



Town and Country Planning (Scotland) Act 1972

1972 CHAPTER 52

PART VII

COMPENSATION FOR PLANNING DECISIONS RESTRICTING NEW DEVELOPMENT

Right to compensation

135 General provision as to right to compensation

Subject to the provisions of this Part of this Act, a person shall be entitled to compensation under this Part of this Act in respect of a planning decision whereby planning permission for the carrying out of new development of land is refused, or is granted subject to conditions, if—

- (a) at the time of the decision he is entitled to an interest in any land to which the decision relates which has an unexpended balance of established development value; and
- (b) the value of that interest, or, in the case of an interest extending to other land, the value of that interest in so far as it subsists in such land as is referred to in the preceding paragraph, is depreciated by the decision.

136 Planning decisions not ranking for compensation

- (1) Compensation under this Part of this Act shall not be payable—
 - (a) in respect of the refusal of planning permission for any development which consists of or includes the making of any material change in the use of any buildings or other land; or
 - (b) in respect of any decision made on an application in pursuance of regulations under section 61 of this Act for consent to the display of advertisements.

Status: This is the original version (as it was originally enacted).

- (2) Compensation under this Part of this Act shall not be payable in respect of the imposition, on the granting of planning permission to develop land, of any condition relating to—
- (a) the number or disposition of buildings on any land;
 - (b) the dimensions, design, structure or external appearance of any building, or the materials to be used in its construction;
 - (c) the manner in which any land is to be laid out for the purposes of the development, including the provision of facilities for the parking, loading, unloading or fuelling of vehicles on the land ;
 - (d) the use of any buildings or other land ; or
 - (e) the location or design of any means of access to a highway, or the materials to be used in the construction of any such means of access,

or in respect of any conditions subject to which permission is granted for the winning and working of minerals.

In this subsection " means of access to a highway " does not include a service road.

- (3) Compensation under this Part of this Act shall not be payable in respect of the application to any planning permission of any of the conditions referred to in sections 38 and 39 of this Act or in respect of the imposition of any condition to which section 69 or 80 of this Act applies.
- (4) Compensation under this Part of this Act shall not be payable in respect of the refusal of permission to develop land, if the reason or one of the reasons stated for the refusal is that development of the kind proposed would be premature by reference to either or both of the following matters, that is to say—
- (a) the stages indicated, in the structure plan or local plan for the area in which the land is situated, as the stages by which development is to be carried out;
 - (b) any existing deficiency in the provision of water supplies or sewerage services, and the period within which any such deficiency may reasonably be expected to be made good:

Provided that this subsection shall not apply if the planning decision refusing the permission is made on an application made more than seven years after the date of a previous planning decision whereby permission to develop the same land was refused for the same reason, or for reasons which included the same reason.

In this subsection, the reference to the structure plan or local plan for the area in which the land is situated is a reference to the structure plan or local plan for that area as approved by the Secretary of State, or, if the plan so approved has been amended by the Secretary of State, to that plan as so amended.

- (5) Compensation under this Part of this Act shall not be payable in respect of the refusal of permission to develop land, if the reason or one of the reasons stated for the refusal is that the land is unsuitable for the proposed development on account of its liability to flooding or to subsidence.
- (6) For the purposes of this section, a planning decision whereby permission to develop land is granted subject to a condition prohibiting development on a specified part of that land shall be treated as a decision refusing the permission with respect to that part of the land.

137 No compensation if certain other development permitted

- (1) Compensation under this Part of this Act shall not be payable in respect of a planning decision whereby permission is refused for the development of land if, notwithstanding that refusal, there is available with respect to that land planning permission for development to which this section applies:

Provided that, where such permission is available with respect to part only of the land, this section shall have effect only in so far as the interest subsists in that part

- (2) Where a claim for compensation under this Part of this Act is made in respect of an interest in any land, planning permission for development to which this section applies shall be taken for the purposes of this section to be available with respect to that land or a part thereof if, immediately before the Secretary of State gives notice of his determination in respect of that claim, there is in force with respect to that land, or that part thereof, a grant of, or an undertaking by the Secretary of State to grant, planning permission for some such development, subject to no conditions other than such as are mentioned in section 136(2) of this Act.
- (3) This section applies to any development of a residential, commercial or industrial character, being development which consists wholly or mainly of the construction of houses, flats, shop or office premises, or industrial buildings (including warehouses), or any combination thereof.

138 Further exclusions from compensation

- (1) Where an interest in any land has (whether before or after the commencement of this Act) been compulsorily acquired by, or sold to, an authority possessing compulsory purchase powers (not being statutory undertakers or the National Coal Board), that authority, and any person deriving title from that authority under a conveyance made by that authority on or at any time after 1st July 1948, shall not be entitled to compensation under this Part of this Act in respect of a planning decision made after the service of the notice to treat, or after the making of the contract of sale, as the case may be, by reason that the value of that interest, or of any interest created (whether directly or indirectly) out of that interest, is depreciated by the decision.
- (2) Subsection (1) of this section shall apply to land which has at any time on or after 1st July 1948 (whether before or after the commencement of this Act) been appropriated by a local authority for a purpose for which the authority could have been authorised to acquire the land compulsorily, as it applies to land in which an interest has been acquired as mentioned in that subsection, with the substitution, for the reference to the service of the notice to treat, of a reference to the appropriation.
- (3) Where at the relevant date any land was or is operational land of statutory undertakers, or land of the National Coal Board of a class specified in regulations made under section 86 of the Act of 1947 or under section 259 of this Act, the statutory undertakers or the National Coal Board, as the case may be, and any person deriving title from those undertakers or that Board, shall not be entitled to compensation under this Part of this Act, in respect of a planning decision made after the relevant date, by reason that the value of any interest in that land is depreciated by that decision.

In this subsection " the relevant date ", in relation to land which was such operational land or land of the National Coal Board as is mentioned in this subsection on 1st January 1955, means that day, and, in relation to land which (whether before or after the commencement of this Act) became or becomes such operational land or land

of the National Coal Board on a date subsequent to the said 1st January, means that subsequent date.

- (4) A person shall not be entitled to compensation under this Part of this Act in respect of depreciation of the value of an interest in land by a planning decision if he is entitled to compensation by virtue of section 154 of this Act in respect of depreciation of the value of that interest by that decision.
- (5) A creditor in a heritable security shall not be entitled to compensation under this Part of this Act in respect of his interest as creditor:

Provided that this subsection shall be without prejudice to the operation of any regulations made under section 151 of this Act.

139 Grant of planning permission treated as subject to notional condition

- (1) The provisions of this section shall have effect where—
- (a) on an application for planning permission for the carrying out of new development of land, a planning decision is made whereby the permission is granted, whether unconditionally or subject to conditions; and
 - (b) the Secretary of State certifies that he is satisfied that particular buildings or works to which the application related were included therein only because the applicant had reason to believe that permission for the other development to which the application related (in this section referred to as "the principal development") would not have been granted except subject to a condition requiring the erection or construction of those buildings or works.
- (2) Where subsection (1) of this section applies, then for the purposes of this Part of this Act—
- (a) the application shall be deemed to have included, in place of those buildings or works, such other development of the land on which the buildings or works were to be erected or constructed as might reasonably have been expected to have been included having regard to the principal development; and
 - (b) the permission shall be deemed to have been granted for the principal development subject to a condition requiring the erection or construction of those buildings or works.

140 Notice under s. 70 treated as planning decision

Where a notice under section 70(1) of this Act is served in respect of the whole or part of any land, the provisions of this Part of this Act shall have effect as if the application, in consequence of which the notice is served, had been an effective application for planning permission, and as if the notice had been a planning decision of the local planning authority refusing that permission in respect of that land or that part thereof, as the case may be.