
STATUTORY INSTRUMENTS

2003 No. 430

The Planning (Amendment) (Northern Ireland) Order 2003

Control over development

Demolition

18.—(1) In Article 11 of the principal Order (meaning of “development”) after paragraph (1) there is inserted—

“(1A) For the purposes of this Order “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.”.

(2) In paragraph (2) of that Article, after sub-paragraph (e) there is inserted—

“(f) the demolition of any description of building specified in a direction given by the Department.”.

Reversion to previous lawful use

19. Article 12 of the principal Order (development requiring planning permission) shall be renumbered as paragraph (1) of that Article and after that paragraph there is inserted—

“(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 paragraphs (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.”.

Power of Department to decline to determine applications

20.—(1) After Article 25 of the principal Order there is inserted—

“Power of Department to decline to determine applications

25A.—(1) The Department may decline to determine an application for planning permission for the development of any land if—

- (a) within the period of 2 years ending with the date on which the application is received—
 - (i) the Department has refused a similar application under Article 31; or
 - (ii) the planning appeals commission has dismissed an appeal against the refusal of a similar application; and
- (b) in the opinion of the Department there has been no significant change since the refusal or, as the case may be, dismissal mentioned in sub-paragraph (a) in the development plan, so far as material to the application, or in any other material considerations.

(2) For the purposes of this Article an application for planning permission for the development of any land shall only be taken to be similar to a later application if the development and the land to which the applications relate are in the opinion of the Department the same or substantially the same.

(3) The reference in paragraph (1)(a)(ii) to an appeal against the refusal of an application includes an appeal under Article 33 in respect of an application.”.

(2) In Article 33 of that Order (right to appeal where Department has failed to take a decision on an application) after “applies,” there is inserted—

“or

- (c) gives notice to him that it has exercised its power under Article 25A to decline to determine the application,”.

Assessment of environmental effects

21. After Article 25A of the principal Order (as inserted by Article 20 of this Order) there is inserted—

“Assessment of environmental effects

25B.—(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.”.

Dismissal of appeals in cases of undue delay

22. In Article 32 of the principal Order (appeals) after paragraph (5) there is inserted—

“(5A) If at any time before or during the determination of an appeal under this Article 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.”.

Planning agreements

23.—(1) For Article 40 of the principal Order (agreements facilitating, regulating or restricting development or use of land) there is substituted—

“Planning agreements

40.—(1) Any person who has an estate in land may enter into an agreement with the Department (referred to in this Article and Articles 40A and 40B as “a planning agreement”), enforceable to the extent mentioned in paragraph (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; or
- (d) requiring a sum or sums to be paid to the 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 paragraph (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 shall consult with the district council for the area in which the land which is the subject of the proposed agreement is situated.

(4) Subject to paragraph (5) a planning agreement is enforceable by the Department—

- (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 he 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 paragraph (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 Department 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 Department exercises its power under paragraph (7)(a) it shall 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 paragraph (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 Article;
- (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 his estate in the land is.

(11) If a person against whom an agreement is enforceable 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.

(12) Any sum or sums required to be paid under a planning agreement and any expenses recoverable by the Department under paragraph (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 paragraph (12) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the Department by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the Department 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 Article “specified” means specified in the instrument by which the planning agreement is entered into.

Modification and discharge of planning agreements

40A.—(1) A planning agreement may not be modified or discharged except—

- (a) by agreement between the Department and the person or persons against whom the agreement is enforceable; or
- (b) in accordance with this Article and Article 40B.

(2) Before entering into an agreement falling within paragraph (1)(a), the Department shall consult with the district council for the area in which the land which is the subject of the proposed agreement is situated.

(3) An agreement falling within paragraph (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 Department 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 paragraph (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 paragraph (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 Department under paragraph (4), the Department 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 Department shall give notice of its determination to the applicant within such period as may be prescribed.

(9) Where the Department 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 paragraph (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 paragraph (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

40B.—(1) Where the Department—

- (a) fails to give notice as mentioned in Article 40A(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 paragraph (1)(a), it shall be assumed that the Department has determined that the planning agreement shall continue to have effect without modification.

(3) An appeal under this Article shall be made by notice served within such period and in such manner as may be prescribed.

(4) Paragraphs (7) to (10) of Article 40A apply in relation to appeals to the planning appeals commission under this Article as they apply in relation to applications to the Department under that Article.

(5) Before determining the appeal the planning appeals commission shall, if either the applicant or the Department 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 Article shall be final.”

(2) In Schedule 11 to the Land Registration Act (Northern Ireland) 1970 (c. 18) (matters requiring to be registered in the Statutory Charges Register) in entry 27 after sub-paragraph (g) there is inserted—

“(gg) planning agreements under Article 40;”.