

*Status: Point in time view as at 01/02/2015.*

*Changes to legislation: There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, Cross Heading: Determination of planning applications. (See end of Document for details)*



## 2011 CHAPTER 25

### Part 3

#### Planning control

##### *Determination of planning applications*

#### **Determination of planning applications**

**45.—**(1) Subject to this Part and section 91(2), where an application is made for planning permission, the council or, as the case may be, the Department, in dealing with the application, must have regard to the local development plan, so far as material to the application, and to any other material considerations, and—

- (a) subject to sections 61 and 62, may grant planning permission, either unconditionally or subject to such conditions as it thinks fit; or
- (b) may refuse planning permission.

(2) A development order may provide that a council or the Department must not determine an application for planning permission before the end of such period as may be specified by the development order.

(3) In determining any application for planning permission the council or the Department must take into account any representations relating to that application which are received by it within such period as may be specified by a development order.

(4) Where an application for planning permission is accompanied by such a certificate as is mentioned in section 42(1)(c) or (d), the council or, as the case may be, the Department—

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- (a) in determining the application, must take into account any representations relating to the application which are made to it by any person who satisfies it that, in relation to any of the designated land, that person is such a person as is described in section 42(1)(c); and
- (b) must give notice of its decision on the application to every person who made representations which it was required to take into account under paragraph (a).

#### Commencement Information

- II S. 45 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, art. 2

#### Power of council to decline to determine subsequent application

**46.—**(1) A council may decline to determine a relevant application if—

- (a) any of the conditions in subsections (2) to (4) is satisfied; and
- (b) the council thinks there has been no significant change in the relevant considerations since the relevant event.

(2) The condition is that in the period of two years ending with the date on which the application mentioned in subsection (1) is received the Department has refused a similar application.

(3) The condition is that in that period the planning appeals commission has dismissed an appeal—

- (a) against the refusal of a similar application; or
- (b) under section 60 in respect of a similar application.

(4) The condition is that—

- (a) in that period the council has refused more than one similar application; and
- (b) there has been no appeal to the planning appeals commission against any such refusal or, if there has been such an appeal, it has been withdrawn.

(5) A council may also decline to determine a relevant application if—

- (a) the condition in subsection (6) is satisfied; and
- (b) the council thinks there has been no significant change in the relevant considerations since the relevant event.

(6) The condition is that—

- (a) in the period of two years ending with the date on which the application mentioned in subsection (5) is received the planning appeals commission has refused a similar application,

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- (b) the similar application was an application deemed to have been made by section 145(5).
- (7) A relevant application is an application for planning permission for the development of any land.
- (8) The relevant considerations are—
  - (a) the local development plan so far as material to the application;
  - (b) any other material considerations.
- (9) The relevant event is—
  - (a) for the purposes of subsections (2), (4) and (6) the refusal of the similar application;
  - (b) for the purposes of subsection (3) the dismissal of the appeal.
- (10) An application for planning permission is similar to another application if (and only if) the council thinks that the development and the land to which the applications relate are the same or substantially the same.

**Commencement Information**

**I2** S. 46 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, art. 2

**Power of Department to decline to determine subsequent application**

- 47.—**(1) The Department may decline to determine an application for planning permission for the development of any land made to it in accordance with section 26(5) if—
- (a) in the period of two years ending with the date on which that application is received the Department has refused a similar application; and
  - (b) the Department thinks there has been no significant change in the relevant considerations since the refusal of the similar application.
- (2) The relevant considerations are—
- (a) the local development plan so far as material to the application;
  - (b) any other material considerations.
- (3) An application for planning permission is similar to another application if (and only if) the Department thinks that the development and the land to which the applications relate are the same or substantially the same.

**Commencement Information**

**I3** S. 47 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, art. 2

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### **Power of council to decline to determine overlapping application**

**48.—**(1) A council may decline to determine an application for planning permission for the development of any land which is—

- (a) made on the same day as a similar application; or
- (b) made at a time when any of the conditions in subsections (2) to (4) applies in relation to a similar application.

(2) The condition is that a similar application is under consideration by the council and the determination period for that application has not expired.

(3) The condition is that a similar application is under consideration by—

- (a) the Department; or
- (b) the planning appeals commission on an appeal under section 58 or 60,

and the Department or, as the case may be, the planning appeals commission, has not issued its decision.

(4) The condition is that a similar application—

- (a) has been granted by the council;
- (b) has been refused by the council; or
- (c) has not been determined by the council within the determination period,

and the time within which an appeal could be made to the planning appeals commission under section 58 or 60 has not expired.

(5) A council may also decline to determine an application for planning permission for the development of any land which is made at a time when the condition in subsection (6) applies in relation to a similar application.

(6) The condition is that—

- (a) a similar application is under consideration by the planning appeals commission,
- (b) the similar application is an application deemed to have been made by section 145(5), and
- (c) the planning appeals commission has not issued its decision.

(7) An application for planning permission is similar to another application if (and only if) the council thinks that the development and the land to which the applications relate are the same or substantially the same.

(8) The determination period is—

- (a) the period specified by the development order for the determination of the application; or
- (b) such longer period as the applicant and the council have agreed for the determination of the application.

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(9) If a council exercises its power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, it may not also exercise that power to decline to determine the similar application.

**Commencement Information**

**I4** S. 48 in operation at 1.2.2015 for specified purposes by [S.R. 2015/25, art. 2](#)

**Power of Department to decline to determine overlapping application**

**49.—**(1) The Department may decline to determine an application for planning permission for the development of any land made to it in accordance with section 26(5) which is—

- (a) made on the same day as a similar application; or
- (b) made at a time when a similar application is under consideration by the Department.

(2) An application for planning permission is similar to another application if (and only if) the Department thinks that the development and the land to which the applications relate are the same or substantially the same.

(3) If the Department exercises its power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, it may not also exercise that power to decline to determine the similar application.

**Commencement Information**

**I5** S. 49 in operation at 1.2.2015 for specified purposes by [S.R. 2015/25, art. 2](#)

**Duty to decline to determine application where section 27 not complied with**

**50.—**(1) A council or, as the case may be, the Department must decline to determine an application for the development of any land if, in the opinion of the council or the Department—

- (a) compliance with section 27 was required as respects the development, and
- (b) there has not been such compliance.

(2) Before deciding whether, under subsection (1), an application must be declined the council or, as the case may be, the Department, may request the applicant to provide such additional information as it may specify within such time as may be prescribed.

(3) Where, under subsection (1), a council or the Department declines to determine an application, the council or, as the case may be, the Department, must advise the applicant of the reason for its being of the opinion mentioned in that subsection.

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#### Commencement Information

I6 S. 50 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, art. 2

#### Assessment of environmental effects

51.—(1) The Department 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 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 the development on the environment, under section 2(2) of the European Communities Act 1972 (c. 68).

#### Commencement Information

I7 S. 51 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, art. 2

#### Conditional grant of planning permission

52.—(1) Without prejudice to the generality of section 45(1), conditions may be imposed on the grant of planning permission—

- (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the council or, as the case may be, the Department to be expedient for the purposes of or in connection with the development authorised by the permission;
- (b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.

(2) Conditions may not be imposed by a council under subsection (1)(a) for regulating the development or use of any land within the district of another council except with the consent of that council.

(3) Any planning permission granted subject to such a condition as is mentioned in subsection (1)(b) is in this Act referred to as “planning permission granted for a limited period”.

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#### Commencement Information

**I8** S. 52 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, art. 2

### Power to impose aftercare conditions on grant of mineral planning permission

**53.—(1)** Where—

- (a) planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste or waste materials is granted, and
- (b) the permission is subject to a condition requiring that after the winning and working is completed or the depositing has ceased, the site shall be restored by the use of any or all of the following, namely, subsoil, topsoil and soil-making material,

it may be granted subject also to any such condition as the council or, as the case may be, the Department thinks fit requiring that such steps shall be taken as may be necessary to bring land to the required standard for whichever of the following uses is specified in the condition, namely—

- (i) use for agriculture;
- (ii) use for forestry;
- (iii) use for amenity; or
- (iv) use for ecological purposes.

**(2)** In this Act—

- (a) a condition such as is mentioned in paragraph (b) of subsection (1) is referred to as “a restoration condition”; and
- (b) a condition requiring such steps to be taken as are mentioned in that subsection is referred to as “an aftercare condition”.

**(3)** An aftercare condition may either—

- (a) specify the steps to be taken; or
- (b) require that the steps be taken in accordance with a scheme (in this Act referred to as an “aftercare scheme”) approved by the council or, as the case may be, the Department.

**(4)** A council or the Department may approve an aftercare scheme in the form in which it is submitted to it or may modify it and approve it as modified.

**(5)** The steps that may be specified in an aftercare condition or an aftercare scheme may consist of planting, cultivating, fertilising, watering, draining or otherwise treating the land.

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(6) Where a step is specified in a condition or a scheme, the period during which it is to be taken may also be specified, but no step may be required to be taken after the expiry of the aftercare period.

(7) In subsection (6) “the aftercare period” means a period of 5 years from compliance with the restoration condition or such other maximum period after compliance with that condition as may be prescribed; and in respect of any part of a site, the aftercare period shall commence on compliance with the restoration condition in respect of that part.

(8) In a case where—

- (a) the use specified in an aftercare condition is a use for agriculture; and
- (b) the land was in use for agriculture at the time of the grant of the planning permission or had previously been used for that purpose and had not at the time of the grant been used for any authorised purpose since its use for agriculture ceased,

the land is brought to the required standard when its physical characteristics are restored, so far as it is practicable to do so, to what they were when it was last used for agriculture.

(9) In any other case where the use specified in an aftercare condition is a use for agriculture, the land is brought to the required standard when it is reasonably fit for that use.

(10) Where the use specified in an aftercare condition is a use for forestry, the land is brought to the required standard when it is reasonably fit for that use.

(11) Where the use specified in an aftercare condition is a use for amenity, the land is brought to the required standard when it is suitable for sustaining trees, shrubs or other plants.

(12) In this section—

“authorised” means authorised by planning permission;

“forestry” means the growing of a utilisable crop of timber.

#### Commencement Information

19 S. 53 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, art. 2

### Permission to develop land without compliance with conditions previously attached

**54.—**(1) This section applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) A development order may make special provision with respect to—



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- (a) the form and content of such applications; and
  - (b) the procedure to be followed in connection with such applications.
- (3) On such an application the authority which granted the previous planning permission must consider only the question of the conditions subject to which planning permission should be granted, and
- (a) if it decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, the authority must grant planning permission accordingly; and
  - (b) if it decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, the authority must refuse the application.
- (4) This section does not apply where the application is made after the previous planning permission has become time-expired, that is to say, the previous permission having been granted subject to a condition as to the time within which the development to which it related was to be begun, that time has expired without the development having been begun.
- (5) Planning permission must not be granted under this section to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which—
- (a) a development must be begun;
  - (b) an application for approval of reserved matters (within the meaning of section 62) must be made.

#### **Commencement Information**

**I10** S. 54 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, art. 2

### **Planning permission for development already carried out**

**55.—**(1) On an application made to a council or the Department, the planning permission which may be granted includes planning permission for development carried out before the date of the application.

- (2) Subsection (1) applies to development carried out—
  - (a) without planning permission;
  - (b) in accordance with planning permission granted for a limited period; or
  - (c) without complying with some condition subject to which planning permission was granted.
- (3) Planning permission for such development may be granted as to have effect from—

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- (a) the date on which the development was carried out; or
- (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.

#### **Commencement Information**

**III** S. 55 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, art. 2

#### **Directions etc. as to method of dealing with applications**

**56.—**(1) Provision may be made by a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by councils and the Department, and in particular—

- (a) for enabling the Department to give directions restricting the grant of planning permission by a council, either indefinitely or during such period as may be specified in the directions, in respect of any such development, or in respect of development of any such class, as may be so specified;
- (b) for enabling the Department to give directions to a council requiring it, in respect of any such development, or in respect of development of any such class, as may be specified in the directions—
  - (i) to consider, where the council is minded to grant planning permission, imposing a condition specified in, or of a nature indicated in, the directions; and
  - (ii) (unless the directions are withdrawn) not to grant planning permission without first satisfying the Department that such consideration has been given and that such a condition either will be imposed or need not be imposed;
- (c) for requiring that, before planning permission for any development is granted or refused, councils must consult with such authorities or persons as may be specified by the order;
- (d) for requiring the Department before granting or refusing planning permission for any development to consult with the council for the district in which the land is situated and with such other authorities or persons as may be specified by the order;
- (e) for requiring a council or, as the case may be, the Department to give to any applicant for planning permission, within such time as may be specified by the order, such notice as may be so specified as to the manner in which the applicant's application has been dealt with;
- (f) for requiring a council or, as the case may be, the Department to give any applicant for any consent, agreement or approval required by a condition

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imposed on a grant of planning permission notice of its decision on the application, within such time as may be specified by the order;

(g) for requiring a council to give to the Department, and to such other persons as may be specified by or under the order, such information as may be so specified with respect to applications for planning permission made to the council, including information as to the manner in which any such application has been dealt with.

(2) 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.

**Commencement Information**

**I12** S. 56 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, art. 2

**Effect of planning permission**

**57.—**(1) Without prejudice to the provisions of this Part, any grant of planning permission to develop land shall (except insofar as the permission otherwise provides) have effect for the benefit of the land and of all persons for the time being having an estate therein.

(2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used; and if no purpose is so specified the permission shall be construed as including permission to use the building for the purpose for which it is designed.

**Commencement Information**

**I13** S. 57 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, art. 2

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