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## STATUTORY INSTRUMENTS

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# 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.

[<sup>F1</sup>(3) The planning permission which may be granted by an order under this Article 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 made; 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) 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.

**Status:** Point in time view as at 13/02/2015.

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(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.

F1 2003 NI 8

## [<sup>F2</sup>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.]

F2 2003 NI 8

### **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—

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- (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.

*Art. 41 rep. by 2003 NI 8*

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