a reference to a development plan comprising that land, in the form in which (whether as originally approved or made by the Secretary of State or as for the time being amended) that plan is in force at the following time, that is to say, where neither of the following paragraphs apply, the time of the application, and—

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

- (a) where the interest in question is to be acquired in the circumstances mentioned in subsection (2)(b) of this section or the acquiring authority (otherwise than in those circumstances) have served a notice to treat in respect of that interest; or
- (b) where the acquiring authority have entered into a contract for the purchase of that interest,

the date of service of the notice to treat or the date of the contract or, where both paragraphs apply, the later of those dates.