

2009 No. 259

LANDS TRIBUNAL

The Lands Tribunal for Scotland Amendment Rules 2009

Made - - - - *19th June 2009*

Coming into force - - *1st July 2009*

The Scottish Ministers make the following Rules, in exercise of the powers conferred by section 3(6) and (12)(e) of the Lands Tribunal Act 1949(a) and of all other powers enabling them to do so.

In accordance with section 44 of and paragraph 24 of Schedule 7 to, the Tribunals, Courts and Enforcement Act 2007(b), they have consulted with the Administrative Justice and Tribunals Council and that Council has consulted its Scottish Committee(c).

Citation and commencement

1. These Rules may be cited as the Lands Tribunal for Scotland Amendment Rules 2009 and come into force on 1st July 2009.

Amendment of the Lands Tribunal for Scotland Rules 2003

2. The Lands Tribunal for Scotland Rules 2003(d) are amended in accordance with rules 3 to 8 of these Rules.

Interpretation

3. In rule 2 (interpretation) after the definition of “the Act of 2003” insert—

““the Development Management Scheme Order” means the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009(e);”.

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- (a) 1949 c.42. Section 3 was amended by section 50(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35) and by S.I. 1972/2002. The functions of the Lord Advocate were transferred to the Secretary of State for Scotland by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678) and to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). The requirement to obtain Treasury consent was removed by section 55 of that Act.
- (b) 2007 c.15.
- (c) Consultation was previously with the Council on Tribunals and its Scottish Committee under sections 8(1) and (3) of the Tribunals and Inquiries Act 1992 (c.53). Sections 8(1) and (3) of that Act are now repealed. Section 45(1) of the Tribunals, Courts and Enforcement Act 2007 abolishes the Council on Tribunals and its Scottish Committee, with section 44 of and Schedule 7 to that Act establishing the Administrative Justice and Tribunals Council and its Scottish Committee in their place.
- (d) S.S.I. 2003/452.
- (e) S.I. 2009/729.

Applications for certificates referred to in article 9(4) of the Development Management Scheme Order

4. After rule 5 (application for certificates) insert—

“Applications for certificates referred to in article 9(4) of the Development Management Scheme Order

5A. When an application is made to the Tribunal for a certificate referred to in article 9(4) (intimation of variation under article 8) of the Development Management Scheme Order, there shall be sent with the application sufficient evidence to satisfy the Tribunal of the intimation of the notice of a proposal to register a deed of variation or discharge.”.

Method of making Application

5. In rule 13 (method of making application) after “2003 (Notification of application)” insert, “or article 24 of the Development Management Scheme Order”.

Provision for other Parties

6. In rule 21 (provision for other parties) after “representations)” insert “and, in respect of applications under article 22 (powers of the Lands Tribunal) or 23 (special provision as to variation or discharge of rules) of the Development Management Scheme Order, to article 26 (persons entitled to make representations) of that Order”.

Expenses

7. In rule 28(1) (expenses) after “that Act.” insert—

“For the purposes of determining applications under article 22 (powers of the Lands Tribunal) or 23 (special provision as to variation or discharge of rules) of the Development Management Scheme Order, expenses shall be determined in accordance with article 29 of that Order.”.

Application Forms

8.—(1) In Schedule 1 (list of applications and application forms) at the end insert—

“The Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009

Article 22(1)(a) DMS 22(1)(a)

Article 22(1)(b) DMS 22(1)(b)

Article 22(1)(c) DMS 22(1)(c)”.

(2) In Schedule 2—

- (a) in Form TC 90(1)(a) omit “or rule of a development management scheme” in the title and in each place in the form where those words occur; and
- (b) at the end insert the forms set out in the Schedule to these Rules.

St Andrew's House,
Edinburgh
19th June 2009

FERGUS EWING
Authorised to sign by the Scottish Ministers

SCHEDULE

Rule 8(2)

Application Forms

FORM DMS 22(1)(a)

Application under article 22(1)(a) of the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 to discharge or vary a rule of a development management scheme

1. Name and address of applicant.

2. Applicant’s connection with land constrained by the rule.

3. Particulars of the rule.

- (a) Nature of the rule.
- (b) Property constrained by the rule (describe the burdened unit sufficiently precisely to enable it to be identified).
- (c) Manner and date of creation of the rule (describe the deed in which the rule was applied by reference to the names of the parties and date of registration or recording).
- (d) Owner(s) of the burdened unit (state names and addresses).
- (e) Persons entitled to the benefit of the rule (here state the name and address of the Owners Association for the development and the names and addresses of the owners of any units entitled to enforce the rule).

4. Nature of application (here state whether the application is for complete discharge or variation of the rule, and if the latter, specify what change is required).

5. Details of application (here give a statement of the circumstances in which discharge or variation is required).

6. Statutory basis of application (here specify which of the grounds in article 28(1) of the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 applies and give brief details of circumstances bearing on each of the factors referred to in article 28(2) of that Order. Note that in relation to article 28(2) you should set out full detail of any other circumstances you wish the Tribunal to consider in support of your application.).

I/We hereby apply for the discharge/variation of the rule described above.

Signed

Date

(To be signed by the applicant or by the applicant’s solicitor, who should add a designation and the words: Agent of the said AB)

NOTES FOR THE INFORMATION OF APPLICANTS

1. You should enclose with this application a copy of any deed of application or deed of variation under which the rule was created, a large scale plan of the location identifying adjacent properties and any grant of planning permission which has been obtained for any proposed development, with any plans relating to it.

2. Article 28 of the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 reads as follows:—

“28.—(1) An application for the variation, discharge or preservation of a rule shall be granted by the Lands Tribunal only if they are satisfied, having regard to the factors set out in paragraph (2) that—

- (a) except in the case of an application under rule 22(1)(b), it is reasonable to grant the application; or
- (b) in such a case, the variation or discharge in question—
 - (i) is not in the best interests of all the members (taken as a group); or
 - (ii) is unfairly prejudicial to one or more members.

(2) The factors mentioned in paragraph (1) are—

- (a) any change in circumstances since the rule was created (including, without prejudice to that generality, any change in the character of the benefited unit or burdened unit or of the neighbourhood of the units);
- (b) the extent to which the rule confers a benefit on a benefited unit;
- (c) the extent to which the rule impedes enjoyment of the burdened unit;
- (d) if the rule is an obligation to do something, how—
 - (i) practicable; or
 - (ii) costly,it is to comply with the rule;
- (e) the length of time which has elapsed since the rule was created;
- (f) the purpose of the rule;
- (g) whether in relation to the burdened unit there is the consent, or deemed consent of a planning authority, or consent of some other regulatory authority, for a use which the rule prevents;
- (h) whether the owner of the burdened unit is willing to pay compensation;
- (i) any other factor which the Lands Tribunal consider to be material.”.

3. Your application will be intimated to persons who may have an interest to oppose it. It is accordingly in your interest to ensure that you set out your description of any circumstances relied on as fully and accurately as you can. The Tribunal may allow new material to be introduced at a later stage but if this gives rise to expense which could have been avoided by a more careful application, the Tribunal will take that into consideration. You will not be allowed to introduce new material in the later stages of the case if the Tribunal thinks this would prejudice any objectors.

FORM DMS 22(1)(b)

Application under article 22(1)(b) of the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 to preserve a rule of the Development Management Scheme

1. Name and address of applicant.

2. Applicant's connection with land constrained by the rule.

(describe the applicant's property sufficiently precisely to enable it to be identified).

3. Particulars of the rule to be preserved.

(a) Nature of the rule.

(b) Manner and date of application of the rule *(describe the deed in which the rule was applied by reference to the names of the parties and date of registration or recording).*

4. Circumstances giving rise to application *(here give details of the notice received of a proposal to register a deed of variation or discharge, including the name and address of the person proposing to register. Alternatively a copy of the notice may be enclosed).*

5. Date specified in that notice *(give the date by which an application for preservation must be made to the Lands Tribunal).*

6. Statutory basis of application *(here specify which of the grounds in article 28(1)(b) of the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 applies and give brief details of circumstances bearing on each of the factors referred to in article 28(2) of that Order. Note that in relation to article 28(2)(i) you should set out full detail of any other circumstances you wish the Tribunal to consider in support of your application).*

I/We hereby apply for the preservation of the rule described above.

Signed

Date

(To be signed by the applicant or by the applicant's solicitor, who should add a designation and the words: Agent of the said AB)

NOTES FOR THE INFORMATION OF APPLICANTS

1. You should enclose with this application a copy of the deed of application or variation under which the rule was created and a large scale plan of the location identifying adjacent properties.

2. Article 28 of the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 reads as follows:—

“28.—(1) An application for the variation, discharge or preservation of a rule shall be granted by the Lands Tribunal only if they are satisfied, having regard to the factors set out in paragraph (2) that—

(a) except in the case of an application under rule 22(1)(b), it is reasonable to grant the application; or

(b) in such a case, the variation or discharge in question—

(i) is not in the best interests of all the members (taken as a group); or

(i) is unfairly prejudicial to one or more members.

(2) The factors mentioned in paragraph (1) are—

(a) any change in circumstances since the rule was created (including, without prejudice to that generality, any change in the character of the benefited unit or burdened unit or of the neighbourhood of the units);

(b) the extent to which the rule confers a benefit on a benefited unit;

- (c) the extent to which the rule impedes enjoyment of the burdened unit;
- (d) if the rule is an obligation to do something, how—
 - (i) practicable; or
 - (ii) costly,it is to comply with the rule;
- (e) the length of time which has elapsed since the rule was created;
- (f) the purpose of the rule;
- (g) whether in relation to the burdened unit there is the consent, or deemed consent of a planning authority, or consent of some other regulatory authority, for a use which the rule prevents;
- (h) whether the owner of the burdened unit is willing to pay compensation;
- (i) any other factor which the Lands Tribunal consider to be material.”.

3. Your application will be intimated to persons who may have an interest to oppose it. It is accordingly in your interest to ensure that you set out your description of any circumstances relied on as fully and accurately as you can. The Tribunal may allow new material to be introduced at a later stage but if this gives rise to expense which could have been avoided by a more careful application, the Tribunal will take that into consideration. You will not be allowed to introduce new material in the later stages of the case if the Tribunal thinks this would prejudice any objectors.

FORM DMS 22(1)(c)

Application under article 22(1)(c) of the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 for the determination of the validity, applicability or enforceability of a rule of a development management scheme

1. Name and address of applicant.

2. Applicant's connection with land constrained by the rule.

3. Particulars of the rule.

- (a) Nature of the rule.
- (b) Property constrained by the rule (*describe the burdened unit sufficiently precisely to enable it to be identified*).
- (c) Manner and date of creation of the rule (*describe the deed in which the rule was applied by reference to the names of the parties and date of registration or recording*).
- (d) Owner(s) of the burdened unit (*state names and addresses*).
- (e) Persons entitled to the benefit of the rule (*here state the name and address of the Owners Association for the development and the names and addresses of the owners of any units entitled to enforce the rule*).

4. Nature of application (*here state whether the application is for a determination of the validity, applicability or enforceability of the rule*).

5. Basis of application (*here give a statement of the reasons for believing that the rule of the development management scheme is valid or invalid, applicable or inapplicable, enforceable or unenforceable*).

I/We hereby apply for the determination of a question as to the validity, applicability or enforceability of the rule described above.

Signed

Date

(To be signed by the applicant or by the applicant's solicitor, who should add a designation and the words: Agent of the said AB)

NOTES FOR THE INFORMATION OF APPLICANTS

1. You should enclose with this application a copy of any deed of application or deed of variation under which the rule was created and a large scale plan of the location identifying adjacent properties.

2. Your application will be intimated to persons who may have an interest to oppose it. It is accordingly in your interest to ensure that you set out your description of any circumstances relied on as fully and accurately as you can. The Tribunal may allow new material to be introduced at a later stage but if this gives rise to expense which could have been avoided by a more careful application, the Tribunal will take that into consideration. You will not be allowed to introduce new material in the later stages of the case if the Tribunal thinks this would prejudice any objectors.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Lands Tribunal for Scotland Rules 2003 (“the 2003 Rules”). The changes make provision in relation to applications to the Lands Tribunal for Scotland (“the Lands Tribunal”) for the variation, discharge or preservation of rules of a development management scheme made under the provisions of the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 (“the 2009 Order”).

Rule 3 amends the interpretation provisions in rule 2 of the 2003 Rules.

Rule 4 inserts a new rule 5A which makes provision relating to the evidence to be provided to the Lands Tribunal when making an application for a certificate under article 9(4) of the 2009 Order.

Article 24 of the 2009 Order makes equivalent provision for applications under that Order as section 93 of the Title Conditions (Scotland) Act 2003 does for applications under sections 90 and 91 of that Act and rule 5 amends rule 13 of the 2003 Rules accordingly.

Rule 6 extends the application of rule 21 of the 2003 Order, which enables the Lands Tribunal to allow persons to become parties to proceedings before it, to proceedings arising from applications made under the 2009 Order.

Rule 7 amends rule 28 of the 2003 Rules to ensure that questions of expenses in relation to applications made under the 2009 Order are dealt with in accordance with article 29 of that Order.

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