

2005 No. 353

PLANNING

The Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2005

Made - - - - - *27th July 2005*

Coming into operation *31st August 2005*

The Department of the Environment, in exercise of the powers conferred by Articles 40A(8) and (10), 40B(3) and (4), and 129(1) of the Planning (Northern Ireland) Order 1991(a) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2005 and shall come into operation on 31st August 2005.

(2) In these Regulations “the 1991 Order” means the Planning (Northern Ireland) Order 1991.

Applications for the modification and discharge of planning agreements

2.—(1) An application for the modification or discharge of a planning agreement shall be made on a form issued by the Department, which shall require the following information—

- (a) the name and address of the applicant;
- (b) the address or location of the land to which the application relates and the nature of the applicant’s estate in that land;
- (c) sufficient information to enable the Department to identify the planning agreement which the applicant wishes to have modified or discharged;
- (d) the applicant’s reasons for applying for the modification or discharge of that agreement; and
- (e) such other information as the Department considers necessary to enable it to determine the application.

(2) An application for the modification or discharge of a planning agreement shall include—

- (a) the information required by the application form;
- (b) a map identifying the land to which the agreement relates; and
- (c) such other information as the applicant considers relevant to the determination of the application.

(a) S.I. 1991/1220 (N.I. 11) as amended by S.I. 2003/430 (N.I. 8)

Notification of applications by applicant

3.—(1) An applicant for the modification or discharge of a planning agreement shall give notice of the application to any person (other than the applicant) against whom, on the day 21 days before the date of the application, the planning agreement is enforceable and whose name and address is known to the applicant.

(2) In order to comply with paragraph (1), the applicant shall take reasonable steps to ascertain the name and address of every such person.

(3) Where the names and addresses of all such persons are not known to the applicant after he has taken reasonable steps to ascertain that information, he shall, during the 21 day period immediately preceding the application, publish notice of the application in at least one newspaper circulating in the locality in which the land to which the application relates is situated.

(4) The notice required to be served or published by this regulation shall be in the form set out in Part 1 of the Schedule and shall invite representations on the application to be made to the Department within 21 days of the date on which the notice is served or published, as the case may be.

(5) An application for the modification or discharge of a planning agreement shall be accompanied by a certificate, in the form set out in Part 2 of the Schedule, certifying that the requirements in the preceding provisions of this regulation have been satisfied.

Publicity for applications

4.—(1) Where an application for the modification or discharge of a planning agreement is made to the Department, the Department shall publicise the application by—

- (a) publishing notice of the application in at least one newspaper circulating in the locality in which the land to which the application relates is situated; and
- (b) where it maintains a website for the purpose of advertisement of applications, by publication of the notice on the website.

(2) The notice published in accordance with paragraph (1) shall invite representations on the application to be made to the Department within 4 weeks of the date on which the notice is first published in a newspaper in pursuance of sub-paragraph (a) or is first published on the website, whichever is the later.

(3) The Department shall make a copy of the application and the relevant part of the instrument by which the planning agreement was entered into available for inspection during the period allowed for making representations under paragraph (2).

Determination of applications by Department

5.—(1) The Department shall not determine an application for the modification or discharge of a planning agreement before the expiry of the period provided for making representations in accordance with regulation 4(2).

(2) Subject to paragraph (1) the Department shall give the applicant written notice of its determination within—

- (a) 16 weeks from the date on which the application is received; or
- (b) except where the applicant has already given notice of appeal to the Planning Appeals Commission, such extended period as may be agreed upon in writing between the applicant and the Department.

(3) Where the Department determines that a planning agreement shall continue to have effect without modification, notice of that determination shall state the full reasons for the determination and include a statement to the effect that the applicant may appeal to the Planning Appeals Commission against the determination within 6 months of the date of the notice.

Appeals to the Planning Appeals Commission

6.—(1) An appeal under Article 40B of the 1991 Order shall be made within 6 months of—

- (a) the date of the notice of the determination giving rise to the appeal; or
- (b) in the case of an appeal under Article 40B(1)(a) (non-determination), the expiry of the period specified in regulation 5(2).

Sealed with the Official Seal of the Department of the Environment on 27th July 2005.

(L.S.)

Marianne Fleming

A senior officer of the Department of the Environment

SCHEDULE

PRESCRIBED NOTICES AND CERTIFICATES

PART 1

Regulation 3(4)

NOTICE OF AN APPLICATION TO MODIFY OR DISCHARGE A PLANNING AGREEMENT UNDER ARTICLE 40A OF THE PLANNING (NORTHERN IRELAND) ORDER 1991

(Notice to be given by applicant)

Take notice that *(insert name of applicant)*

is applying to the Department of the Environment to modify/dischARGE the planning agreement described below

Planning Agreement

Agreement: *(insert brief description of the planning agreement which the applicant wishes to have modified or discharged)*

Land to which the planning agreement relates: *(insert address or location of the land)*

Date on which the planning agreement was entered into: *(insert relevant date)*

Any person against whom the planning agreement is enforceable who wishes to make representations about this application should write to the Department of Environment at *(insert address)* by *(insert date giving period of 21 days beginning with the date of service or publication of the notice, as the case may be.)*

Signature of Applicant or Agent

Date

PART 2

Regulation 3(5)

CERTIFICATE OF COMPLIANCE WITH THE NOTIFICATION REQUIREMENTS IN REGULATION 3

Certificate A

I certify that on the day 21 days before the date of the accompanying application the planning agreement to which the application relates was enforceable against no person other than the applicant.

Signature of Applicant or Agent

Date

Certificate B

I certify that the applicant has given notice to each person against whom, on the day 21 days before the date of the accompanying application, the planning agreement to which the application relates was enforceable as listed below.

*Person on whom
notice was served*

*Address at which
notice was served*

*Date on which
notice was served*

Signature of Applicant or Agent

Date

Certificate C

I certify that:

- the applicant cannot issue a Certificate A or B in respect of the accompanying application;
- * the applicant has given notice to the persons listed below, being persons against whom, on the day 21 days before the date of the application, the planning agreement to which the application relates was enforceable

| <i>Person on whom notice was served</i> | <i>Address at which notice was served</i> | <i>Date on which notice was served</i> |
|---|---|--|
|---|---|--|

- The applicant has taken reasonable steps to ascertain the name and address of every person against whom, on the day 21 days before the date of the application, the planning agreement to which the application relates was enforceable and who has not been given notice of the application but has been unable to do so. The steps taken were as follows-
(insert description of the steps taken).
- Notice of the application, as attached to this certificate, has been published in the *(insert name of local newspaper/s in which the notice was published)* on *(date of publication)*.

Signature of Applicant or Agent

Date

** delete as appropriate*

EXPLANATORY NOTE

(This note is not part of the Regulations)

Article 40A of the Planning (Northern Ireland) Order 1991 enables a person against whom a planning agreement is enforceable to apply to the Department to have the application modified or discharged. Article 40B of that Order provides for an appeal to the Planning Appeals Commission if such an application is refused or not determined.

These Regulations make provision with respect to—

- (a) the form and content of such applications (regulation 2);
- (b) the notification of and publicity for such applications (regulations 3 and 4);
- (c) the determination of such applications (regulation 5);
- (d) appeals to the Planning Appeals Commission against the Department's determination on such applications (regulation 6).

© Crown Copyright 2005

£3.00

Published by The Stationery Office Limited

ISBN 0-337-96102-6



9 780337 961021