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## STATUTORY INSTRUMENTS

# 2006 No. 1252

## The Planning Reform (Northern Ireland) Order 2006

### PART II

#### PLANNING REFORM

PROSPECTIVE

#### Statement of community involvement

<sup>F13</sup>. . . . .

#### Textual Amendments

**F1** Arts. 3-20 repealed (1.4.2015 except for the repeal of art. 5) by [Planning Act \(Northern-Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 7](#) (with s. 211); S.R. 2015/49, art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159](#), art. 2)

PROSPECTIVE

#### Status of development plans

<sup>F14</sup>. . . . .

#### Textual Amendments

**F1** Arts. 3-20 repealed (1.4.2015 except for the repeal of art. 5) by [Planning Act \(Northern-Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 7](#) (with s. 211); S.R. 2015/49, art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159](#), art. 2)

VALID FROM 17/10/2006

#### Independent examination of development plans

**5.—(1)** For Article 7 of the principal Order (inquiries relating to development plans) substitute—

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**“Independent examination**

7.—(1) The Department may cause an independent examination to be carried out by the planning appeals commission for the purpose of considering objections to a development plan or to the alteration, repeal or replacement of a development plan.

(2) Any person who makes objections to a development plan or to the alteration, repeal or replacement of a development plan shall, if he so requests, be given the opportunity to appear before and be heard by the planning appeals commission.”

(2) In Article 8 of the principal Order (adoption of development plan by Department), in paragraph (1) for “a public local inquiry” substitute “ an independent examination ”.

(3) In Article 111 of the principal Order (procedure of planning appeals commission)—

(a) in paragraph (2), after “inquiry” wherever that word occurs, insert “ , independent examination ”;

(b) in paragraph (6)—

(i) for “an inquiry” substitute “ an inquiry or independent examination ”;

(ii) for “or inquiry” substitute “ , inquiry or independent examination ”.

PROSPECTIVE

**Sustainable development**

<sup>F1</sup>6. ....

**Textual Amendments**

**F1** Arts. 3-20 repealed (1.4.2015 except for the repeal of art. 5) by [Planning Act \(Northern-Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 7](#) (with s. 211); S.R. 2015/49, art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159](#), art. 2)

PROSPECTIVE

**Development to include certain internal operations**

<sup>F1</sup>7. ....

**Textual Amendments**

**F1** Arts. 3-20 repealed (1.4.2015 except for the repeal of art. 5) by [Planning Act \(Northern-Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 7](#) (with s. 211); S.R. 2015/49, art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159](#), art. 2)

PROSPECTIVE

## Statements of principles of design and accessibility

F18. ....

### Textual Amendments

- F1 Arts. 3-20 repealed (1.4.2015 except for the repeal of art. 5) by [Planning Act \(Northern-Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 7](#) (with s. 211); S.R. 2015/49, art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

VALID FROM 10/06/2006

## Power to decline to determine applications

9.—(1) For Article 25A of the principal Order (power of Department to decline to determine applications) substitute—

### “Power to decline to determine subsequent application

25A.—(1) The Department may decline to determine a relevant application if—

- (a) any of the conditions in paragraphs (2) to (4) is satisfied; and
- (b) the Department thinks there has been no significant change in the relevant considerations since the relevant event.

(2) The condition is that in the period of 2 years ending with the date on which the application mentioned in paragraph (1) is received the Department has refused a similar application under Article 31.

(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 Article 33 in respect of a similar application.

(4) The condition is that—

- (a) in that period the Department has refused more than one similar application; and
- (b) there has been no appeal to the planning appeals commission against any such refusal.

(5) A relevant application is an application for planning permission for the development of any land.

(6) The relevant considerations are—

- (a) the development plan so far as material to the application;
- (b) any other material considerations.

(7) The relevant event is—

- (a) for the purposes of paragraphs (2) and (4) the refusal of the similar application;
- (b) for the purposes of paragraph (3) the dismissal of the appeal.

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(8) 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 to decline to determine overlapping application**

**25AA.**—(1) The Department may decline to determine an application for planning permission for the development of any land which is made at a time when any of the conditions in paragraphs (2) to (4) applies in relation to a similar application.

(2) The condition is that a similar application is under consideration by the Department 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 in pursuance of Article 31; or

(b) the planning appeals commission on an appeal under Article 32 or 33,

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 Department;

(b) has been refused by the Department; or

(c) has not been determined by the Department within the determination period,

and the time within which an appeal could be made to the planning appeals commission under Article 32 or 33 has not expired.

(5) 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.

(6) 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 Department have agreed for the determination of the application.”.

(2) In Article 33(c) of the principal Order (appeal in default of planning decision), after “25A” insert “ or 25AA ”.

(3) After paragraph 4 of Schedule 1 to the principal Order (determination of applications for listed building consent) insert—

*“Power to decline to determine application*

#### **Power to decline to determine subsequent application**

**4A.**—(1) The Department may decline to determine an application for a relevant consent if—

(a) one or more of the conditions in sub-paragraphs (2) to (4) is satisfied; and

(b) the Department thinks there has been no significant change in any material considerations since the relevant event.

(2) The condition is that in the period of 2 years ending with the date on which the application mentioned in sub-paragraph (1) is received the Department has refused a similar application made under paragraph 1.

(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 paragraph 8 in respect of a similar application.

(4) The condition is that—

- (a) in that period the Department has refused more than one similar application; and
- (b) there has been no appeal to the planning appeals commission against any such refusal.

(5) Relevant consent is—

- (a) listed building consent; or
- (b) consent under Article 51 (conservation area consent).

(6) The relevant event is—

- (a) for the purposes of sub-paragraphs (2) and (4) the refusal of the similar application;
- (b) for the purposes of sub-paragraph (3) the dismissal of the appeal.

(7) An application for relevant consent is similar to another application if (and only if) the Department thinks that the building and works to which the applications relate are the same or substantially the same.

(8) For the purposes of an application for consent under Article 51 (conservation area consent) a reference to a provision of this Order is a reference to that provision as excepted or modified by regulations under Article 51(5).

#### **Power to decline to determine overlapping application**

**4B.**—(1) The Department may decline to determine an application for a relevant consent which is made at a time when any of the conditions in sub-paragraphs (2) to (4) applies in relation to a similar application.

(2) The condition is that a similar application is under consideration by the Department and the determination period for that application has not expired.

(3) The condition is that a similar application is under consideration by the planning appeals commission on an appeal under paragraph 7 or 8 and the commission has not issued its decision.

(4) The condition is that a similar application—

- (a) has been granted by the Department;
- (b) has been refused by the Department; or
- (c) has not been determined by the Department within the determination period,

and the time within which an appeal could be made to the planning appeals commission under paragraph 7 or 8 has not expired.

(5) Relevant consent is—

- (a) listed building consent; or
- (b) consent under Article 51 (conservation area consent).

(6) An application for relevant consent is similar to another application if (and only if) the Department thinks that the building and works to which the applications relate are the same or substantially the same.

(7) The determination period is—

- (a) the period prescribed for the determination of the application; or

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(b) such longer period as the applicant and the Department have agreed for the determination of the application.

(8) For the purposes of an application for consent under Article 51 (conservation area consent) a reference to a provision of this Order is a reference to that provision as excepted or modified by regulations under Article 51(5).”.

(4) In paragraph 8 of Schedule 1 to the principal Order (appeal in default of planning decision) after “decision on the application” insert “ or gives notice to the applicant that it has exercised its power under paragraph 4A or 4B to decline to determine the application ”.

(5) This Article has effect only in relation to applications made under the principal Order which are received by the Department after the coming into operation of this Article.

VALID FROM 10/06/2006

#### **Duration of planning permission and listed building consent**

**10.**—(1) In Article 28 of the principal Order (permission to develop land without compliance with conditions previously attached), after paragraph (4) add—

“(5) Planning permission shall not be granted under this Article 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 Article 35) must be made.”.

(2) In paragraph 5 of Schedule 1 to that Order (listed building consent to execute works without compliance with conditions previously attached), after sub-paragraph (4) add—

“(5) Listed building consent shall not be granted under this paragraph to the extent that it has effect to change a condition subject to which a previous listed building consent was granted by extending the time limit within which the works must be begun.”.

(3) This Article has effect only in relation to applications for planning permission, listed building consent or consent under Article 51 of the principal Order (conservation area consent) which are received by the Department after the coming into operation of this Article.

VALID FROM 10/06/2006

#### **Removal of discretion to extend time for bringing appeal**

**11.** In Article 32 of the principal Order (appeals), in paragraph (3) the words “or such longer period as the commission may allow” shall cease to have effect.

VALID FROM 10/06/2006

#### **Conservation areas**

**12.** In Article 50 of the principal Order (conservation areas), for paragraph (3) substitute—

“(3) Subject to paragraph (3A), before making, varying or cancelling a designation under this Article, the Department shall consult with—

- (a) the Historic Buildings Council;
- (b) any appropriate district council;
- (c) such other persons or bodies as may be prescribed.

(3A) A designation under this Article may be made without consulting the persons or bodies mentioned in paragraph (3)(c), but a designation made without such consultation shall only have effect for a period of 6 months beginning on the date on which the designation was made.”.

VALID FROM 10/06/2006

### Temporary stop notice

13.—(1) After Article 67D of the principal Order insert—

*“Temporary stop notices*

#### Temporary stop notice

67E.—(1) This Article applies if the Department thinks—

- (a) that there has been a breach of planning control in relation to any land; and
- (b) that it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.

(2) The Department may issue a temporary stop notice.

(3) The notice shall be in writing and shall—

- (a) specify the activity which the Department thinks amounts to the breach;
- (b) prohibit the carrying on of the activity (or of so much of the activity as is specified in the notice);
- (c) set out the Department's reasons for issuing the notice.

(4) A temporary stop notice may be served on any of the following—

- (a) the person who the Department thinks is carrying on the activity;
- (b) a person who the Department thinks is an occupier of the land;
- (c) a person who the Department thinks has an estate in the land.

(5) The Department shall display on the land—

- (a) a copy of the notice;
- (b) a statement of the effect of the notice and of Article 67G.

(6) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of paragraph (5).

(7) A temporary stop notice ceases to have effect—

- (a) at the end of the period of 28 days starting on the day the copy notice is so displayed;
- (b) at the end of such shorter period starting on that day as is specified in the notice; or

- (c) if it is withdrawn by the Department.

#### **Temporary stop notice: restrictions**

**67F.**—(1) A temporary stop notice does not prohibit—

- (a) any person from continuing to use any building, caravan or other structure situated on land to which the temporary stop notice relates as his permanent residence whether as owner, occupier, tenant, patient, guest or otherwise;
- (b) the carrying out of an activity of such description or in such circumstances as is prescribed.

(2) A temporary stop notice does not prohibit the carrying out of any activity which has been carried out (whether continuously or not) for a period of 4 years ending with the day on which the copy of the notice is first displayed as mentioned in Article 67E(6).

(3) Paragraph (2) does not prevent a temporary stop notice prohibiting—

- (a) activity consisting of or incidental to building, engineering, mining or other operations; or
- (b) the deposit of refuse or waste materials.

(4) For the purposes of paragraph (2) any period during which the activity is authorised by planning permission shall be ignored.

(5) A second or subsequent temporary stop notice shall not be issued in respect of the same activity unless the Department has first taken some other enforcement action in relation to the breach of planning control which is constituted by the activity.

(6) In paragraph (5) enforcement action includes obtaining the grant of an injunction under Article 76B.

#### **Temporary stop notice: offences**

**67G.**—(1) A person commits an offence if he contravenes a temporary stop notice—

- (a) which has been served on him; or
- (b) a copy of which has been displayed in accordance with Article 67E(5).

(2) Contravention of a temporary stop notice includes causing or permitting the contravention of the notice.

(3) An offence under this Article may be charged by reference to a day or a longer period of time.

(4) A person may be convicted of more than one such offence in relation to the same temporary stop notice by reference to different days or periods of time.

(5) A person does not commit an offence under this Article if he proves—

- (a) that the temporary stop notice was not served on him; and
- (b) that he did not know, and could not reasonably have been expected to know, of its existence.

(6) A person convicted of an offence under this Article is liable—

- (a) on summary conviction, to a fine not exceeding 163 30,000;
- (b) on conviction on indictment, to a fine.

(7) In determining the amount of the fine the court shall have regard in particular to any financial benefit which has accrued or has appeared to accrue to the person convicted in consequence of the offence.”



(2) After Article 67A of the Planning (Northern Ireland) Order 1972 (NI 17) insert—

**“Compensation for loss due to temporary stop notice**

**67B.**—(1) This Article applies if and only if a temporary stop notice is issued and at least one of the following sub-paragraphs applies—

- (a) the activity which is specified in the notice is authorised by planning permission or a development order;
- (b) a certificate in respect of the activity is issued under Article 83A of the Planning Order or granted under that Article by virtue of Article 83E of that Order;
- (c) the Department withdraws the notice.

(2) Paragraph (1)(a) does not apply if the planning permission is granted on or after the date on which a copy of the notice is first displayed as mentioned in Article 67E(6) of the Planning Order.

(3) Paragraph (1)(c) does not apply if the notice is withdrawn following the grant of planning permission as mentioned in paragraph (2).

(4) A person who at the time the notice is served has an estate in the land to which the notice relates is entitled to be compensated by the Department in respect of any loss or damage directly attributable to the prohibition effected by the notice.

(5) A claim for compensation under this Article shall be made to the Department within the time and in the manner specified by a development order.

(6) The loss or damage in respect of which compensation is payable under this Article in respect of a prohibition shall include a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition.

(7) No compensation is payable under this Article—

- (a) in respect of the prohibition in a temporary stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control; or
- (b) in the case of a claimant who was required to provide information under Article 67C or 125 of the Planning Order in respect of any loss or damage suffered by him which could have been avoided if he had provided the information or had otherwise co-operated with the Department when responding to the notice.

(8) Any question of disputed compensation under this Article shall be determined by the Lands Tribunal.”

(3) In Article 124 of the principal Order (planning register), in paragraph (1) after sub-paragraph (m) add—

“(n) temporary stop notices issued under Article 67E;”.

VALID FROM 10/06/2006

**Increase in fines for unlawful advertisements**

**14.**—(1) In Article 84 of the principal Order (enforcement of advertisement control) in paragraph (2) for “level 3” substitute “ level 4 ”.

(2) Nothing in this Article affects the punishment for an offence committed before the coming into operation of this Article.

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## Procedure of Planning Appeals Commission

**15.**—(1) Article 111 of the principal Order (procedure of appeals commission) shall be amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) after “member” insert “ or members ”;

(b) in sub-paragraph (b)—

(i) after “member” insert “ or members ”;

(ii) for “him” substitute “ the member or members ”.

(3) In paragraph (2)—

(a) in sub-paragraph (a) after “member” insert “ or members ”;

(b) in sub-paragraph (b)—

(i) after “member” insert “ or members ”;

(ii) for “him” substitute “ the member or members ”.

(4) For paragraph (5A) substitute—

“(5A) Rules under paragraph (5) which provide for the taking of any decision may, in particular, provide for that decision to be taken—

(a) by a panel of not fewer than 4 commissioners; or

(b) by a single commissioner.”.

VALID FROM 10/06/2006

## Fees and charges

**16.** For Article 127 of the principal Order (fees for planning applications) substitute—

### “Fees and charges

**127.**—(1) The Department may by regulations make such provision as it thinks fit for the payment of a charge or fee of the prescribed amount in respect of—

(a) the performance by the Department of any function it has;

(b) anything done by the Department which is calculated to facilitate or is conducive or incidental to the performance of any such function.

(2) The Office of the First Minister and deputy First Minister may by regulations make such provision as it thinks fit for the payment of a charge or fee of the prescribed amount in respect of—

(a) an application for planning permission which is deemed to be made to the planning appeals commission under this Order;

(b) an appeal to the planning appeals commission under this Order.

(3) Regulations under this Article may prescribe—

(a) the person by whom any charge or fee is payable;

(b) provision as to the calculation of any charge or fee;

(c) circumstances in which no charge or fee is to be paid;

(d) circumstances in which any charge or fee paid is to be remitted or refunded (in whole or in part).”

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