



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART III

#### CONTROL OVER DEVELOPMENT

##### *Determination of applications*

#### **37 Determination of applications: general considerations**

- (1) Where an application is made to a planning authority for planning permission—
  - (a) subject to sections 58 and 59, they may grant planning permission, either unconditionally or subject to such conditions as they think fit, or
  - (b) they may refuse planning permission.
- (2) In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.
- (3) Subsection (1) has effect subject to sections 34 and 35 and to the following provisions of this Act, and to sections 59(1), 60 and 65 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- (4) The date of the grant or refusal of—
  - (a) planning permission,
  - (b) an approval required by a development order, or
  - (c) any consent, agreement or approval required by a condition imposed on the grant of planning permission,

shall be the date on which the planning authority's decision bears to have been signed on behalf of the authority.

### **38 Consultations in connection with determination of applications**

- (1) In determining any application to which section 34(1) applies, the planning authority shall take into account any representations relating to that application which are received by them before the expiry of any period prescribed under subsection (1)(h) of that section.
- (2) Where an application for planning permission is accompanied by such a certificate as is mentioned in section 35(1)(b), regulations or a development order may—
  - (a) provide that a planning authority shall not determine an application for planning permission before the end of such period as may be prescribed;
  - (b) require a planning authority—
    - (i) to take into account in determining such an application such representations, made within such period, as may be prescribed, and
    - (ii) to give to any person whose representations have been taken into account such notice as may be prescribed of their decision.
- (3) Regulations or a development order making any provision by virtue of this section may make different provision for different cases or different classes of development.
- (4) Before a planning authority grant planning permission for the use of land as a caravan site they shall, unless they are also the authority with power to issue a site licence for that land, consult the local authority with that power.
- (5) In this section “site licence” means a licence under Part 1 of the Caravan Sites and Control of Development Act 1960 authorising the use of land as a caravan site.

### **39 Power of planning authority to decline to determine applications**

- (1) A planning authority 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, the Secretary of State has refused a similar application referred to him under section 46 or has dismissed an appeal against the refusal of a similar application, and
  - (b) in the opinion of the authority there has been no significant change since the refusal or, as the case may be, dismissal mentioned in 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 section an application for planning permission for the development of any land shall be taken to be similar to a later application only if the development and the land to which the applications relate are in the opinion of the planning authority the same or substantially the same.
- (3) The reference in subsection (1)(a) to an appeal against the refusal of an application includes an appeal under section 47(2) in respect of an application.

### **40 Assessment of environmental effects**

- (1) The Secretary of State 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—
  - (a) 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 development on the environment, under section 2(2) of the European Communities Act 1972, and
  - (b) may make different provisions for different classes of development.
- (3) Where a draft of regulations made in exercise both of the power conferred by this section and the power conferred by section 2(2) of the European Communities Act 1972 is approved by resolution of each House of Parliament, no statutory instrument containing such regulations shall be subject to annulment by virtue of section 275(3).

#### **41 Conditional grant of planning permission**

- (1) Without prejudice to the generality of section 37(1) to (3), conditions may be imposed on the grant of planning permission under that section—
  - (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;
  - (b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.
- (2) Conditions may not be imposed by a planning authority under subsection (1)(a) for regulating the development or use of any land within the area of another planning authority except with the consent of that authority.
- (3) Subject to paragraph 1(6)(a) of Schedule 3, a planning permission which is granted subject to such a condition as is mentioned in subsection (1)(b) is in this Act referred to as “planning permission granted for a limited period”.
- (4) Where—
  - (a) planning permission is granted for development consisting of or including the carrying out of building or other operations subject to a condition that the operations shall be commenced not later than a time specified in the condition, and
  - (b) any building or other operations are commenced after the time so specified, the commencement and carrying out of those operations do not constitute development for which that permission was granted.
- (5) Subsection (4)(a) does not apply to a condition attached to the planning permission by or under section 58 or 59.
- (6) Part I of Schedule 3 shall have effect for the purpose of making special provision with respect to the conditions which may be imposed on the grant of planning permission for development consisting of the winning and working of minerals.

## **42 Determination of applications to develop land without compliance with conditions previously attached**

- (1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- (2) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
  - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;
  - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- (3) Special provision may be made with respect to such applications—
  - (a) by regulations under section 32 as regards the form and content of the application, and
  - (b) by a development order as regards the procedure to be followed in connection with the application.
- (4) This section does not apply if the previous permission was granted subject to a condition as to the time within which the development to which it related was to be begun, and that time has expired without the development having been begun.

## **43 Directions etc. as to method of dealing with applications**

- (1) Provision may be made by regulations or a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by planning authorities, and in particular—
  - (a) for enabling the Secretary of State to give directions restricting the grant of planning permission by the planning authority, either indefinitely or during such period as may be specified in the directions, in respect of any such development, or in respect of development of any such class, as may be so specified;
  - (b) for authorising the planning authority, in such cases and subject to such conditions as may be prescribed by the regulations or the order, or by directions given by the Secretary of State under the regulations or the order, to grant planning permission for development which does not accord with the provisions of the development plan;
  - (c) for requiring the planning authority, before granting or refusing planning permission for any development, to consult such authorities or persons as may be prescribed by the regulations or the order or by directions given by the Secretary of State under the regulations or the order;
  - (d) for requiring the planning authority to give to any applicant for planning permission, within such time as may be prescribed by the regulations or the order, such notice as may be so prescribed as to the manner in which his application has been dealt with;
  - (e) for requiring the planning authority to give any applicant for any consent, agreement or approval required by a condition imposed on a grant of planning

permission notice of their decision on his application, within such time as may be so prescribed;

- (f) for requiring the planning authority to give to the Secretary of State and to such other persons as may be prescribed by or under the regulations or the order, such information as may be so prescribed with respect to applications for planning permission made to the authority, including information as to the manner in which any such application has been dealt with.

- (2) Paragraphs (d) and (f) of subsection (1) shall apply in relation to applications for an approval required by regulations under this Act or a development order as they apply in relation to applications for planning permission.

#### **44 Effect of planning permission**

- (1) Without prejudice to the provisions of this Part as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it.
- (2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used.
- (3) If no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.

#### **45 Duty to draw attention to certain provisions for benefit of disabled**

- (1) This section applies to the grant by the planning authority of an application for planning permission in respect of any building or premises in relation to which a duty is imposed by any of sections 4, 5 and 7 to 8A of the Chronically Sick and Disabled Persons Act 1970 (facilities at premises open to the public to include, where reasonable and practicable, provision for the needs of the disabled etc.).
- (2) The planning authority shall, when granting the planning permission, draw the attention of the person to whom the permission is granted to the section or sections in question.