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STATUTORY INSTRUMENTS

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**1991 No. 1220**

**The Planning(Northern Ireland) Order 1991**

**PART IV**

**PLANNING CONTROL**

*Planning applications*

**Form and content of applications**

- 20.**—(1) Any application to the Department for planning permission—
- (a) shall be made in such manner as may be specified by a development order;
  - (b) shall include such particulars, and be verified by such evidence, as may be required by a development order or by any directions given by the Department thereunder.
- (2) Provision shall 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 the Department and in particular—
- (a) for requiring the Department before granting or refusing planning permission for any development to consult with the district council for the area in which the land is situated and with such authorities or persons as may be specified by the order;
  - (b) for requiring 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 his application has been dealt with.
- (3) Paragraphs (1) and (2)(b) shall apply to applications to the Department for any consent, agreement or approval of the Department required by a condition imposed on a grant of planning permission as they apply to applications for planning permission.

**Publication of notices of applications**

- 21.**—(1) Subject to paragraph (2), where an application for planning permission is made to the Department, the Department—
- (a) shall publish notice of the application in at least one newspaper circulating in the locality in which the land to which the application relates is situated; and
  - (b) shall not determine the application before the expiration of 14 days from the date on which notice of the application is first published in a newspaper in pursuance of sub-paragraph (a).
- (2) A development order may provide that paragraph (1) shall not apply to an application for planning permission for development of any class specified by the order.
- (3) Where an application for planning permission for development of a class specified under paragraph (2) is made to the Department, the Department shall not determine the application before the expiration of 21 days from the date on which it is received by the Department.

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

**22.**—(1) Subject to paragraph (2), the Department shall not entertain an application for planning permission in relation to any land (in this Article and in Article 23 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 he was such a person as is described in sub-paragraph (a) or (b);
  - (ii) that (not being such a person as is described in sub-paragraph (a) or (b)) he was in the actual possession of the designated land;
  - (iii) that (not being a person falling under head (i) or (ii)) he 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 sub-paragraph (a) or (b); and
  - (ii) that he has made due inquiries and is of the opinion, for the reasons specified in the certificate, that he is unable to issue a certificate which would satisfy the requirements of sub-paragraph (c); and
  - (iii) that he 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) Paragraph (1) shall 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 or proposed by the Executive;
- (b) by Northern Ireland Electricity to place an electricity line above or below ground across any land.

(3) A certificate for the purposes of sub-paragraph (c) or (d) of paragraph (1) shall set out the names and addresses of the persons to whom the requisite notice was given in accordance with that sub-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 paragraph (1)(c) or (d), the Department shall 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 Article, 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 Article and which contains a statement which he 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;

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

### **Notice requiring planning application**

- 23.—**(1) Where it appears to the Department 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 Department required in that behalf under a development order;

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

(2) A notice under this Article may be issued only within the period of four years from the date on which the development to which it relates was begun; and the provisions of Article 36(1) apply in determining for the purpose of this Article when development shall be taken to be begun.

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

(4) A copy of a notice under this Article shall 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 Article has been served on any person referred to in paragraph (4), then if the application referred to in the notice is not made to the Department 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 paragraph (5)—
- (a) was, at the time when the copy of the notice under this Article was served on him, 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, he shall, upon a complaint duly made by him and on giving to the prosecution not less than three days' notice of his intention, be entitled to

have the person who then became the owner of the land (in paragraph (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 paragraph (6) applies, that the application referred to in the notice under this Article 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 he further proves that he took all reasonable steps to secure compliance with the notice, shall be acquitted of the offence.

(8) If, after a person has been convicted under paragraphs (5) to (7), the application referred to in the notice under this Article is not made to the Department, he 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 his first conviction on which the offence continues.

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

(10) If it does so the Department shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.

(11) Any reference in this Article and Article 24 to the period allowed for compliance with a notice under this Article is a reference to the period mentioned in paragraph (1) or such extended period as may be allowed by the Department for compliance with the notice.

(12) For the purposes of this Article an application to the Department for any planning permission or approval shall not be taken to be made unless it is accompanied by the fee prescribed under Article 127 in relation to that application.

### **Appeal against notice under Article 23**

**24.**—(1) A person on whom a copy of a notice has been served under Article 23 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 four years referred to in Article 23(2) had elapsed at the date when the notice was issued.

(3) An appeal under this Article shall 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 Article, the planning appeals commission shall, if either the appellant or the Department 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 Article the notice shall be of no effect pending the final determination or the withdrawal of the appeal.

- (6) On an appeal under this Article the planning appeals commission—
  - (a) shall 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 Department.

(7) The validity of a notice under Article 23 shall not, except by way of an appeal under this Article, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.