2011 CHAPTER 25

Part 3

Planning control

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.

Commencement Information

I1 S. 61 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I2 S. 62 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I3 S. 63(1)(a)-(c)(2)-(5) in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I4 S. 64 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I5 S. 65 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I6 S. 66 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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).

Commencement Information

I7 S. 67 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I8 S. 68 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I9 S. 69 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I10 S. 70 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I11 S. 71 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I12 S. 72 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I13 S. 73 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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).

Commencement Information

I14 S. 74 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I15 S. 75 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I16 S. 76 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I17 S. 77 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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.

Commencement Information

I18 S. 78 in operation at 1.2.2015 for specified purposes by S.R. 2015/25, **art. 2**

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

Changes to legislation:
There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, Cross Heading: Duration of planning permission.