



# Planning and Compensation Act 1991

## 1991 CHAPTER 34

### PART I

#### TOWN AND COUNTRY PLANNING: ENGLAND AND WALES

##### *Control over development*

#### 12 Planning obligations

- (1) For section 106 of the principal Act (agreements regulating development or use of land) there is substituted—

##### **“106 Planning obligations**

- (1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A and 106B as “a planning obligation”), enforceable to the extent mentioned in subsection (3)—
- (a) restricting the development or use of the land in any specified way;
  - (b) requiring specified operations or activities to be carried out in, on, under or over the land;
  - (c) requiring the land to be used in any specified way; or
  - (d) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically.
- (2) A planning obligation may—
- (a) be unconditional or subject to conditions;
  - (b) impose any restriction or requirement mentioned in subsection (1) (a) to (c) either indefinitely or for such period or periods as may be specified; and
  - (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires

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the payment of periodical sums, require them to be paid indefinitely or for a specified period.

- (3) Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection (9)(d)—
  - (a) against the person entering into the obligation; and
  - (b) against any person deriving title from that person.
- (4) The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land.
- (5) A restriction or requirement imposed under a planning obligation is enforceable by injunction.
- (6) Without prejudice to subsection (5), if there is a breach of a requirement in a planning obligation to carry out any operations in, on, under or over the land to which the obligation relates, the authority by whom the obligation is enforceable may—
  - (a) enter the land and carry out the operations; and
  - (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.
- (7) Before an authority exercise their power under subsection (6)(a) they shall give not less than twenty-one days' notice of their intention to do so to any person against whom the planning obligation is enforceable.
- (8) Any person who wilfully obstructs a person acting in the exercise of a power under subsection (6)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) A planning obligation may not be entered into except by an instrument executed as a deed which—
  - (a) states that the obligation is a planning obligation for the purposes of this section;
  - (b) identifies the land in which the person entering into the obligation is interested;
  - (c) identifies the person entering into the obligation and states what his interest in the land is; and
  - (d) identifies the local planning authority by whom the obligation is enforceable.
- (10) A copy of any such instrument shall be given to the authority so identified.
- (11) A planning obligation shall be a local land charge and for the purposes of the Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.
- (12) Regulations may provide for the charging on the land of—
  - (a) any sum or sums required to be paid under a planning obligation; and
  - (b) any expenses recoverable by a local planning authority under subsection (6)(b),

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and this section and sections 106A and 106B shall have effect subject to any such regulations.

- (13) In this section “specified” means specified in the instrument by which the planning obligation is entered into and in this section and section 106A “land” has the same meaning as in the Local Land Charges Act 1975.

### **106A Modification and discharge of planning obligations**

- (1) A planning obligation may not be modified or discharged except—
- (a) by agreement between the authority by whom the obligation is enforceable and the person or persons against whom the obligation is enforceable; or
  - (b) in accordance with this section and section 106B.
- (2) An agreement falling within subsection (1)(a) shall not be entered into except by an instrument executed as a deed.
- (3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to the local planning authority by whom the obligation is enforceable for the obligation—
- (a) to have effect subject to such modifications as may be specified in the application; or
  - (b) to be discharged.
- (4) In subsection (3) “the relevant period” means—
- (a) such period as may be prescribed; or
  - (b) if no period is prescribed, the period of five years beginning with the date on which the obligation is entered into.
- (5) An application under subsection (3) for the modification of a planning obligation may not specify a modification imposing an obligation on any other person against whom the obligation is enforceable.
- (6) Where an application is made to an authority under subsection (3), the authority may determine—
- (a) that the planning obligation shall continue to have effect without modification;
  - (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
  - (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
- (7) The authority shall give notice of their determination to the applicant within such period as may be prescribed.
- (8) Where an authority determine that a planning obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.
- (9) Regulations may make provision with respect to—

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- (a) the form and content of applications under subsection (3);
  - (b) the publication of notices of such applications;
  - (c) the procedures for considering any representations made with respect to such applications; and
  - (d) the notices to be given to applicants of determinations under subsection (6).
- (10) Section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to a planning obligation.

### **106B Appeals**

- (1) Where a local planning authority—
    - (a) fail to give notice as mentioned in section 106A(7); or
    - (b) determine that a planning obligation shall continue to have effect without modification,
 the applicant may appeal to the Secretary of State.
  - (2) For the purposes of an appeal under subsection (1)(a), it shall be assumed that the authority have determined that the planning obligation shall continue to have effect without modification.
  - (3) An appeal under this section shall be made by notice served within such period and in such manner as may be prescribed.
  - (4) Subsections (6) to (9) of section 106A apply in relation to appeals to the Secretary of State under this section as they apply in relation to applications to authorities under that section.
  - (5) Before determining the appeal the Secretary of State shall, if either the applicant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
  - (6) The determination of an appeal by the Secretary of State under this section shall be final.
  - (7) Schedule 6 applies to appeals under this section.”
- (2) In section 296(2) of that Act (exercise of powers in relation to Crown land) after “authority-” there is inserted—
- “(aa) in relation to land which for the time being is Crown land—
    - (i) a planning obligation shall not be enforced by injunction; and
    - (ii) the power to enter land conferred by section 106(6) shall not be exercised;”.
- (3) After section 299 of that Act there is inserted—

### **“299A Crown planning obligations**

- (1) The appropriate authority in relation to any Crown interest or Duchy interest in land in the area of a local planning authority may enter into an obligation falling within any of paragraphs (a) to (d) of section 106(1) (in this section

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referred to as a “planning obligation”) enforceable to the extent mentioned in subsection (3).

- (2) A planning obligation may not be entered into except by an instrument executed as a deed which—
  - (a) states that the obligation is a planning obligation for the purposes of this section;
  - (b) identifies the land in relation to which the obligation is entered into;
  - (c) identifies the appropriate authority who are entering into the obligation and states what the Crown or Duchy interest in the land is; and
  - (d) identifies the local planning authority by whom the obligation is enforceable.
- (3) A planning obligation entered into under this section is enforceable—
  - (a) against any person with a private interest deriving from the Crown or Duchy interest stated in accordance with subsection (2)(c);
  - (b) by the authority identified in accordance with subsection (2)(d).
- (4) Subject to subsection (5), subsections (2), (4) to (8) and (10) to (13) of section 106 and sections 106A and 106B apply to a planning obligation entered into under this section as they apply to a planning obligation entered into under that section.
- (5) The consent of the appropriate authority must be obtained to—
  - (a) the enforcement by injunction of a planning obligation against a person in respect of land which is Crown land; and
  - (b) the exercise, in relation to Crown land, of the power to enter land conferred by section 106(6) (as applied by subsection (4)).”

### **13 Demolition of buildings**

- (1) In section 55 of the principal Act (meaning of “development”) after subsection (1) there is inserted—

“(1A) For the purposes of this Act “building operations” includes—

  - (a) demolition of buildings;
  - (b) rebuilding;
  - (c) structural alterations of or additions to buildings; and
  - (d) other operations normally undertaken by a person carrying on business as a builder.”
- (2) In subsection (2) of that section after paragraph (f) there is inserted—

“(g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority.”
- (3) After section 108(3) of that Act (compensation for refusal or conditional grant of planning permission formerly granted by development order) there is inserted—

“(4) Regulations made by virtue of this subsection may provide that subsection (1) shall not apply where planning permission granted by a development order

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for demolition of buildings or any description of buildings is withdrawn by the issue of directions under powers conferred by the order.”

#### **14 Fish farming**

(1) After section 55(4) of the principal Act (meaning of “development”) there is inserted—

“(4A) Where the placing or assembly of any tank in any part of any inland waters for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the tank resulted from carrying out engineering operations over that land; and in this subsection—

“fish farming” means the breeding, rearing or keeping of fish or shellfish (which includes any kind of crustacean and mollusc);

“inland waters” means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows; and

“tank” includes any cage and any other structure for use in fish farming.”

(2) This section does not apply to the placing or assembly of any structure before this section comes into force.

#### **15 Assessment of environmental effects**

After section 71 of the principal Act there is inserted—

##### **“71A Assessment of environmental effects**

(1) The Secretary of State may by regulations make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects of the proposed development.

(2) The regulations—

(a) may make the same provision as, or provision similar or corresponding to, any provision made, for the purposes of any Community obligation of the United Kingdom about the assessment of the likely effects of development on the environment, under section 2(2) of the European Communities Act 1972; and

(b) may make different provision for different classes of development.

(3) Where a draft of regulations made in exercise both of the power conferred by this section and the power conferred by section 2(2) of the European Communities Act 1972 is approved by resolution of each House of Parliament, section 333(3) shall not apply.”

#### **16 Notice etc. of applications for planning permission**

(1) For sections 65 to 68 of the principal Act (publicity for applications for planning permission) there is substituted—

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### **“65 Notice etc. of applications for planning permission**

- (1) A development order may make provision requiring—
  - (a) notice to be given of any application for planning permission, and
  - (b) any applicant for such permission to issue a certificate as to the interests in the land to which the application relates or the purpose for which it is used,and provide for publicising such applications and for the form, content and service of such notices and certificates.
- (2) Provision shall be made by a development order for the purpose of securing that, in the case of any application for planning permission, any person (other than the applicant) who on such date as may be prescribed by the order is an owner of the land to which the application relates, or a tenant of any agricultural holding any part of which is comprised in that land, is given notice of the application in such manner as may be required by the order.
- (3) A development order may require an applicant for planning permission to certify, in such form as may be prescribed by the order, or to provide evidence, that any requirements of the order have been satisfied.
- (4) A development order making any provision by virtue of this section may make different provision for different cases or different classes of development.
- (5) A local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of this section have been satisfied.
- (6) If any person—
  - (a) issues a certificate which purports to comply with any requirement imposed by virtue of this section and contains a statement which he knows to be false or misleading in a material particular; or
  - (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,he shall be guilty of an offence.
- (7) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) In this section—

“agricultural holding” has the same meaning as in the Agricultural Holdings Act 1986; and

“owner” in relation to any land means any person who—

  - (a) is the estate owner in respect of the fee simple;
  - (b) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired; or
  - (c) in the case of such applications as may be prescribed by a development order, is entitled to an interest in any mineral so prescribed,

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and the reference to the interests in the land to which an application for planning permission relates includes any interest in any mineral in, on or under the land.

(9) Notwithstanding section 127 of the Magistrates' Courts Act 1980, a magistrates' court may try an information in respect of an offence under this section whenever laid.”

(2) For section 71(1) and (2) there is substituted—

“(1) A development order may provide that a local planning authority shall not determine an application for planning permission before the end of such period as may be prescribed.

(2) A development order may require a local planning authority—

- (a) to take into account in determining such an application such representations, made within such period, as may be prescribed; and
- (b) to give to any person whose representations have been taken into account such notice as may be prescribed of their decision.

(2A) A development order making any provision by virtue of this section may make different provision for different cases or different classes of development.”

## 17 Power of local planning authority to decline to determine applications

(1) After section 70 of the principal Act there is inserted—

### **“70A Power of local planning authority to decline to determine applications**

(1) A local planning authority may decline to determine an application for planning permission for the development of any land if—

- (a) within the period of two years ending with the date on which the application is received, the Secretary of State has refused a similar application referred to him under section 77 or has dismissed an appeal against the refusal of a similar application; and
- (b) in the opinion of the authority there has been no significant change since the refusal or, as the case may be, dismissal mentioned in paragraph (a) in the development plan, so far as material to the application, or in any other material considerations.

(2) For the purposes of this section an application for planning permission for the development of any land shall only be taken to be similar to a later application if the development and the land to which the applications relate are in the opinion of the local planning authority the same or substantially the same.

(3) The reference in subsection (1)(a) to an appeal against the refusal of an application includes an appeal under section 78(2) in respect of an application.”

(2) In section 78(2) of that Act (right to appeal to Secretary of State where local planning authority have failed to take a decision on an application) for “neither” there is substituted “done none of the following” and for “nor” there is substituted—



“(aa) given notice to the applicant that they have exercised their power under section 70A to decline to determine the application;”.

## **18 Dismissal of appeals in cases of undue delay**

After section 79(6) of the principal Act (determination of appeals) there is inserted—

“(6A) If at any time before or during the determination of such an appeal it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may—

- (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
- (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.”

## **19 Receipt and determination of applications**

(1) After section 74(1) of the principal Act (provisions that may be made by a development order for dealing with applications) there is inserted—

“(1A) Provision may be made by a development order—

- (a) for determining the persons to whom applications under this Act are to be sent; and
- (b) for requiring persons to whom such applications are sent to send copies to other interested persons.”

(2) In Schedule 1 to that Act (distribution of functions)—

- (a) in paragraph 3(2) (functions which appear to the district planning authority to relate to a county matter to be exercised by the county authority) for “appears to the district planning authority to relate” there is substituted “relates”,
- (b) paragraphs 3(3) to (6) and 4(1) (all applications to be made to district planning authority) are omitted.