



## 2011 CHAPTER 25

### PART 3

#### PLANNING CONTROL

##### *“Development” and requirement of planning permission*

##### **Meaning of “development”**

**23.—**(1) In this Act, subject to subsections (2) to (6), “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

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

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alteration of or addition to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.

(3) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

- (a) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building;
- (b) the carrying out by a council or statutory undertaker of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes,

cables or other apparatus, including the breaking open of any street or other land for that purpose;

- (c) the use of any buildings or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such;
- (d) the use of any land for the purposes of agriculture or forestry and the use for any of those purposes of any building occupied together with land so used;
- (e) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Department for the purpose of this section, the use of the buildings or other land or, subject to the provisions of the order, of any part thereof for any other purpose of the same class;
- (f) the demolition of any description of building specified in a direction given by the Department to councils generally or to a particular council;
- (g) a structural alteration of any description of building specified in a direction given by the Department to councils generally or to a particular council, where the alteration consists of demolishing part of the building.

(4) The Department may in a development order specify any circumstances or description of circumstances in which subsection (3) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by such amount or percentage amount as is so specified.

(5) For the purposes of this section—

- (a) the use as two or more separate dwelling-houses of any building previously used as a single dwelling-house involves a material change in the use of the building and of each part thereof which is so used;
- (b) the deposit of refuse or waste material on land involves a material change in the use thereof, notwithstanding that the land is comprised in a site already used for that purpose, if either the superficial area of the deposit is thereby extended, or the height of the deposit is thereby extended and exceeds the level of the land adjoining the site.

(6) Without prejudice to any regulations made under this Act relating to the control of advertisements, a use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this Act as involving a material change in the use of that part of the building.

### **Development requiring planning permission**

**24.—**(1) Subject to this Act, planning permission is required for the carrying out of any development of land.

(2) Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted.

(3) Where by a development order planning permission to develop land has been granted subject to limitations, planning permission is not required for the use of that land which (apart from its use in accordance with that permission) is its normal use.

(4) Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part) it could lawfully have been used if that development had not been carried out.

(5) In determining for the purposes of subsections (2) and (3) what is or was the normal use of land, no account shall be taken of any use begun in contravention of this Part.

### *Development management*

#### **Hierarchy of developments**

**25.—**(1) For the purposes of this Act, a development belongs to one of the following categories—

- (a) the first, to be known as “major developments”; and
- (b) the second, to be known as “local developments”.

(2) The Department must by regulations describe classes of development and assign each class to one of the categories mentioned in paragraphs (a) and (b) of subsection (1).

(3) But the Department may, as respects a particular local development, direct that the development is to be dealt with as if (instead of being a local development) it were a major development.

#### **Department’s jurisdiction in relation to developments of regional significance**

**26.—**(1) A person who proposes to apply for permission for any major development (except a development to which section 213 applies) which is prescribed in regulations made for the purposes of this subsection (“the prospective applicant”) must, before complying with section 27, enter into consultations with the Department.

(2) The Department may make regulations prescribing the procedure to be followed in relation to consultations under this section.

(3) Without prejudice to any regulations made under subsection (2), the prospective applicant must, for the purpose of consultations under that

subsection, supply to the Department sufficient information in relation to the proposed development to enable the Department to assess the proposed development.

(4) Where, following consultations under this section, the Department is of the opinion that the proposed development would, if carried out—

- (a) be of significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland, or
- (b) involve a substantial departure from the local development plan for the area to which it relates,

it must serve a notice in writing on the prospective applicant stating that the development is development to which this section applies.

(5) An application for planning permission for development to which this section applies must be made to the Department.

(6) Where, following consultations under this section, the Department is of the opinion that the proposed development would not, if carried out—

- (a) be of significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland, or
- (b) involve a substantial departure from the local development plan for the area to which it relates,

it must serve a notice in writing on the prospective applicant stating—

- (i) that it is of that opinion; and
- (ii) that the prospective applicant's application for planning permission, if it is proceeded with, must be made to the appropriate council.

(7) No application for planning permission in respect of a development specified in regulations made for the purposes of subsection (1) may be made to a council unless or until a notice is served under subsection (6) in relation to the development.

(8) The Department must serve a copy of a notice under subsection (4) or (6), as the case may be, on the appropriate council.

(9) For the purpose of considering representations made in respect of an application for planning permission which is an application to which section 235 (national security) applies, the Department must, subject to any rules made under subsection (2) or (5) of that section, cause a public local inquiry to be held by—

- (a) the planning appeals commission; or
- (b) a person appointed by the Department for the purpose.

(10) For the purpose of considering representations made in respect of an application for planning permission made to it, other than an application mentioned in subsection (9), the Department may cause a public local inquiry to be held by—

- (a) the planning appeals commission; or
- (b) a person appointed by the Department for the purpose.

(11) Where a public local inquiry is not held under subsection (10), the Department must, before determining the application, serve a notice in writing on the applicant and the appropriate council indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service of the notice), the applicant or the council so requests in writing, the Department shall afford to each of them an opportunity of appearing before and being heard by—

- (a) the planning appeals commission; or
- (b) a person appointed by the Department for the purpose.

(12) In determining an application for planning permission made to it, the Department must, where any inquiry or hearing is held, take into account any report of the planning appeals commission or a person appointed by the Department for the purposes of the inquiry or hearing, as the case may be.

(13) The decision of the Department on an application for planning permission made to it shall be final.

### **Pre-application community consultation**

**27.—**(1) Before submitting an application for planning permission for a major development (except a development to which section 213 applies), the prospective applicant must comply with the following provisions of this section.

(2) The prospective applicant must give notice (to be known as a “proposal of application notice”) to the appropriate council that an application for planning permission for the development is to be submitted.

(3) A period of at least 12 weeks must elapse between giving the notice and submitting any such application.

(4) A proposal of application notice must be in such form, and have such content, as may be prescribed but must in any event contain—

- (a) a description in general terms of the development to be carried out;
  - (b) if the site at which the development is to be carried out has a postal address, that address;
  - (c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site, and
  - (d) details as to how the prospective applicant may be contacted and corresponded with.
- (5) Regulations may—

- (a) require that the proposal of application notice be given to persons specified in the regulations,
- (b) prescribe—
  - (i) the persons who are to be consulted as respects a proposed application, and
  - (ii) the form that consultation is to take.
- (6) The council may, provided that it does so within the period of 21 days after receiving the proposal of application notice, notify the prospective applicant that it requires (either or both)—
  - (a) that the proposal of application notice be given to persons additional to those specified under subsection (5) (specifying in the notification who those persons are);
  - (b) that consultation additional to any required by virtue of subsection (5) be undertaken as regards the proposed development (specifying in the notification what form that consultation is to take).
- (7) In considering whether to give notification under subsection (6) the council is to have regard to the nature, extent and location of the proposed development and to the likely effects, at and in the vicinity of that location, of its being carried out.
- (8) In the case of an application for planning permission to be made to the Department, this section has effect as if any reference to a council were a reference to the Department.

### **Pre-application community consultation report**

**28.—**(1) A person who, before submitting an application for planning permission for a development, is required to comply with section 27 and who proceeds to submit that application is to prepare a report (a “pre-application community consultation report”) as to what has been done to effect such compliance.

(2) A pre-application community consultation report is to be in such form as may be prescribed.

### **Call in of applications, etc., to Department**

**29.—**(1) The Department may give directions requiring applications for planning permission made to a council, or applications for the approval of a council of any matter required under a development order, to be referred to it instead of being dealt with by councils.

(2) A direction under subsection (1)—

- (a) may be given either to a particular council or to councils generally; and

(b) may relate either to a particular application or to applications of a class specified in the direction.

(3) Where the Secretary of State or, as the case may be, the Department of Justice has certified that an application for planning permission or an application for any approval under this Act or a development order is an application to which section 235 (national security) applies, the Department of the Environment must give a direction to the council to which the application was made requiring the application to be referred to the Department of the Environment instead of being dealt with by the council.

(4) Any application in respect of which a direction under this section has effect shall be referred to the Department accordingly.

(5) For the purpose of considering representations made in respect of an application to which section 235 applies which has been referred to it under this section, the Department must, subject to any rules made under subsection (2) or (5) of that section, cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(6) For the purpose of considering representations made in respect of an application referred to it under this section, other than an application mentioned in subsection (5), the Department may cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(7) Where a public local inquiry is not held under subsection (6), the Department must, before determining the application, serve a notice in writing on the applicant and the appropriate council indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service of the notice), the applicant or the council so requests in writing, the Department shall afford to each of them an opportunity of appearing before and being heard by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(8) In determining an application for planning permission referred to it, the Department must, where any inquiry or hearing is held, take into account any report of the planning appeals commission or a person appointed by the Department for the purposes of the inquiry or hearing, as the case may be.

(9) The decision of the Department on an application for planning permission referred to it shall be final.

**Pre-determination hearings**

**30.—**(1) Regulations or a development order may provide that, before determining an application for planning permission for a development of a class prescribed in the regulations or specified in the order, a council is to give the applicant and any person so prescribed or specified an opportunity of appearing before and being heard by a committee of the council.

(2) The procedures in accordance with which any such hearing is arranged and conducted (including, without prejudice to the generality of this subsection, procedures for ensuring relevance and avoiding repetition) and any other procedures consequent upon the hearing are to be such as the council considers appropriate.

(3) Any right of attendance at the hearing (other than for the purpose of appearing before and being heard by the committee) is to be such as the council considers appropriate.

(4) In relation to an application other than is provided for in regulations or a development order under subsection (1), a council may elect to give the applicant and any other person an opportunity such as is mentioned in that subsection; and if the council does so elect, subsections (2) and (3) apply accordingly.

**Local developments: schemes of delegation**

**31.—**(1) A council must—

(a) as soon as practicable after the coming into operation of this section, and thereafter—

(i) whenever required to do so by the Department; or

(ii) subject to sub-paragraph (i), at such intervals as may be provided for in regulations made under this section,

prepare a scheme (to be known as a “scheme of delegation”) by which any application for planning permission for a development within the category of local developments or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category is to be determined by a person appointed by the council for the purposes of this section instead of by it, and

(b) keep under review the scheme so prepared.

(2) The determination of any person so appointed is to be treated as that of the council.

(3) Without prejudice to subsection (1)(a)(ii), regulations under this section may make provision as to—

(a) the form and content of,



- (b) the procedures for preparing and adopting, and
  - (c) the requirement to publish,
- a scheme of delegation.

(4) Where an application for planning permission falls to be determined by a person so appointed, sections 41(3), 42, 45, 46, 48, 52(1) and (2), 54, 58 and 60 apply, with any necessary modifications, as they apply to an application which falls to be determined by the council.

(5) The council may, if it thinks fit, decide to determine an application itself which would otherwise fall to be determined by a person so appointed.

(6) Any such decision must include a statement of the reasons for which it has been taken; and a copy of the decision is to be served on the applicant.

### *Development orders*

#### **Development orders**

**32.—**(1) The Department must by order (in this Act referred to as a “development order”) provide for the grant of planning permission.

(2) A development order may either—

- (a) itself grant planning permission for development specified in the order or for development of any class so specified; or
- (b) in respect of development for which planning permission is not granted by the order itself, provide for the grant of planning permission by a council (or, in the cases provided for elsewhere in this Act, the Department) on an application made to the council or, as the case may be, the Department, in accordance with the order.

(3) A development order may be made either—

- (a) as a general order applicable, except so far as the order otherwise provides, to all land, but which may make different provision with respect to different descriptions of land; or
- (b) as a special order applicable only to such land or descriptions of land as may be specified in the order.

(4) Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.

(5) Without prejudice to the generality of subsection (4), where planning permission is granted by a development order for development of a specified class, the order may enable a council or the Department to direct that the permission shall not apply either in relation to development in a particular area or in relation to any particular development.

(6) Any provision of a development order whereby permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of other references in this Act to limitations) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that provision on more than that number of days in that period.

(7) For the purpose of enabling development to be carried out in accordance with planning permission, or otherwise for the purpose of promoting proper development in accordance with a local development plan, a development order may direct that any statutory provision in relation to any development specified under the order—

- (a) shall not apply to any development specified in the order; or
- (b) shall apply to it subject to such modifications as may be so specified.

#### *Simplified planning zone schemes*

### **Simplified planning zones**

**33.—**(1) A simplified planning zone is an area in respect of which a simplified planning zone scheme is in force.

(2) The adoption or approval of a simplified planning zone scheme has effect to grant in relation to the zone, or any part of it specified in the scheme, planning permission for development specified in the scheme or for development of any class so specified.

(3) Planning permission under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme.

(4) A simplified planning zone scheme shall consist of a map and a written statement, and such diagrams, illustrations and descriptive matter as the council for the district within which the zone is located thinks appropriate for explaining or illustrating the provisions of the scheme, and must specify—

- (a) the development or classes of development permitted by the scheme;
- (b) the land in relation to which permission is granted; and
- (c) any conditions, limitations or exceptions subject to which it is granted;

and must contain such other matters as may be prescribed.

### **Making and alteration of simplified planning zone schemes**

**34.—**(1) A council may at any time make a simplified planning zone scheme in respect of any area within its district.

- (2) A council may at any time alter—
- (a) a simplified planning zone scheme adopted by it; or
  - (b) with the consent of the Department, a simplified planning zone scheme approved by the Department.
- (3) In exercising its functions under subsection (1) or (2), the council must take account of—
- (a) the regional development strategy;
  - (b) any policy or advice contained in guidance issued by the Department;
  - (c) such other matters as the Department may prescribe or, in a particular case, direct.
- (4) Schedule 1 has effect with respect to the making and alteration of simplified planning zone schemes and other related matters.

**Simplified planning zone schemes: conditions and limitations on planning permission**

**35.—**(1) The conditions and limitations on planning permission which may be specified in a simplified planning zone scheme may include—

- (a) conditions or limitations in respect of all development permitted by the scheme or in respect of particular descriptions of development so permitted; and
  - (b) conditions or limitations requiring the consent, agreement or approval of the council in relation to particular descriptions of permitted development;
- and different conditions or limitations may be specified for different cases or classes of case.

(2) Nothing in a simplified planning zone scheme shall affect the right of any person—

- (a) to do anything not amounting to development; or
  - (b) to carry out development for which planning permission is not required or for which permission has been granted otherwise than by the scheme;
- and no limitation or restriction subject to which permission has been granted otherwise than under the scheme shall affect the right of any person to carry out development for which permission has been granted under the scheme.

**Duration of simplified planning zone scheme**

**36.—**(1) A simplified planning zone scheme shall take effect on the date of its adoption or approval and shall cease to have effect at the end of the period of 10 years beginning with that date.

(2) Upon the scheme's ceasing to have effect, planning permission under the scheme shall also cease to have effect except in a case where the development authorised by it has been begun.

(3) The provisions of section 64(2) to (6) and sections 65 and 66 apply to planning permission under a simplified planning zone scheme where development has been begun but not completed by the time the area ceases to be a simplified planning zone.

(4) The provisions of section 63(2) apply in determining for the purposes of this section when development shall be taken to be begun.

### **Alteration of simplified planning zone scheme**

**37.—**(1) The adoption of alterations to a simplified planning zone scheme has effect as follows.

(2) The adoption of alterations providing for the inclusion of land in the simplified planning zone has effect to grant in relation to that land or such part of it as is specified in the scheme planning permission for development so specified or of any class so specified.

(3) The adoption of alterations providing for the grant of planning permission has effect to grant such permission in relation to the simplified planning zone, or such part of it as is specified in the scheme, for development so specified or development of any class so specified.

(4) The adoption of alterations providing for the withdrawal or relaxation of conditions, limitations or restrictions to which planning permission under the scheme is subject has effect to withdraw or relax the conditions, limitations or restrictions forthwith.

(5) The adoption of alterations providing for—

- (a) the exclusion of land from the simplified planning zone;
- (b) the withdrawal of planning permission; or
- (c) the imposition of new or more stringent conditions, limitations or restrictions to which planning permission under the scheme is subject,

has effect to withdraw permission, or to impose the conditions, limitations or restrictions, with effect from the end of the period of 12 months beginning with the date of the adoption.

(6) The adoption of alterations to a scheme does not affect planning permission under the scheme in any case where the development authorised by it has been begun before the adoption of alterations has effect; and the provisions of section 63(2) apply in determining for the purposes of this subsection when development shall be taken to be begun.

(7) This section applies to the approval of alterations to a simplified planning zone by the Department as it applies to the adoption of such alterations by a council.

### **Exclusion of certain descriptions of land or development**

**38.—**(1) The following descriptions of land may not be included in a simplified planning zone—

- (a) land in a conservation area;
- (b) land in an area which is—
  - (i) designated as a National Park under Article 12 of the [Nature Conservation and Amenity Lands \(Northern Ireland\) Order 1985 \(NI 1\)](#);
  - (ii) designated as an area of outstanding natural beauty under Article 14 of that Order;
  - (iii) declared to be an area of special scientific interest under Article 28 of the [Environment \(Northern Ireland\) Order 2002 \(NI 7\)](#);
- (c) land declared to be a national nature reserve under Article 18 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
- (d) land of such other description as may be prescribed.

(2) Where land included in a simplified planning zone becomes land of such a description, subsection (1) does not have effect to exclude it from the zone.

(3) The Department may by order provide that no simplified planning zone scheme shall have effect to grant planning permission—

- (a) in relation to an area of land specified in the order or to areas of land of a description so specified; or
- (b) for development of a description specified in the order.

(4) An order under subsection (3) has effect to withdraw such planning permission under a simplified planning zone scheme already in force with effect from the date on which the order comes into force, except in a case where the development authorised by the permission has been begun before that date; and the provisions of section 63(2) apply in determining for the purposes of this subsection when development shall be taken to be begun.

### *Grant of planning permission in enterprise zones*

### **Grant of planning permission in enterprise zones**

**39.—**(1) An order designating an enterprise zone under the 1981 Order shall (without more) have effect on the effective date to grant planning permission

for development specified in the scheme or for development of any class so specified.

(2) The adoption of a modified scheme under Article 4 of the 1981 Order (as applied by Article 10(2) of that Order) shall (without more) have effect on the effective date of modification to grant planning permission for development specified in the modified scheme or for development of any class so specified.

(3) Planning permission granted by virtue of this section shall be subject to such conditions or limitations as may be specified in the scheme or modified scheme or (if none are specified) unconditional.

(4) Where planning permission is so granted for any development or class of development, the Department may direct that the permission shall not apply in relation to—

- (a) a specified development; or
- (b) a specified class of development; or
- (c) a specified class of development in a specified area within the enterprise zone.

(5) If the scheme or the modified scheme specifies matters, in relation to any development it permits, which will require approval by the Department, the permission shall have effect accordingly.

(6) The Department may by regulations make provision—

- (a) as to the procedure for giving a direction under subsection (4);
- (b) as to the method and procedure relating to the approval of matters specified in a scheme or modified scheme as mentioned in subsection (5),

and such regulations may modify any provision of this Act other than this section.

(7) Notwithstanding subsections (1) to (6), planning permission may be granted under any other provision of this Part in relation to land in an enterprise zone (whether the permission is granted in pursuance of an application made under this Part or by a development order).

(8) Modifications to a scheme do not affect planning permission under the scheme in any case where the development authorised by it has been begun before the effective date of modification.

(9) Upon an area ceasing to be an enterprise zone planning permission under the scheme shall cease to have effect except in a case where the development authorised by it has been begun.

(10) Section 64(2) to (6) and sections 65 and 66 shall apply to planning permission under the scheme where development has been begun but not completed by the time the area ceases to be an enterprise zone.

(11) Section 63(2) shall apply in determining for the purposes of this section when development shall be taken to be begun.

(12) Nothing in this section prejudices the right of any person to carry out development apart from this section.

(13) In this section “the 1981 Order” means the [Enterprise Zones \(Northern Ireland\) Order 1981 \(NI 15\)](#) and other expressions used in this section and in that Order have the same meaning in this section as in that Order.

### *Planning applications*

#### **Form and content of applications**

**40.**—(1) Any application for planning permission—

- (a) must be made in such form and in such manner as may be specified by a development order;
- (b) must include such particulars, and be verified by such evidence, as may be required by a development order or by any directions given by a council or the Department under such an order.

(2) A direction under subsection (1)(b) must not be inconsistent with the development order.

(3) A development order must require an application for planning permission of such description as is specified in the order to be accompanied by such of the following as is so specified—

- (a) a statement about the design principles and concepts that have been applied to the development;
- (b) a statement about how issues relating to access to the development have been dealt with.

(4) The form and content of a statement mentioned in subsection (3) is such as is required by the development order.

(5) Subsection (1) shall apply to applications to a council or the Department for any consent, agreement or approval of the council or, as the case may be, the Department required by a condition imposed on a grant of planning permission as that subsection applies to applications for planning permission.

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

**41.**—(1) A development order may make provision requiring notice to be given of any application for planning permission and provide for publicising such applications and for the form, content and service of such notices.

(2) A development order may require an applicant for planning permission to provide evidence that any requirements of the order have been satisfied.

(3) An application for planning permission must not be entertained by a council or the Department unless any requirements imposed by virtue of this section have been satisfied.

### **Notification of applications to certain persons**

**42.**—(1) Subject to subsection (2), a council or, as the case may be, the Department must not entertain an application for planning permission in relation to any land (in this section and in section 43 referred to as “the designated land”) unless it is accompanied by one or other of the following certificates, that is to say—

- (a) a certificate stating that the application is made by or on behalf of a person who at the date of the application is in the actual possession of all the designated land, being a person entitled to one of the following estates in that land, namely—
  - (i) a legal or equitable fee simple absolute, a legal or equitable fee tail or a legal or equitable life estate;
  - (ii) a tenancy of which not less than 40 years of the term thereof remain unexpired;
- (b) a certificate stating that the application is made by or on behalf of the trustees of a trust or settlement which affects all the designated land and that, at the date of the application—
  - (i) a beneficiary under the trust or settlement is in the actual possession of the designated land; and
  - (ii) no person other than a beneficiary under the trust or settlement is entitled to enter into the actual possession of the designated land within a period of 40 years;
- (c) a certificate stating that the requisite notice of the application has been given by or on behalf of the applicant to each person who at the beginning of the period of 21 days ending with the date of the application, in relation to the designated land or any part thereof, fell into any of the following classes, namely—
  - (i) that that person was such a person as is described in paragraph (a) or (b);
  - (ii) that (not being such a person as is described in paragraph (a) or (b)) that person was in the actual possession of the designated land;
  - (iii) that (not being a person falling under sub-paragraph (i) or (ii)) that person was entitled to enter into the actual possession of the designated land within a period of 40 years;
- (d) a certificate stating—



- (i) that the applicant is unable to issue a certificate in accordance with paragraph (a) or (b); and
- (ii) that the applicant has made due inquiries and is of the opinion, for the reasons specified in the certificate, that he or she is unable to issue a certificate which would satisfy the requirements of paragraph (c); and
- (iii) that the applicant has given the requisite notice of the application to any person who, at the beginning of the period of 21 days ending with the date of the application, was in the actual possession of any part of the designated land.

(2) Subsection (1) does not apply to an application for planning permission made—

- (a) by the Northern Ireland Housing Executive in pursuance of a redevelopment scheme approved by the Department for Social Development or proposed by the Executive;
- (b) by an electricity undertaker to place an electricity line above or below ground across any land;
- (c) by a gas undertaker to lay pipes for the conveyance or supply of gas;
- (d) by a water or sewerage undertaker to lay a main, sewer or pipe for the purposes of its functions under the [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(NI 21\)](#).

(3) A certificate for the purposes of paragraph (c) or (d) of subsection (1) shall set out the names and postal addresses of the persons to whom the requisite notice was given in accordance with that paragraph and the date of service of the notice.

(4) Where an application for planning permission is accompanied by such a certificate as is mentioned in subsection (1)(c) or (d), the council or, as the case may be, the Department, must not determine the application before the end of the period of 14 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate.

(5) Where a tenancy subsists in any land, and—

- (a) it is necessary, for the purposes of this section, to determine whether a person is entitled to enter into the actual possession of that land; and
- (b) by reason of any option or other contractual right with respect to the determination, renewal or continuance of the tenancy the date of expiry of the tenancy is not ascertainable with certainty;

that date shall be taken to be such as appears reasonable and probable having regard to the interests of the party by whom the option is exercisable, or in whose favour the right operates, and to any other material consideration.

(6) If any person—

- (a) issues a certificate which purports to comply with the requirements of this section and which contains a statement which that person knows to be false or misleading in a material particular; or
- (b) recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular;

that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Any certificate issued for the purposes of this section shall be in such form as may be specified in a development order; and any reference in this section to the requisite notice is a reference to a notice in the form so specified.

### **Notice requiring planning application to be made**

**43.—**(1) Where it appears to a council that development has been carried out—

- (a) without the grant of the planning permission required in that behalf in accordance with this Part; or
- (b) without the grant of any approval of the council required in that behalf under a development order;

the council may issue a notice under this section requiring the making of an application for such planning permission or approval to the council within 28 days from the service of the notice.

(2) A notice under this section may be issued only within the period of 5 years from the date on which the development to which it relates was begun, and the provisions of section 63(2) apply in determining for the purpose of this section when development shall be taken to be begun.

(3) A notice under this section must specify the matters alleged to constitute the development to which the notice relates.

(4) A copy of a notice under this section must be served on the owner and on the occupier of the land to which it relates.

(5) Where a copy of a notice under this section has been served on any person referred to in subsection (4), then if the application referred to in the notice is not made to the council within the period allowed for compliance with the notice, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) If a person against whom proceedings are brought under subsection (5)—

- (a) was, at the time when the copy of the notice under this section was served on that person, the owner of the land to which the notice relates; but
- (b) has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of that land,

that person shall, upon duly making a complaint and on giving to the prosecution not less than 3 days' notice of his or her intention, be entitled to have the person who then became the owner of the land (in subsection (7) referred to as the "subsequent owner") brought before the court in the proceedings.

(7) If after it has been proved, in a case to which subsection (6) applies, that the application referred to in the notice under this section has not been made within the period allowed for compliance with the notice, the original defendant proves that the failure to make that application was attributable, in whole or in part, to the default of the subsequent owner—

- (a) the subsequent owner may be convicted of the offence; and
- (b) the original defendant, if that person further proves that all reasonable steps were taken to secure compliance with the notice, shall be acquitted of the offence.

(8) If, after a person has been convicted under subsections (5) to (7), the application referred to in the notice under this section is not made to the council, that person shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day following the first conviction on which the offence continues.

(9) The council may, at any time before the end of the period allowed for compliance with a notice under this section, withdraw the notice.

(10) If it does so the council must as soon as is reasonably possible give notice of the withdrawal to every person who was served with a copy of the notice.

(11) Any reference in this section and section 44 to the period allowed for compliance with a notice under this section is a reference to the period mentioned in subsection (1) or such extended period as may be allowed by the council for compliance with the notice.

(12) For the purposes of this section an application to the council for any planning permission or approval shall not be taken to be made unless it is accompanied by the fee prescribed under section 223 in relation to that application.

### **Appeal against notice under section 43**

**44.—**(1) A person on whom a copy of a notice has been served under section 43 may, at any time before the end of the period allowed for compliance with that notice, appeal to the planning appeals commission against the notice.

(2) An appeal may be brought on any of the following grounds—

- (a) that the matters alleged in the notice do not constitute development;
- (b) that the development alleged in the notice has not taken place;
- (c) that the period of 5 years referred to in section 43(2) had elapsed at the date when the notice was issued.

(3) An appeal under this section must be made by notice in writing to the planning appeals commission and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

(4) Before determining an appeal under this section, the planning appeals commission must, if either the appellant or the council so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(5) Where an appeal is brought under this section the notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(6) On an appeal under this section the planning appeals commission—

- (a) must quash the notice, vary the terms of the notice or uphold the notice;
- (b) may correct any informality, defect or error in the notice, or vary its terms, if it is satisfied that the correction or variation can be made without injustice to the appellant or to the council.

(7) The validity of a notice under section 43 shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

#### *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—

- (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).

**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,
- (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.

**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.

**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.

(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.

#### **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.

**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.

**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).

**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”.

**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.

(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.

### **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—

- (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.

### **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—

- (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.

**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 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.

### **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.

### *Appeals*

### **Appeals**

**58.—**(1) Where an application is made to a council—

- (a) for planning permission to develop land; or
- (b) for any consent, agreement or approval of the council required by a condition imposed on a grant of planning permission; or
- (c) for any approval of the council required under a development order;

then if that permission, consent, agreement or approval is refused or is granted subject to conditions, the applicant may by notice in writing appeal to the planning appeals commission.

(2) Subsection (1) shall not apply to any application referred to the Department under section 29.

(3) Any notice under this section must be served on the planning appeals commission within 4 months from the date of notification of the decision to which it relates or such other period as may be specified by development order.

(4) Where an appeal is brought under this section from a decision of a council, the planning appeals commission, subject to subsections (5) to (7), may allow or dismiss the appeal or may reverse or vary any part of the decision whether the appeal relates to that part thereof or not and may deal with the application as if it had been made to it in the first instance.

(5) Before determining an appeal under this section, the planning appeals commission must, if either the applicant or the council so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(6) If at any time before or during the determination of an appeal under this section it appears to the planning appeals commission that the appellant is responsible for undue delay in the progress of the appeal, it 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.

(7) Subject to subsection (5), sections 41, 42, 45, 52, 53, 54 and 55 shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this section as they apply to an application for planning permission.

#### **Matters which may be raised in an appeal under section 58**

**59.—**(1) In an appeal under section 58, a party to the proceedings is not to raise any matter which was not before the council or, as the case may be, the Department at the time the decision appealed against was made unless that party can demonstrate to the satisfaction of the planning appeals commission—

- (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 local development plan, or
- (b) any other material consideration.

#### **Appeal against failure to take planning decision**

**60.** Where any such application as is mentioned in section 58(1) is made to a council, then unless within such period as may be specified by a development order, or within such extended period as may be agreed upon in writing between the applicant and the council, the council either—

- (a) gives notice to the applicant of its decision on the application; or
- (b) gives notice to the applicant that the application is one to which section 29 applies; or
- (c) gives notice to the applicant that it has exercised its power under section 46 or 48 to decline to determine the application,

section 58 shall apply in relation to the application—

- (i) as if the permission, consent, agreement or approval to which it relates had been refused by the council; and

- (ii) as if notification of the council's decision had been received by the applicant at the end of the period so specified, or at the end of the said extended period, as the case may be.

### *Duration of planning permission*

#### **Duration of planning permission**

**61.**—(1) Subject to this section, every planning permission granted or deemed to be granted shall be granted or, as the case may be, deemed to be granted subject to the condition that the development to which it relates must be begun within—

- (a) 5 years of the date on which the permission is granted; or
- (b) such other period (whether longer or shorter) as the authority concerned with the terms of the planning permission considers appropriate having regard to the provisions of the local development plan and to any other material considerations.

(2) If planning permission is granted without the condition required by subsection (1), it shall be deemed to have been granted subject to the condition that the development to which it relates must be begun within 5 years of the date of the grant.

(3) Nothing in subsections (1) and (2) applies—

- (a) to any outline planning permission;
- (b) to any planning permission granted by a development order;
- (c) to any planning permission granted for a limited period;
- (d) to any planning permission granted for development carried out before the grant of that permission;
- (e) to any planning permission granted by an enterprise zone scheme; or
- (f) to any planning permission granted by a simplified planning zone scheme.

#### **Duration of outline planning permission**

**62.**—(1) In this section and in section 61 “outline planning permission” means planning permission granted in accordance with the provisions of a development order, conditional on the subsequent approval by the council or, as the case may be, the Department of the particulars of the proposed development (in this section referred to as “reserved matters”).

(2) Subject to the following provisions of this section, where outline planning permission is granted for development consisting of or including the carrying out of building or other operations it must be granted subject to conditions to the following effect—

- (a) that in the case of any reserved matter application for approval must be made within 3 years of the date of the grant of outline planning permission; and
- (b) that the development to which the permission relates must be begun by whichever is the later of the following dates—
  - (i) the expiration of 5 years from the date of the grant of outline planning permission; or
  - (ii) the expiration of 2 years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- (3) If outline planning permission is granted without the conditions required by subsection (2), it shall be deemed to have been granted subject to those conditions.
- (4) The authority concerned with the terms of an outline planning permission may, in applying subsection (2), substitute for the periods of 3 years, 5 years or 2 years referred to in that subsection, such other periods respectively (whether longer or shorter) as it considers appropriate.
- (5) It may, in applying subsection (2), specify separate periods under subsection (2)(a) in relation to separate parts of the development to which the planning permission relates; and if it does so, the condition required by subsection (2)(b) shall then be framed correspondingly by reference to those parts, instead of by reference to the development as a whole.
- (6) In considering whether to exercise its powers under subsections (4) and (5), the authority must have regard to the provisions of the local development plan and to any other material consideration.

### **Provisions supplementary to sections 61 and 62**

- 63.—**(1) The authority referred to in section 61(1)(b) or 62 is—
- (a) the council in the case of planning permission granted by it;
  - (b) the Department, in the case of planning permission granted by it;
  - (c) in the case of planning permission granted under section 58, 60 or 145, the planning appeals commission;
  - (d) in the case of planning permission deemed to be granted under paragraph 3(1) of Schedule 8 to the [Electricity \(Northern Ireland\) Order 1992 \(NI 1\)](#) (consents under Articles 39 and 40 of that Order), the Department of Enterprise, Trade and Investment.
- (2) For the purposes of sections 61 and 62, development shall be taken to be begun on the earliest date on which any of the following operations comprised in the development begins to be carried out—



- (a) where the development consists of or includes the erection of a building, any work of construction in the course of the erection of the building;
- (b) where the development consists of or includes alterations to a building, any work involved in the alterations;
- (c) where the development consists of or includes a change of use of any building or other land, that change of use;
- (d) where the development consists of or includes mining operations, any of those operations.

(3) For the purposes of section 62(2), a reserved matter shall be treated as finally approved when an application for approval is granted, or, where on an appeal under section 58, the planning appeals commission grants the approval, on the date of the determination of the appeal.

(4) Where a council grants planning permission the fact that any of the conditions of the permission are required by this Act to be imposed or are deemed by this Act to be imposed, shall not prevent the conditions being the subject of an appeal under section 58 against the decision of the council.

(5) Where a planning permission (whether outline or other) has conditions attached to it by or under section 61 or 62—

- (a) development commenced and carried out after the date by which the conditions of the permission require it to be commenced shall be treated as not authorised by the permission; and
- (b) an application for approval of a reserved matter, if it is made after the date by which the conditions require it to be made, shall be treated as not made in accordance with the terms of the permission.

#### **Termination of planning permission by reference to time limit**

**64.—**(1) Subsections (2) to (6) shall have effect where by virtue of section 61 or 62, a planning permission is subject to a condition that the development to which the permission relates must be begun before the expiration of a particular period and that development has been begun within that period but the period has elapsed without the development having been completed.

(2) If the council is of the opinion that the development will not be completed within a reasonable period, it may serve a notice (“a completion notice”) stating that the planning permission will cease to have effect at the expiration of a further period specified in the notice.

(3) The period so specified must not be less than 12 months after the notice takes effect.

(4) A completion notice must be served—

- (a) on the owner of the land,
- (b) on the occupier of the land, and

(c) on any other person who in the opinion of the council will be affected by the notice.

(5) The council may withdraw a completion notice at any time before the expiration of the period specified in it as the period at the expiration of which the planning permission is to cease to have effect.

(6) If it does so it must immediately give notice of the withdrawal to every person who was served with the completion notice.

### **Effect of completion notice**

**65.—**(1) A completion notice shall not take effect unless and until it is confirmed by the Department.

(2) In confirming a completion notice the Department may substitute a longer period for that specified in the notice as the period at the expiration of which the planning permission is to cease to have effect.

(3) If, within such period as may be specified in a completion notice (which shall not be less than 28 days from its service) any person on whom the notice is served so requires, the Department, before confirming the notice, must give that person and the council an opportunity of appearing before and being heard by the planning appeals commission.

(4) If a completion notice takes effect, the planning permission referred to in it shall become invalid at the expiration of the period specified in the notice (whether the original period specified under section 64(1) or a longer period substituted by the Department under subsection (2)).

(5) Subsection (4) shall not affect any permission so far as development carried out under it before the end of the period mentioned in that subsection is concerned.

### **Power of Department to serve completion notices**

**66.—**(1) If it appears to the Department to be expedient that a completion notice should be served in respect of any land, the Department may itself serve such a notice.

(2) A completion notice served by the Department shall have the same effect as if it had been served by the appropriate council.

(3) The Department shall not serve such a notice without consulting the appropriate council.

### **Power to make non-material changes to planning permission**

**67.—**(1) A council may make a change to any planning permission relating to land within its district if it is satisfied that the change is not material.

(2) In deciding whether a change is material, a council must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.

(3) The power conferred by subsection (1) includes power—

- (a) to impose new conditions;
- (b) to remove or alter existing conditions.

(4) The power conferred by subsection (1) may be exercised only on an application made by or on behalf of a person with an estate in the land to which the planning permission relates.

(5) An application under subsection (4) must be made in the form and manner specified by a development order.

(6) Subsection (7) applies in relation to an application under subsection (4) made by or on behalf of a person with an estate in some, but not all, of the land to which the planning permission relates.

(7) The application may be made only in respect of so much of the planning permission as affects the land in which the person has an estate.

(8) A council must comply with such requirements as may be specified by development order as to consultation and publicity in relation to the exercise of the power conferred by subsection (1).

### **Revocation or modification of planning permission by council**

**68.—**(1) If it appears to a council, having regard to the local development plan and to any other material considerations, that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part or on an appeal under section 143, the council may, subject to subsections (2) to (4), by order revoke or modify the permission to such extent as (having regard to those matters) it considers expedient.

(2) The power conferred by this section to revoke or modify permission to develop land may be exercised—

- (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
- (b) where the permission relates to a change of use of any land, at any time before the change has taken place;

except that the revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

(3) An order made under this section in respect of mining operations by surface working shall not prevent the continuation of those operations on any land in use for the purpose of those operations at the date on which the order comes into operation.

(4) Where the council makes an order under this section it must serve a notice on the owner and occupier of the land affected and on any other person who in its opinion would be affected by the order.

**Aftercare conditions imposed on revocation or modification of mineral planning permission**

**69.**—(1) An order under section 68 may in relation to planning permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials, include such aftercare condition as the council thinks fit if—

- (a) it also includes a restoration condition; or
- (b) a restoration condition has previously been imposed in relation to the land by virtue of any provision of this Act.

(2) Subsections (3) to (12) of section 53 shall apply in relation to an aftercare condition so imposed as they apply in relation to such a condition imposed under section 53.

**Procedure for section 68 orders: opposed cases**

**70.**—(1) Except as provided in section 71, an order under section 68 shall not take effect unless it is confirmed by the Department.

(2) Where a council submits such an order to the Department for confirmation, it must serve notice on—

- (a) the owner of the land affected,
- (b) the occupier of the land affected, and
- (c) any other person who, in the opinion of the council, will be affected by the order.

(3) The notice must specify the period within which any person on whom it is served may require the Department to give that person an opportunity of appearing before, and being heard by, the planning appeals commission.

(4) If within that period such a person so requires, before the Department confirms the order it must give such an opportunity both to that person and to the council.

(5) The period referred to in subsection (3) must not be less than 28 days from the service of the notice.

(6) The Department may confirm an order submitted to it under this section either without modification or subject to such modifications as the Department considers expedient.

**Procedure for section 68 orders: unopposed cases**

**71.—**(1) This section applies where—

- (a) a council has made an order under section 68; and
- (b) the owner and occupier of the land and all persons who in the opinion of the council will be affected by the order have notified the council in writing that they do not object to the order.

(2) Where this section applies, instead of submitting the order to the Department for confirmation the council must advertise in the prescribed manner the fact that the order has been made, and the advertisement must specify—

- (a) the period within which persons affected by the order may give notice to the Department that they wish for an opportunity of appearing before, and being heard by, the planning appeals commission; and
- (b) the period at the expiration of which, if no such notice is given to the Department, the order may take effect by virtue of this section without being confirmed by the Department.

(3) The council must also serve notice to the same effect on the persons mentioned in subsection (1)(b).

(4) The period referred to in subsection (2)(a) must not be less than 28 days from the date the advertisement first appears.

(5) The period referred to in subsection (2)(b) must not be less than 14 days from the expiration of the period referred to in subsection (2)(a).

(6) The council must send a copy of any advertisement published under subsection (2) to the Department not more than 3 days after the publication.

(7) If—

- (a) no person claiming to be affected by the order has given notice to the Department under subsection (2)(a) within the period referred to in that subsection, and
- (b) the Department has not directed within that period that the order be submitted to it for confirmation,

the order shall take effect at the expiry of the period referred to in subsection (2)(b), without being confirmed by the Department as required by section 70(1).

(8) This section does not apply—

- (a) to an order revoking or modifying a planning permission granted by the Department under this Part;
- (b) to an order revoking or modifying a planning permission granted by the planning appeals commission under Part 5;
- (c) to an order modifying any conditions to which a planning permission is subject by virtue of section 61 or 62.

**Revocation or modification of planning permission by the Department**

**72.—**(1) If it appears to the Department that it is expedient that an order should be made under section 68, it may make such an order.

(2) Such an order which is made by the Department shall have the same effect as if it had been made by the relevant council and confirmed by the Department.

(3) The Department must not make such an order without consulting the relevant council.

(4) Where the Department proposes to make such an order it must serve notice on the relevant council.

(5) A notice served under subsection (4) must specify the period (which must not be less than 28 days from the date of its service) within which the council may require an opportunity of appearing before and being heard by the planning appeals commission.

(6) If within that period the council so requires, before the Department makes the order it must give the council such an opportunity.

(7) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by a council of any order under section 68 and its confirmation by the Department shall have effect, subject to any necessary modifications, in relation to any proposal by the Department to make such an order and its making by the Department.

(8) Section 69 applies to orders made by the Department under this section as that section applies to orders made by a council under section 68.

(9) In this section, “relevant council” means the council for the district in which the land to which the order relates is situated.

**Orders requiring discontinuance of use or alteration or removal of buildings or works**

**73.—**(1) If it appears to a council that it is expedient in the interests of the proper planning of an area within its district (including the interests of amenity), regard being had to the local development plan and to any other material considerations—

(a) that any use of land should be discontinued, or that any conditions should be imposed on the continuance of a use of land; or

(b) that any buildings or works should be altered or removed;

the council may by order require the discontinuance of that use within such time as may be specified in the order, or impose such conditions as may be so specified on the continuance thereof, or require such steps as may be so specified to be taken within such time as may be so specified for the alteration or removal of the buildings or works, as the case may be.

(2) An order under this section may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be specified in the order; and the provisions of section 68 shall apply in relation to any planning permission granted by an order under this section as they apply in relation to planning permission granted by the council on an application made under this Part.

(3) The planning permission which may be granted by an order under this section includes planning permission, subject to such conditions as may be specified in the order, for development carried out before the date on which the order was submitted to the Department under section 74; and planning permission for such development may be granted so as to have effect from—

- (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.

(4) Where the requirements of an order under this section will involve the displacement of persons residing in any premises, it shall be the duty of the Northern Ireland Housing Executive in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacement.

(5) Subject to section 74(8), in the case of planning permission granted by an order under this section, the authority referred to in sections 61(1)(b) and 62 is the council making the order.

### **Confirmation by Department of section 73 orders**

**74.—**(1) An order under section 73 shall not take effect unless it is confirmed by the Department, either without modification or subject to such modifications as the Department considers expedient.

(2) The power of the Department under this section to confirm an order subject to modifications includes power—

- (a) to modify any provision of the order granting planning permission, as mentioned in subsections (2) and (3) of section 73;
- (b) to include in the order any grant of planning permission which might have been included in the order as submitted to it.

(3) Where a council submits an order to the Department for its confirmation under this section, the council must serve notice—

- (a) on the owner of the land affected,
- (b) on the occupier of that land, and
- (c) on any other person who in the opinion of the council will be affected by the order.

(4) The notice must specify the period within which any person on whom it is served may require the Department to give that person an opportunity of appearing before, and being heard by, the planning appeals commission.

(5) If within that period such a person so requires, before the Department confirms the order, it must give such an opportunity both to that person and to the council.

(6) The period referred to in subsection (4) must not be less than 28 days from the service of the notice.

(7) Where an order under section 73 has been confirmed by the Department, the council must serve a copy of the order on the owner and occupier of the land to which the order relates.

(8) Where the Department exercises its powers under subsection (2) in confirming an order granting planning permission, the Department is the authority referred to in sections 61(1)(b) and 62(4).

#### **Power of Department to make section 73 orders**

**75.—**(1) If it appears to the Department that it is expedient that an order should be made under section 73, it may make such an order.

(2) Such an order made by the Department shall have the same effect as if it had been made by the relevant council and confirmed by the Department.

(3) The Department must not make such an order without consulting the relevant council.

(4) Where the Department proposes to make such an order it shall serve notice on the relevant council.

(5) The notice must specify the period within which the council may require an opportunity of appearing before and being heard by the planning appeals commission.

(6) If within that period the council so requires, before the Department makes the order it shall give the council such an opportunity.

(7) The period referred to in subsection (5) must not be less than 28 days from the date of the service of the notice.

(8) The provisions of this Part and of any regulations or order made under this Act with respect to the procedure to be followed in connection with the submission by a council of any order under section 73, its confirmation by the Department and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Department to make such an order, its making by the Department and the service of copies of it.

(9) In this section, “relevant council” means the council for the district in which the land to which the order relates is situated.



**Planning agreements**

**76.—**(1) Any person who has an estate in land may enter into an agreement with the relevant authority (referred to in this section and sections 77 and 78 as “a planning agreement”), enforceable to the extent mentioned in subsection (4)—

- (a) facilitating or 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;
- (d) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically; or
- (e) requiring a sum or sums to be paid to a Northern Ireland department on a specified date or dates or periodically.

(2) A planning agreement 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 agreement is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.

(3) Before entering into a planning agreement, the Department must consult with the appropriate council.

(4) Subject to subsection (5) a planning agreement is enforceable by the relevant authority—

- (a) against the person entering into the agreement; and
- (b) against any person deriving title from that person.

(5) The instrument by which a planning agreement is entered into may provide that a person shall not be bound by the agreement in respect of any period during which that person no longer has an estate in the land.

(6) A restriction or requirement imposed under a planning agreement is enforceable by injunction.

(7) Without prejudice to subsection (6), if there is a breach of a requirement in a planning agreement to carry out any operations in, on, under or over the land to which the agreement relates, the relevant authority may—

- (a) enter the land and carry out the operations; and

(b) recover from the person or persons against whom the agreement is enforceable any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(8) Before the relevant authority exercises its power under subsection (7)(a) it must give not less than 21 days' notice of its intention to do so to any person against whom the planning agreement is enforceable.

(9) Any person who wilfully obstructs a person acting in the exercise of a power under subsection (7)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) A planning agreement may not be entered into except by an instrument under seal which—

- (a) states that the agreement is a planning agreement for the purposes of this section;
- (b) identifies the land in which the person entering into the agreement has an estate; and
- (c) identifies the person entering into the agreement and states what that person's estate in the land is.

(11) If a person against whom an agreement is enforceable requests the relevant authority to supply that person with a copy of the agreement, it is the duty of the authority to do so free of charge.

(12) Any sum or sums required to be paid under a planning agreement and any expenses recoverable by the relevant authority under subsection (7)(b) shall, until recovered, be deemed to be charged on and payable out of the estate in the land in relation to which they have been incurred, of the person against whom the planning agreement is enforceable.

(13) The charge created by subsection (12) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the relevant authority by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the authority may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 (c. 41) on mortgagees by deed accordingly.

(14) In this section "specified" means specified in the instrument by which the planning agreement is entered into.

(15) In this section, and in sections 77 and 78, "relevant authority", in relation to a planning agreement proposed to be made in connection with an application for planning permission, means—

- (a) where the application has been made to a council, and the council has an estate in the land to which the proposed agreement relates, the Department;
- (b) where the application has been made to the Department, the Department;

- (c) in any other case, the council in whose district the land to which the application relates is situated.

### **Modification and discharge of planning agreements**

- 77.—(1) A planning agreement may not be modified or discharged except—
- (a) by agreement between the relevant authority and the person or persons against whom the agreement is enforceable; or
  - (b) in accordance with this section and section 78.
- (2) Before entering into an agreement falling within subsection (1)(a), the Department must consult with the appropriate council.
- (3) An agreement falling within subsection (1)(a) shall be contained in an instrument under seal.
- (4) A person against whom a planning agreement is enforceable may, at any time after the expiry of the relevant period, apply to the relevant authority for the agreement—
- (a) to have effect subject to such modifications as may be specified in the application; or
  - (b) to be discharged.
- (5) In subsection (4) “the relevant period” means—
- (a) such period as may be prescribed; or
  - (b) if no period is prescribed, the period of 5 years beginning with the date on which the agreement is entered into.
- (6) An application under subsection (4) for the modification of a planning agreement may not specify a modification imposing an obligation on any other person against whom the agreement is enforceable.
- (7) Where an application is made to the relevant authority under subsection (4), the authority may determine—
- (a) that the planning agreement shall continue to have effect without modification;
  - (b) if the agreement no longer serves a useful purpose, that it shall be discharged; or
  - (c) if the agreement 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.
- (8) The relevant authority must give notice of its determination to the applicant within such period as may be prescribed.
- (9) Where the relevant authority determines that a planning agreement shall have effect subject to modifications specified in the application, the agreement

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.

(10) Regulations may make provision with respect to—

- (a) the form and content of applications under subsection (4);
- (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 (7).

(11) Article 5 of the [Property \(Northern Ireland\) Order 1978 \(NI 4\)](#) (power of Lands Tribunal to modify or extinguish impediments) shall not apply to a planning agreement.

### **Appeals**

**78.**—(1) Where the relevant authority—

- (a) fails to give notice as mentioned in section 77(8); or
- (b) determines that a planning agreement shall continue to have effect without modifications;

the applicant may appeal to the planning appeals commission.

(2) For the purposes of an appeal under subsection (1)(a), it shall be assumed that the relevant authority has determined that the planning agreement 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 (7) to (10) of section 77 apply in relation to appeals to the planning appeals commission under this section as they apply in relation to applications to the relevant authority under that section.

(5) Before determining the appeal the planning appeals commission must, if either the applicant or the relevant authority so wishes, afford to each of them an opportunity of appearing before and being heard by the planning appeals commission.

(6) The determination of an appeal by the planning appeals commission under this section shall be final.

### *Land belonging to councils and development by councils*

### **Land belonging to councils and development by councils**

**79.**—(1) The provisions listed in subsection (2) shall apply in relation to—

- (a) land of interested councils; and

- (b) the development of any land by interested councils or by such councils jointly with any other persons,

subject to regulations made by virtue of this section.

- (2) The provisions are—

- (a) Part 3;
- (b) Part 4 (apart from the provisions of Chapters 1 and 2 of that Part); and
- (c) Part 5.

- (3) The regulations may, in relation to such land or such development—

- (a) provide for any of those provisions to apply subject to prescribed exceptions or modifications or not to apply;
- (b) make new provision as to any matter dealt with in any of those provisions.

- (4) Without prejudice to subsection (2), the regulations may provide—

- (a) for applications for planning permission to develop such land, or for such development, to be determined by the interested council or by the Department; and
- (b) for the procedure to be followed on such applications,

and, in the case of applications falling to be determined by an interested council, they may regulate the council's arrangements for the discharge of its functions, notwithstanding anything in section 47A of the Local Government Act (Northern Ireland) 1972 (c. 9).

- (5) The regulations must—

- (a) provide for any provision made by virtue of section 41, 42, 45(2) to (4) or by a development order, to apply to applications for planning permission to develop such land, or for such development, subject to prescribed exceptions or modifications, or
- (b) make corresponding provision to those provisions.

(6) In this section “interested council”, in relation to any land, means any council which exercises any functions of a council under this Act in relation to that land, and, for the purposes of this section, land is land of a council if the council has any estate in it.

(7) This section applies to any consent required in respect of any land as it applies to planning permission to develop land.