



Planning etc. (Scotland) Act 2006

2006 asp 17

PART 3

DEVELOPMENT MANAGEMENT

Powers of Scottish Ministers in relation to planning applications and decisions

19 Appeals etc.

(1) In section 47 of the principal Act (right to appeal against planning decisions and failure to take such decisions)—

- (a) in subsection (1), at the end add “against the decision”, and
- (b) after subsection (1) insert—

“(1A) But subsection (1) does not apply in relation to any such action on the part of a planning authority as is mentioned in section 237(3A).”.

(2) After that section insert—

“47A Matters which may be raised in an appeal under section 47(1)

(1) In an appeal under section 47(1), a party to the proceedings is not to raise any matter which was not before the planning authority at the time the decision appealed against was made unless that party can demonstrate—

- (a) that the matter could not have been raised before that time, or
- (b) that its not being raised before that time was a consequence of exceptional circumstances.

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—

- (a) the provisions of the development plan, or
- (b) any other material consideration.”.

(3) In section 237 of that Act (validity of certain plans, schemes, orders and actions)—

- (a) in subsection (1)(f), at the end add “or on the part of a planning authority as is mentioned in subsection (3A)”,

Status: This is the original version (as it was originally enacted).

- (b) after subsection (3) insert—
 - “(3A) The action on the part of a planning authority is any decision or determination (other than a deemed decision) in a review conducted by them by virtue of section 43A(8).”, and
 - (c) at the end of subsection (4), add “or on the part of a planning authority to take any such action as is mentioned in subsection (3A)”.
- (4) In section 239 of that Act (proceedings for questioning the validity of certain orders, decisions and directions)—
 - (a) in subsection (1)(b), before the words “to which” insert “, or on the part of a planning authority,”, and
 - (b) in subsection (4), at the end add “or on the part of a planning authority as is mentioned in subsection (3A) of that section”.
- (5) In section 267 of that Act (procedure on certain appeals and applications)—
 - (a) in subsection (1), for the words from “proceedings” to the end substitute “appeals and applications under this Act and as to the manner in which such appeals and applications are to be conducted”,
 - (b) after subsection (1) insert—
 - “(1A) Without prejudice to the generality of subsection (1), the regulations may—
 - (a) make different provision for different cases or classes of case and in particular according to whether an appeal is under subsection (1) of section 47 or under subsection (2) of that section,
 - (b) as regards the manner in which an appeal or application is to be conducted, make different provision for different stages of a case,
 - (c) make provision in relation to oral or written submissions and to documents in support of such submissions, and
 - (d) make provision in relation to time limits.
 - (1B) The provision which may be made by virtue of subsections (1) and (1A) includes provision as to—
 - (a) the making of oral submissions, or as to any failure to make such submissions or to lodge documents in support of such submissions,
 - (b) the lodging of, or as to any failure to lodge, written submissions or documents in support of such submissions, and
 - (c) subject to section 47A, as to what matters may be raised in the course of the appeal or application.
 - (1C) The provision which may be made by virtue of subsections (1) and (1A) includes provision that the manner in which an appeal or application, or any stage of an appeal or application, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under or by virtue of this Act).”,

- (c) in subsection (2)(a), the word “such” is repealed, and
 - (d) subsection (3) is repealed.
- (6) The title of section 267 becomes “**Appeals and applications under this Act: procedure etc.**”.