



Town and Country Planning (Scotland) Act 1997

1997 CHAPTER 8

PART III

CONTROL OVER DEVELOPMENT

Determination of applications

39 [F¹Declining to determine an application]

[F²(1) A planning authority may decline to determine an application (in this subsection referred to as the “current application”) for planning permission for the development of any land—

(a) if—

- (i) in the period of [F³5] years ending with the date on which the current application is received, the Scottish Ministers have refused a similar application referred to them under section 46 or have dismissed an appeal against the refusal of, or an appeal under section 47(2) in respect of, a similar application, and
- (ii) in the opinion of the authority there has not, since the Scottish Ministers refused the similar application or dismissed the appeal, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,

(b) if—

- (i) in that period of [F⁴5] years the planning authority have refused more than one similar application,
- (ii) there has been no appeal to the Scottish Ministers against either (or as the case may be any) of those refusals, and
- (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change

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- in the development plan (so far as material to the current application) or in any other material consideration,
- (c) if—
- (i) in that period of [^{F5}5] years the planning authority have refused more than one similar application,
 - (ii) there has been an appeal to the Scottish Ministers against either (or as the case may be any) of those refusals but as at the time the current application is received no such appeal has yet been determined, and
 - (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (d) if—
- (i) in that period of [^{F6}5] years there have been appeals under section 47(2) in respect of more than one similar application but as at the time the current application is received no such appeal has yet been determined, and
 - (ii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the appeals was made, been any significant change in the development plan (so far as material to the current application) or in any other material consideration, or
- (e) if—
- (i) in that period of [^{F7}5] years two similar applications have been made to the planning authority,
 - (ii) the planning authority have refused one of those applications and there has been an appeal under section 47(2) in respect of the other but as at the time the current application is received the appeal under that section has yet to be determined as has the appeal (if any) against the refusal, and
 - (iii) in the opinion of the authority there has not, since the refusal or since the appeal was made (whichever was the more recent), been any significant change in the development plan (so far as material to the current application) or in any other material consideration.
- (1A) A planning authority or the Scottish Ministers must decline to determine an application for planning permission for the development of any land if, in their opinion—
- (a) compliance with section 35B was required as respects the development, and
 - (b) there has not been such compliance.
- (1B) But before deciding whether, under subsection (1A), an application must be declined the authority or as the case may be the Scottish Ministers may request the applicant to provide such additional information as they may specify.
- (1C) Where, under subsection (1A), a planning authority or the Scottish Ministers decline to determine an application they are to advise the applicant of the reason for their being of the opinion mentioned in that subsection.
- (1D) Subsection (1A) is subject to section 35A(9).]
- (2) For the purposes of this section an application for planning permission for the development of any land shall be taken to be similar to a later application only if the

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development and the land to which the applications relate are in the opinion of the planning authority the same or substantially the same.

[^{F8}(2A) For the purposes of the application of this section by virtue of section 43A(5)—

- (a) the references in subsection (1) to an appeal to the Scottish Ministers include a reference to a requirement on the planning authority to review a case by virtue of section 43A(8);
- (b) the references in that subsection to the dismissal by the Scottish Ministers of an appeal include a reference to the upholding by the planning authority of a determination on review; and
- (c) the references to an appeal under section 47(2) include a reference to a requirement to review under section 43A(8)(c).]

^{F9}(3)

Textual Amendments

- F1** S. 39 heading substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 15(c)**, 59(2) (with S.S.I. 2009/222, **art. 6**); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.
- F2** S. 39(1)-(1D) substituted for s. 39(1) (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 15(a)**, 59(2) (with S.S.I. 2009/222, **art. 6**); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.
- F3** Word in s. 39(1)(a)(i) substituted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 22(2)(a)**, 63(2); S.S.I. 2022/275, reg. 2(2)(a) (with reg. 3)
- F4** Word in s. 39(1)(b)(i) substituted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 22(2)(b)**, 63(2); S.S.I. 2022/275, reg. 2(2)(a) (with reg. 3)
- F5** Word in s. 39(1)(c)(i) substituted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 22(2)(c)**, 63(2); S.S.I. 2022/275, reg. 2(2)(a) (with reg. 3)
- F6** Word in s. 39(1)(d)(i) substituted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 22(2)(d)**, 63(2); S.S.I. 2022/275, reg. 2(2)(a) (with reg. 3)
- F7** Word in s. 39(1)(e)(i) substituted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 22(2)(e)**, 63(2); S.S.I. 2022/275, reg. 2(2)(a) (with reg. 3)
- F8** S. 39(2A) inserted (2.2.2013) by [The Planning etc. \(Scotland\) Act 2006 \(Supplementary and Consequential Provisions\) Order 2013 \(S.S.I. 2013/26\)](#), arts. 1, **2(2)**
- F9** S. 39(3) repealed (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 15(b)**, 59(2) (with S.S.I. 2009/222, **art. 6**); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.

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Changes and effects yet to be applied to :

- s. 39(2A) word substituted by [2019 asp 13 Sch. 2 para. 7\(2\)\(a\)](#)
- s. 39(2A)(a) word substituted by [2019 asp 13 Sch. 2 para. 7\(2\)\(b\)](#)
- s. 39(2A)(c) word substituted by [2019 asp 13 Sch. 2 para. 7\(2\)\(c\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied by [S.S.I. 2008/189 art. 53\(3\)](#)
- Act power to apply (with or without modifications) conferred by [2021 asp 9 s. 45\(3\)\(b\)\(c\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 11A inserted by [2006 asp 17 s. 29](#)
- Pt. 12A inserted by [2006 asp 17 s. 30](#)
- Pt. 12A inserted by [2019 asp 13 s. 46\(2\)](#)
- s. 3CD inserted by [2019 asp 13 s. 4\(2\)](#)
- s. 20AA(4)(a)(iii) inserted by [2019 asp 13 s. 14\(6\)](#)
- s. 29(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(3\)\(b\)](#)
- s. 36(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(4\)\(b\)](#)
- s. 36(5)(6) inserted by [2019 asp 13 s. 36\(2\)](#)
- s. 40A inserted by [2019 asp 13 s. 19\(2\)](#)
- s. 43A-43AD substituted for s. 43A by [2019 asp 13 s. 28\(2\)](#)
- s. 47(2)(aa) inserted by [2019 asp 13 s. 28\(3\)\(a\)](#)
- s. 47(2A) inserted by [2019 asp 13 s. 28\(3\)\(b\)](#)
- s. 47(6) inserted by [2019 asp 13 s. 31\(2\)\(c\)](#)
- s. 54A-54F and cross-heading inserted by [2019 asp 13 s. 15\(2\)](#)
- s. 57(2C)(2D) inserted by [2021 asp 9 s. 44\(2\)](#)
- s. 58(4)(fa) inserted by [2019 asp 13 Sch. 2 para. 5\(5\)\(b\)](#)
- s. 61(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(6\)\(b\)](#)
- s. 75(4A) inserted by [2019 asp 13 s. 35\(2\)](#)
- s. 75A(5A) inserted by [2019 asp 13 s. 35\(3\)](#)
- s. 77A inserted by [2019 asp 13 s. 39\(2\)](#)
- s. 135(4A) inserted by [2019 asp 13 s. 43\(2\)\(c\)](#)
- s. 154(1)(c) and word inserted by [2019 asp 13 s. 28\(4\)\(a\)\(ii\)](#)
- s. 154(1A) inserted by [2019 asp 13 s. 28\(4\)\(b\)](#)
- s. 158A(1A) inserted by [2019 asp 13 s. 44\(2\)](#)
- s. 158B-158F and cross-heading inserted by [2019 asp 13 s. 43\(3\)](#)
- s. 183(1)(c) inserted by [2019 asp 13 Sch. 2 para. 5\(7\)\(b\)](#)
- s. 237(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(8\)](#)
- s. 238(3)(a)-(c) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(a\)\(ii\)](#)
- s. 238(5)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(b\)](#)
- s. 238(7) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(c\)](#)