
STATUTORY INSTRUMENTS

1991 No. 1220

The Planning(Northern Ireland) Order 1991

PART IV

PLANNING CONTROL

Additional powers of control

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

39.—(1) If it appears to the Department that it is expedient in the interests of the proper planning of an area (including the interests of amenity), regard being had to the 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 Department 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 Article 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 Article 38 shall apply in relation to any planning permission granted by an order under this Article as they apply in relation to planning permission granted by the Department on an application made under this Part.

(3) The power conferred by paragraph (2) shall include power, by an order under this Article, to grant planning permission, subject to such conditions as may be specified in the order—

- (a) for the retention, on the land to which the order relates, of buildings or works constructed or carried out before the date on which the order was made; or
- (b) for the continuance of a use of that land instituted before that date;

and paragraph (3) of Article 29 shall apply to planning permission granted by virtue of this paragraph as it applies to planning permission granted in accordance with paragraph (2) of that Article.

(4) Before making an order under this Article, the Department shall serve 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; 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 thereof) any person on whom notice is served so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(5) Where the Department makes an order under this Article it shall serve a copy of the order on the owner and occupier of the land to which the order relates and on any other person who in its opinion would be affected by the order.

(6) Where the requirements of an order under this Article 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.

Agreements facilitating, regulating or restricting development or use of land

40.—(1) The Department may enter into an agreement with any person who has an estate in land for the purpose of facilitating, regulating or restricting the development or use of the land, either permanently or during such period as may be prescribed by the agreement.

(2) An agreement under this Article—

- (a) shall be contained in an instrument under seal;
- (b) may include provisions for securing the carrying out of works for the purpose mentioned in paragraph (1); and
- (c) may include such incidental and consequential provisions (including provisions of a financial character) as appear to the Department to be necessary or expedient for the purposes of the agreement.

(3) Where—

- (a) an agreement under this Article contains a covenant on the part of any person who has an estate in land;
- (b) the agreement defines the land to which the covenant relates, being land in which that person has an estate at the time the instrument containing the agreement is executed; and
- (c) the covenant is expressed to be one to which this Article applies, the covenant shall be enforceable (without any limit of time) against any person deriving title from the original covenantor in respect of his estate in any of the land defined as mentioned in subparagraph (b) and any person deriving title under him in respect of any lesser estate in that land as if that person had also been an original covenanting party in respect of the estate for the time being held by him.

(4) Without prejudice to any other method of enforcement of a covenant falling within paragraph (3), if there is a breach of the covenant in relation to any of the land to which the covenant relates a person authorised in writing by the Department may, subject to paragraph (5), enter on the land concerned and do anything which the covenant requires to be done or remedy anything which has been done and which the covenant required not to be done.

(5) Before the Department exercises its powers under paragraph (4) in relation to any land it shall give not less than 21 days notice in writing of its intention to do so to any person—

- (a) who has for the time being an estate in the land; and
- (b) against whom the covenant is enforceable (whether by virtue of paragraph (3) or otherwise).

(6) Where the Department exercises its powers under paragraph (4) in relation to the breach of a covenant, it may recover from any person against whom the covenant is enforceable (whether by virtue of paragraph (3) or otherwise) any expenses incurred by it in exercise of those powers and those expenses shall be a civil debt recoverable summarily.

(7) If a person against whom an agreement is enforceable by virtue of paragraph (3) requests the Department to supply him with a copy of the agreement, it shall be the duty of the Department to do so free of charge.

(8) Nothing in this Article or in any agreement made thereunder shall be construed—

- (a) as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by the Department under this Order so long as those powers are exercised in accordance with the provisions of the development plan; or
- (b) as requiring the exercise of any such powers otherwise than as mentioned in subparagraph (a)