



Planning etc. (Scotland) Act 2006

2006 asp 17

PART 3 **S**

DEVELOPMENT MANAGEMENT

Planning obligations and good neighbour agreements

23 Planning obligations **S**

(1) For section 75 of the principal Act substitute—

“75 Planning obligations

- (1) A person may, in respect of land in the district of a planning authority—
- (a) by agreement with that authority, or
 - (b) unilaterally,
- enter into an obligation (referred to in this section and in sections 75A to 75C as a “planning obligation”) restricting or regulating the development or use of the land, either permanently or during such period as may be specified in the instrument by which the obligation is entered into (referred to in this section and in those sections as the “relevant instrument”).
- (2) Without prejudice to the generality of subsection (1), the reference in that subsection to restricting or regulating the development or use of land includes—
- (a) requiring operations or activities specified in the relevant instrument to be carried out in, on, under or over the land, or
 - (b) requiring the land to be used in a way so specified.
- (3) A planning obligation may—
- (a) be unconditional or subject to conditions,
 - (b) require the payment—
 - (i) of a specified amount or an amount determined in accordance with the relevant instrument, or

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- (ii) of periodical sums either indefinitely or for such period as may be specified in that instrument, and
- (c) contain such incidental and consequential provisions as—
 - (i) in the case of an agreement, appear to the planning authority to be necessary or expedient for the purposes of the agreement, or
 - (ii) in the case of a unilateral obligation, appear to the person entering into the obligation to be necessary or expedient for the purposes of that obligation.
- (4) Without prejudice to the generality of subsection (3)(a), the relevant instrument may provide for the postponement of the effectiveness of the planning obligation to a date specified in the instrument (whether the specification is of a fixed date or of a date determinable by reference to the occurrence of an event).
- (5) A relevant instrument to which the owner of the land is party may be recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland; and if the instrument is so recorded or registered then the planning obligation is (unless the instrument provides that only the person entering into that obligation is to be bound by it) enforceable at the instance of the planning authority—
 - (a) against the owner of the land in so far as the obligation comprises a requirement mentioned in subsection (2) or (3)(b), and
 - (b) against—
 - (i) the owner or tenant of the land, or
 - (ii) any other person having the use of the land,
 in so far as the obligation comprises any other requirement.
- (6) But no such obligation is enforceable against a third party who has acquired right to the land (whether or not that person has completed title) prior to the relevant instrument being so recorded or registered.
- (7) 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 planning authority 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.
- (8) Before a planning authority exercise their power under subsection (7)(a) they are to give any person against whom the planning obligation is enforceable not less than twenty-one days' notice of their intention to do so.
- (9) A person wilfully obstructing someone who is acting in the exercise of a power under subsection (7)(a) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) In this section, “owner” means a person who has right to the land to which the planning obligation relates whether or not that person has completed title; but if, in relation to the land (or, if the land is held *pro indiviso*, in relation to any *pro indiviso* share in the land) more than one person comes within that

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description of owner, then “owner” means such person as has most recently acquired such right.

- (11) But where a heritable creditor is in lawful possession of security subjects which comprise the land, then “owner” includes the heritable creditor.
- (12) For the purposes of subsection (5) it is immaterial whether the person who is owner of the land when the relevant instrument is recorded or registered was owner when the obligation was entered into.

75A Modification and discharge of planning obligations

- (1) A planning obligation may not be modified or discharged except—
 - (a) by agreement, by virtue of subsection (2), between the planning authority and a person against whom that obligation is enforceable, or
 - (b) in accordance with this section and section 75B.
- (2) A person against whom a planning obligation is enforceable may apply to the planning authority for their agreement that the obligation—
 - (a) have effect subject to such modifications as may be specified in the application, or
 - (b) be discharged.
- (3) An application under subsection (2)(a) is not to specify a modification imposing an obligation on any non-applicant against whom the planning obligation is enforceable.
- (4) On an application under subsection (2), the authority may determine that the planning obligation—
 - (a) is to continue to have effect without modification,
 - (b) is discharged, or
 - (c) is to have effect subject to the modifications specified in the application.
- (5) The authority are to give notice of their determination to the applicant within such period as is prescribed.
- (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to a planning obligation the relevant instrument in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be so registered.
- (8) Where the determination is under subsection (4)(c), the planning obligation is enforceable as modified—
 - (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and
 - (b) in any other case, from the date on which notice is given under subsection (5).
- (9) Regulations may make provision with respect to—

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- (a) the form and content of an application under subsection (2),
 - (b) the publication of notice of any such application,
 - (c) procedures for considering any representations made with respect to any such application, and
 - (d) the form and content of any notice given under subsection (5).
- (10) In relation to any application referred to the Scottish Ministers by virtue of subsections (1) to (3) of section 46, the references in subsections (4) and (5) (above) to the authority are to be construed as references to the Scottish Ministers.

75B Appeals

- (1) Where a planning authority—
- (a) fail to comply with section 75A(5), or
 - (b) determine that a planning obligation is to continue to have effect without modification,
- the applicant may appeal to the Scottish Ministers.
- (2) For the purposes of an appeal under subsection (1)(a), it is to be assumed that the authority have determined that the planning obligation is to continue to have effect without modification.
- (3) Any appeal under subsection (1) is to be made by notice served—
- (a) within such period, and
 - (b) in such manner,
- as may be prescribed.
- (4) On an appeal under subsection (1) the Scottish Ministers may determine that the planning obligation—
- (a) is to continue to have effect without modification,
 - (b) is discharged, or
 - (c) is to have effect subject to the modifications specified in the application.
- (5) The Scottish Ministers are to give notice of their determination to the applicant within such period as is prescribed.
- (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to a planning obligation the relevant instrument in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be so registered.
- (8) Where the determination is under subsection (4)(c), the planning obligation is enforceable as modified—
- (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and
 - (b) in any other case, from the date on which notice is given under subsection (5).

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- (9) Regulations may make provision with respect to the form and content of any notice—
 - (a) served under subsection (3), or
 - (b) given under subsection (5).
- (10) Except as provided under section 239, the determination of an appeal by the Scottish Ministers under this section is final.
- (11) Schedule 4 applies to appeals under this section, including appeals under this section as applied by regulations under any other provisions of this Act.

75C Planning obligations: continuing liability of former owner etc.

- (1) In so far as a planning obligation comprises an appropriate requirement, an owner of land does not, by virtue only of ceasing to be such an owner, cease to be bound by that obligation (unless the relevant instrument provides that he does cease to be so bound).
 - (2) The relevant instrument may provide that, in so far as a planning obligation comprises any other requirement, an owner of land does not, by virtue only of ceasing to be such an owner, cease to be bound by that obligation.
 - (3) For the purposes of this section, an “appropriate requirement” is a requirement mentioned in subsection (2) or (3)(b) of section 75 which is due for performance.
 - (4) A person who becomes an owner of land the development or use of which is subject to a planning obligation enforceable as is mentioned in section 75(5) is, unless the relevant instrument otherwise provides, severally liable with any former owner of the land for any appropriate requirement for which the former owner is liable.
 - (5) But if that person incurs expenditure in the performance of any appropriate requirement for which a former owner is liable, he may recover an amount equal to that expenditure from the former owner.
 - (6) In this section, “owner” has the same meaning as in section 75.”.
- (2) Subsections (3) and (4) of section 75 of that Act, as they apply immediately before the coming into force of subsection (1) (above), are to continue so to apply in relation to any agreement entered into under that section before that coming into force.

Commencement Information

- 11** S. 23 in force at 12.12.2008 for specified purposes by S.S.I. 2008/411, art. 2(2)(3)(a)
- 12** S. 23 in force at 1.2.2011 in so far as not already in force by S.S.I. 2010/400, art. 3, Sch.

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