



Town and Country Planning Act 1990

1990 CHAPTER 8

PART III

CONTROL OVER DEVELOPMENT

Other controls over development

102 Orders requiring discontinuance of use or alteration or removal of buildings or works.

- (1) If, having regard to the development plan and to any other material considerations, it appears to a local planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)—
- (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,
- they may by order—
- (i) require the discontinuance of that use, or
 - (ii) impose such conditions as may be specified in the order on the continuance of it, or
 - (iii) require such steps as may be so specified to be taken for the alteration or removal of the buildings or works,
- as the case may be.
- (2) An order under this section 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.

[^{F1}(2A) Section 71ZA applies where planning permission is granted by an order under this section as if the references to the decision notice were to the order.]

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- (3) Section 97 shall apply in relation to any planning permission granted by an order under this section as it applies in relation to planning permission granted by the local planning authority on an application made under this Part.
- ^{F2}(4) The planning permission which may be granted by an order under this section 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 submitted to the Secretary of State under section 103.
- (5) Planning permission for such development may be granted so as to have effect from—
- the date on which the development was carried out; or
 - if it was carried out in accordance with planning permission granted for a limited period, the end of that period.]
- (6) Where the requirements of an order under this section will involve the displacement of persons residing in any premises, it shall be the duty of the local planning authority, 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.
- (7) Subject to section 103(8), in the case of planning permission granted by an order under this section, the authority referred to in sections 91(1)(b) and 92(4) is the local planning authority making the order.
- (8) The previous provisions of this section do not apply to the use of any land for development [^{F3}consisting of the winning and working of minerals or involving the depositing of refuse or waste materials] except as provided in Schedule 9, and that Schedule shall have effect for the purpose of making provision as respects land which is or has been so used.

Textual Amendments

- F1** S. 102(2A) inserted (6.9.2015 for specified purposes) by [Planning \(Wales\) Act 2015 \(anaw 4\)](#), ss. [33\(4\)](#), [58\(2\)\(b\)\(4\)\(b\)](#)
- F2** S. 102(4)(5) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para.21](#) (with s. 84(5)); S.I. 1991/2905, [art.3](#) (subject to art. 5)
- F3** Words in s. 102(8) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 6](#) (with s. 84(5)); S.I. 1991/2067, [art. 3](#) (subject to art. 4)

Modifications etc. (not altering text)

- C1** S. 102: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), reg. 2(1), [Sch. 1](#)

103 Confirmation by Secretary of State of s. 102 orders.

- (1) An order under section 102 shall not take effect unless it is confirmed by the Secretary of State, either without modification or subject to such modifications as he considers expedient.
- (2) The power of the Secretary of State under this section to confirm an order subject to modifications includes power—
- to modify any provision of the order granting planning permission, as mentioned in subsections (2) to (5) of section 102;

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- (b) to include in the order any grant of planning permission which might have been included in the order as submitted to him.
- (3) Where a local planning authority submit an order to the Secretary of State for his confirmation under this section, they shall serve notice—
 - (a) on the owner of the land affected,
 - (b) on the occupier of that land, and
 - (c) on any other person who in their opinion will be affected by the order.
- (4) The notice shall specify the period within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) If within that period such a person so requires, before the Secretary of State confirms the order, he shall give such an opportunity both to him and to the local planning authority.
- (6) The period referred to in subsection (4) must not be less than 28 days from the service of the notice.
- (7) Where an order under section 102 has been confirmed by the Secretary of State, the local planning authority shall serve a copy of the order on the owner and occupier of the land to which the order relates.
- (8) Where the Secretary of State exercises his powers under subsection (2) in confirming an order granting planning permission, he is the authority referred to in sections 91(1) (b) and 92(4).

104 Power of the Secretary of State to make s. 102 orders.

- (1) If it appears to the Secretary of State that it is expedient that an order should be made under section 102, he may himself make such an order.
- (2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the local planning authority and confirmed by the Secretary of State.
- (3) The Secretary of State shall not make such an order without consulting the local planning authority.
- (4) Where the Secretary of State proposes to make such an order he shall serve notice on the local planning authority.
- (5) The notice shall specify the period within which the authority may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) If within that period the authority so require, before the Secretary of State makes the order he shall give the authority such an opportunity.
- (7) The period referred to in subsection (5) must not be less than 28 days from the date of the service of the notice.
- (8) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the local planning authority of any order under section 102, its confirmation by the Secretary of State and the service of copies of it as confirmed shall have effect, subject to any necessary

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modifications, in relation to any proposal by the Secretary of State to make such an order, its making by him and the service of copies of it.

^{F4}105

Textual Amendments

F4 S. 105 repealed (1.11.1995) by 1995 c. 25, ss. 96(4), 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1995/2765, **art. 2**

[106 ^{F5}Planning obligations.

- (1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A [^{F6}to 106C] as “ a planning obligation ”), enforceable to the extent mentioned in subsection (3)—
- (a) 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 authority [^{F7}(or, in a case where section 2E applies, to the Greater London Authority)] on a specified date or dates or periodically.

[In the case of a development consent obligation, the reference to development in ^{F8}(1A) subsection (1)(a) includes anything that constitutes development for the purposes of the Planning Act 2008.]

- (2) A planning obligation may—
- (a) be unconditional or subject to conditions;
 - (b) impose any restriction or requirement mentioned in subsection (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 obligation is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.
- (3) Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection (9)(d)—
- (a) against the person entering into the obligation; and
 - (b) against any person deriving title from that person.
- (4) The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land.
- (5) A restriction or requirement imposed under a planning obligation is enforceable by injunction.

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- (6) Without prejudice to subsection (5), if there is a breach of a requirement in a planning obligation to carry out any operations in, on, under or over the land to which the obligation relates, the authority by whom the obligation is enforceable may—
- (a) enter the land and carry out the operations; and
 - (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.
- (7) Before an authority exercise their power under subsection (6)(a) they shall give not less than twenty-one days' notice of their intention to do so to any person against whom the planning obligation is enforceable.
- (8) Any person who wilfully obstructs a person acting in the exercise of a power under subsection (6)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) A planning obligation may not be entered into except by an instrument executed as a deed which—
- (a) states that the obligation is a planning obligation for the purposes of this section;
 - [if the obligation is a development consent obligation, contains a statement to that effect;]
 - ^{F9}(aa) identifies the land in which the person entering into the obligation is interested;
 - (b) identifies the person entering into the obligation and states what his interest in the land is; and
 - (c) identifies the local planning authority by whom the obligation is enforceable. [^{F10}and, in a case where section 2E applies, identifies the Mayor of London as an authority by whom the obligation is also enforceable]
- (10) A copy of any such instrument shall be given to the [^{F11}authority so identified][^{F11}local planning authority so identified and, in a case where section 2E applies, to the Mayor of London] .
- (11) A planning obligation shall be a local land charge and for the purposes of the ^{M1}Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.
- (12) Regulations may provide for the charging on the land of—
- (a) any sum or sums required to be paid under a planning obligation; and
 - (b) any expenses recoverable by a local planning authority [^{F12}or the Mayor of London] under subsection (6)(b),
- and this section and sections 106A [^{F13}to 106BC] shall have effect subject to any such regulations.
- (13) In this section “ specified ” means specified in the instrument by which the planning obligation is entered into and in this section and section 106A “ land ” has the same meaning as in the ^{M2} Local Land Charges Act 1975.
- [In this section and section 106A “ development consent obligation ” means a planning
- ^{F14}(14) obligation entered into in connection with an application (or a proposed application) for an order granting development consent.]]

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Textual Amendments

- F5** Ss. 106-106B substituted for s. 106 (25.10.1991 so far as substituting the new s. 106, 25.11.1991 for certain purposes and otherwise 9.11.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\), s. 12\(1\)](#) (with [s. 84\(5\)](#)); [S.I. 1991/2272, art. 3\(1\)\(a\)](#); [S.I. 1991/2728, art. 2](#); [S.I. 1992/2831, art. 2](#)
- F6** Words in s. 106(1) substituted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(2\), Sch. 2 para. 3\(2\)](#)
- F7** Words in s. 106(1)(d) inserted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 33\(2\), 59; S.I. 2008/582, art. 2\(a\)](#)
- F8** S. 106(1A) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\), ss. 174\(2\)\(a\), 241](#) (with [s. 226](#)); [S.I. 2010/101, art. 3\(k\)](#) (with [art. 6](#))
- F9** S. 106(9)(aa) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\), ss. 174\(2\)\(b\), 241](#) (with [s. 226](#)); [S.I. 2010/101, art. 3\(k\)](#) (with [art. 6](#))
- F10** Words in s. 106(9)(d) inserted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 33\(3\), 59; S.I. 2008/582, art. 2\(a\)](#)
- F11** Words in s. 106(10) substituted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 33\(4\), 59; S.I. 2008/582, art. 2\(a\)](#)
- F12** Words in s. 106(12)(b) inserted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 33\(5\), 59; S.I. 2008/582, art. 2\(a\)](#)
- F13** Words in s. 106(12) substituted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(2\), Sch. 2 para. 3\(3\)](#)
- F14** S. 106(14) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\), ss. 174\(2\)\(c\), 241](#) (with [s. 226](#)); [S.I. 2010/101, art. 3\(k\)](#) (with [art. 6](#))

Modifications etc. (not altering text)

- C2** S. 106 modified (1.4.1996) by [1994 c. 19, s. 66\(7\), Sch. 17 para. 15\(2\)\(b\)](#) (with [ss. 54\(5\)\(7\), Sch. 17 paras. 22\(1\), 23\(2\)](#)); [S.I. 1995/3198, art. 6\(3\), Sch. 5](#)
- C3** S. 106: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853, reg. 2\(1\), Sch. 1](#)
- C4** S. 106 applied (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\), arts. 1, 43\(1\)](#) (with [arts. 51, 53](#))
- C5** S. 106 applied (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\), arts. 1, 43\(2\)](#) (with [arts. 51, 53](#))
- C6** S. 106(1) modified (24.9.2014) by [The Thames Water Utilities Limited \(Thames Tideway Tunnel\) Order 2014 \(S.I. 2014/2384\), art. 1, Sch. 19 Pt. 1 para. 9\(3\)](#)
- C7** S. 106(3) excluded (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\), arts. 1, 44\(1\)](#) (with [arts. 51, 53](#))
- C8** S. 106(9)(d) excluded (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\), arts. 1, 44\(1\)](#) (with [arts. 51, 53](#))

Marginal Citations

- M1** 1975 c. 76.
M2 1975 c. 76.

[^{F15}106A] Modification and discharge of planning obligations.

- (1) A planning obligation may not be modified or discharged except—
- (a) by agreement between [^{F16}the authority by whom the obligation is enforceable][^{F16}the appropriate authority (see subsection (11))] and the person or persons against whom the obligation is enforceable; or
 - (b) in accordance with [^{F17}—

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- (i) this section and section 106B ^{F18}, or
 - (ii) sections 106BA and 106BC.]
- (2) An agreement falling within subsection (1)(a) shall not be entered into except by an instrument executed as a deed.
- (3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to ^{F19}the local planning authority by whom the obligation is enforceable]^{F19}the appropriate authority] for the obligation—
- (a) to have effect subject to such modifications as may be specified in the application; or
 - (b) to be discharged.
- (4) In subsection (3) “ the relevant period ” means—
- (a) such period as may be prescribed; or
 - (b) if no period is prescribed, the period of five years beginning with the date on which the obligation is entered into.
- (5) An application under subsection (3) for the modification of a planning obligation may not specify a modification imposing an obligation on any other person against whom the obligation is enforceable.
- (6) Where an application is made to an authority under subsection (3), the authority may determine—
- (a) that the planning obligation shall continue to have effect without modification;
 - (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
 - (c) if the obligation 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.
- (7) The authority shall give notice of their determination to the applicant within such period as may be prescribed.
- (8) Where an authority determine ^{F20}under this section] that a planning obligation shall have effect subject to modifications specified in the application, the obligation 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.
- (9) Regulations may make provision with respect to—
- (a) the form and content of applications under subsection (3);
 - (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 subsection (6).
- (10) Section 84 of the ^{M3}Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to a planning obligation.
- [In this section “ the appropriate authority ” means—
- ^{F21}(11) (a) the Mayor of London, in the case of any planning obligation enforceable by him;
- ^{F22}(aa) [the Secretary of State, in the case of any development consent obligation ^{F23} ...;

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^{F24}(ab)]

(b) in the case of any other planning obligation, the local planning authority by whom it is enforceable.

(12) The Mayor of London must consult the local planning authority before exercising any function under this section.]]

Textual Amendments

- F15** S. 106- 106B substituted for s. 106 (25.10.1991 so far as substituting the new s. 106, 25.11.1991 for certain purposes and otherwise 9.11.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\), s. 12\(1\)](#); [S.I. 1991/2272, art. 3\(1\)\(a\)](#); [S.I. 1991/2728, art. 2](#); [S.I. 1992/2831, art. 2](#)
- F16** Words in s. 106A(1)(a) substituted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 34\(2\), 59](#); [S.I. 2008/582, art. 2\(a\)](#)
- F17** Word in s. 106A(1) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(2\), Sch. 2 para. 4\(2\)\(a\)](#)
- F18** Words in s. 106A(1) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(2\), Sch. 2 para. 4\(2\)\(b\)](#)
- F19** Words in s. 106A(3) substituted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 34\(3\), 59](#); [S.I. 2008/582, art. 2\(a\)](#)
- F20** Words in s. 106A(8) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(2\), Sch. 2 para. 4\(3\)](#)
- F21** S. 106(11)(12) inserted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 34\(4\), 59](#); [S.I. 2008/582, art. 2\(a\)](#)
- F22** S. 106A(11)(aa)(ab) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\), ss. 174\(3\), 241 \(with s. 226\)](#); [S.I. 2010/101, art. 3\(k\)](#) (with [art. 6](#))
- F23** Words in s. 106A(11)(aa) repealed (1.4.2012) by [Localism Act 2011 \(c. 20\), s. 240\(2\), Sch. 13 para. 77\(2\)\(a\), Sch. 25 Pt. 20](#); [S.I. 2012/628, art. 7](#)
- F24** Words in s. 106A(11) repealed (1.4.2012) by [Localism Act 2011 \(c. 20\), s. 240\(2\), Sch. 13 para. 77\(2\)\(b\), Sch. 25 Pt. 20](#); [S.I. 2012/628, art. 7](#)

Marginal Citations

M3 1925 c. 20.

106B ^{F25}Appeals [^{F26}in relation to applications under section 106A].

- (1) Where [^{F27}an authority]—[^{F28} (other than the Secretary of State ^{F29}...)]
- (a) fail to give notice as mentioned in section 106A(7); or
- (b) determine [^{F30}under section 106A] that a planning obligation shall continue to have effect without modification,
- the applicant may appeal to the Secretary of State.
- (2) For the purposes of an appeal under subsection (1)(a), it shall be assumed that the authority have determined that the planning obligation shall continue to have effect without modification.
- (3) An appeal under this section shall be made by notice served within such period and in such manner as may be prescribed.
- (4) Subsections (6) to (9) of section 106A apply in relation to appeals to the Secretary of State under this section as they apply in relation to applications to authorities under that section.

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- (5) Before determining the appeal the Secretary of State shall, if either the applicant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) The determination of an appeal by the Secretary of State under this section shall be final.
- (7) Schedule 6 applies to appeals under this section.
- [^{F31}(8) In the application of Schedule 6 to an appeal under this section in a case where the authority mentioned in subsection (1) is the Mayor of London, references in that Schedule to the local planning authority are references to the Mayor of London.]

Textual Amendments

- F25** Ss. 106-106B substituted for s. 106 (25.10.1991 so far as substituting the new s. 106, 25.11.1991 for certain purposes and otherwise 9.11.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\), s. 12\(1\)](#); S.I. 1991/2272, [art. 3\(1\)\(a\)](#); S.I. 1991/2728, [art.2](#); S.I. 1992/2831, [art. 2](#)
- F26** Words in s. 106B heading inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(2\), Sch. 2 para. 5\(2\)](#)
- F27** Words in s. 106B(1) substituted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 34\(6\), 59; S.I. 2008/582, art. 2\(a\)](#)
- F28** Words in s. 106B(1) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\), ss. 174\(4\), 241 \(with s. 226\); S.I. 2010/101, art. 3\(k\) \(with art. 6\)](#)
- F29** Words in s. 106B(1) repealed (1.4.2012) by [Localism Act 2011 \(c. 20\), s. 240\(2\), Sch. 13 para. 77\(3\), Sch. 25 Pt. 20; S.I. 2012/628, art. 7](#)
- F30** Words in s. 106B(1)(b) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\), s. 35\(2\), Sch. 2 para. 5\(3\)](#)
- F31** S. 106B(8) inserted (6.4.2008) by [Greater London Authority Act 2007 \(c. 24\), ss. 34\(7\), 59; S.I. 2008/582, art. 2\(a\)](#)

[^{F32}106B Modification or discharge of affordable housing requirements

- (1) This section applies in relation to an English planning obligation that contains an affordable housing requirement.
- (2) A person against whom the affordable housing requirement is enforceable may apply to the appropriate authority—
 - (a) for the requirement to have effect subject to modifications,
 - (b) for the requirement to be replaced with a different affordable housing requirement,
 - (c) for the requirement to be removed from the planning obligation, or
 - (d) in a case where the planning obligation consists solely of one or more affordable housing requirements, for the planning obligation to be discharged.
- (3) Where an application is made to an authority under subsection (2) and is the first such application in relation to the planning obligation—
 - (a) if the affordable housing requirement means that the development is not economically viable, the authority must deal with the application in accordance with subsection (5) so that the development becomes economically viable, or

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- (b) if paragraph (a) does not apply, the authority must determine that the affordable housing requirement is to continue to have effect without modification or replacement.
- (4) Where an application is made to an authority under subsection (2) and is the second or a subsequent such application in relation to the planning obligation, the authority may—
- (a) deal with the application in accordance with subsection (5), or
 - (b) determine that the affordable housing requirement is to continue to have effect without modification or replacement.
- (5) The authority may—
- (a) determine that the requirement is to have effect subject to modifications,
 - (b) determine that the requirement is to be replaced with a different affordable housing requirement,
 - (c) determine that the planning obligation is to be modified to remove the requirement, or
 - (d) where the planning obligation consists solely of one or more affordable housing requirements, determine that the planning obligation is to be discharged.
- (6) A determination under subsection (5)(a), (b) or (c)—
- (a) may provide for the planning obligation to be modified in accordance with the application or in some other way,
 - (b) may not have the effect that the obligation as modified is more onerous in its application to the applicant than in its unmodified form, and
 - (c) may not have the effect that an obligation is imposed on a person other than the applicant or that the obligation as modified is more onerous in its application to such a person than in its unmodified form.
- (7) Subsection (6)(b) does not apply to a determination in response to the second or a subsequent application under this section in relation to the planning obligation; but such a determination may not have the effect that the development becomes economically unviable.
- (8) In making a determination under this section the authority must have regard to—
- (a) guidance issued by the Secretary of State, and
 - (b) where the determination relates to an application to which section 106BB applies, any representations made by the Mayor of London in accordance with that section.
- (9) The authority must give notice of their determination to the applicant—
- (a) within such period as may be prescribed by the Secretary of State, or
 - (b) if no period is prescribed under paragraph (a) (and subject to section 106BB(5)), within the period of 28 days beginning with the day on which the application is received, or such longer period as is agreed in writing between the applicant and the authority.
- (10) Where an authority determine under this section that a planning obligation is to have effect subject to modifications, the obligation as modified is to be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.

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- (11) The Secretary of State may by regulations make provision with respect to—
- (a) the form and content of applications under subsection (2), and
 - (b) the notices to be given to applicants of determinations under subsection (9).
- (12) This section and section 106BC do not apply in relation to an English planning obligation if planning permission for the development was granted wholly or partly on the basis of a policy for the provision of housing on rural exception sites.
- (13) In this section and section 106BC—
- “affordable housing requirement” means a requirement relating to the provision of housing that is or is to be made available for people whose needs are not adequately served by the commercial housing market (and it is immaterial for this purpose where or by whom the housing is or is to be provided);
- “the appropriate authority” has the same meaning as in section 106A;
- “the development”, in relation to a planning obligation, means the development authorised by the planning permission to which the obligation relates;
- “English planning obligation” means a planning obligation that—
- (a) identifies a local planning authority in England as an authority by whom the obligation is enforceable, and
 - (b) does not identify a local planning authority in Wales as such an authority.
- (14) The Secretary of State may by order amend this section so as to modify the definition of “affordable housing requirement” in subsection (13).
- (15) An order under subsection (14) may have effect for the purposes of planning obligations entered into before (as well as after) its coming into force.
- (16) The Mayor of London must consult the local planning authority before exercising any function under this section.

Textual Amendments

F32 Ss. 106BA-106BC inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), [ss. 7\(1\), 35\(2\)](#) (with [s. 7\(3\)-\(5\)](#))

106BB Duty to notify the Mayor of London of certain applications under section 106BA

- (1) This section applies to an application under section 106BA(2) in relation to a planning obligation where—
- (a) the application for the planning permission to which the planning obligation relates was an application to which section 2A applied (applications of potential strategic importance relating to land in Greater London),
 - (b) the application for planning permission was not determined by the Mayor of London, and
 - (c) pursuant to an order under section 2A or a development order, the local planning authority that determined the application for planning permission were required to consult the Mayor of London in relation to that determination.

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- (2) A local planning authority that receive an application to which this section applies must send a copy of the application to the Mayor of London before the end of the next working day following the day on which the application was received.

In this subsection, “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

- (3) The Mayor of London must notify the local planning authority before the end of the period of 7 days beginning with the day on which the application was received by the authority whether the Mayor intends to make representations about the application.
- (4) Where pursuant to subsection (3) the Mayor of London notifies the local planning authority that the Mayor intends to make representations, those representations must be made before—
- (a) the end of the period of 14 days beginning with the day on which the application was received by the authority, or
 - (b) the end of such longer period as may be agreed in writing between the authority and the Mayor.
- (5) Where this section applies, section 106BA(9)(b) applies as if it required an authority to give notice of their determination to an applicant within—
- (a) the period of 35 days beginning with the day on which the application was received by the authority, or
 - (b) such longer period as is agreed in writing between the applicant and the authority.

Textual Amendments

F32 Ss. 106BA-106BC inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 7(1), 35(2)** (with s. 7(3)-(5))

106BC Appeals in relation to applications under section 106BA

- (1) Where an authority other than the Secretary of State—
- (a) fail to give notice as mentioned in section 106BA(9),
 - (b) determine under section 106BA that a planning obligation is to continue to have effect without modification, or
 - (c) determine under that section that a planning obligation is to be modified otherwise than in accordance with an application under that section,
- the applicant may appeal to the Secretary of State.
- (2) For the purposes of an appeal under subsection (1)(a), it is to be assumed that the authority have determined that the planning obligation is to continue to have effect without modification.
- (3) An appeal under this section must be made by notice served within such period as may be prescribed by the Secretary of State.
- (4) If no period is prescribed under subsection (3), an appeal under this section must be made—

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- (a) in relation to an appeal under subsection (1)(a), within the period of 6 months beginning with the expiry of the period mentioned in section 106BA(9) that applies in the applicant's case, or
 - (b) otherwise, within the period of 6 months beginning with the date on which notice of the determination is given to the applicant under section 106BA(9).
- (5) An appeal under this section must be made by notice served in such manner as may be prescribed by the Secretary of State.
- (6) Subsections (3) to (8), (10) and (11) of section 106BA apply in relation to an appeal under this section as they apply in relation to an application to an authority under that section, subject to subsections (7) to (15) below.
- (7) References to the affordable housing requirement or the planning obligation are to the requirement or obligation as it stood immediately before the application under section 106BA to which the appeal relates.
- (8) References to the first, the second or a subsequent application in relation to a planning obligation are to an appeal under this section against a determination on the first, the second or a subsequent application in relation to the obligation (whether or not it is the first such appeal).
- (9) Section 106BA(5)(d) (discharge of affordable housing requirement) does not apply in relation to an appeal under this section.
- (10) Subsection (11) applies if, on an appeal under this section, the Secretary of State—
 - (a) does not uphold the determination under section 106BA to which the appeal relates (if such a determination has been made), and
 - (b) determines that the planning obligation is to be modified in accordance with section 106BA(5)(a), (b) or (c).
- (11) The Secretary of State must also determine that the planning obligation is to be modified so that it provides that, if the development has not been completed before the end of the relevant period, the obligation is treated as containing the affordable housing requirement or requirements it contained immediately before the first application under section 106BA in relation to the obligation, subject to the modifications within subsection (12).
- (12) Those modifications are—
 - (a) the modifications necessary to ensure that, if the development has been commenced before the end of the relevant period, the requirement or requirements apply only in relation to the part of the development that is not commenced before the end of that period, and
 - (b) such other modifications as the Secretary of State considers necessary or expedient to ensure the effectiveness of the requirement or requirements at the end of that period.
- (13) In subsections (11) and (12) “relevant period” means the period of three years beginning with the date when the applicant is notified of the determination on the appeal.
- (14) Section 106BA and this section apply in relation to a planning obligation containing a provision within subsection (11) as if—
 - (a) the provision were an affordable housing requirement, and

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- (b) a person against whom the obligation is enforceable were a person against whom that requirement is enforceable.
- (15) If subsection (11) applies on an appeal relating to a planning obligation that already contains a provision within that subsection—
 - (a) the existing provision within subsection (11) ceases to have effect, but
 - (b) that subsection applies again to the obligation.
- (16) The determination of an appeal by the Secretary of State under this section is to be final.
- (17) Schedule 6 applies to appeals under this section.
- (18) In the application of Schedule 6 to an appeal under this section in a case where the authority mentioned in subsection (1) is the Mayor of London, references in that Schedule to the local planning authority are references to the Mayor of London.]

Textual Amendments

F32 Ss. 106BA-106BC inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 7(1), 35(2)** (with [s. 7\(3\)-\(5\)](#))

106C Legal challenges relating to development consent obligations

- (1) A court may entertain proceedings for questioning a failure by the Secretary of State ^{F33}... to give notice as mentioned in section 106A(7) [^{F34}or 106BA(9)] only if—
 - (a) the proceedings are brought by a claim for judicial review, and
 - (b) the claim form is filed [^{F35}before the end of] the period of 6 weeks beginning with [^{F36}the day after] the day on which the period prescribed under section 106A(7) [^{F34}or 106BA(9)] ends.
- ^{F37}(1A) If no period is prescribed under section 106BA(9), the period of 6 weeks referred to in subsection (1)(b) that applies in relation to proceedings for failure to give notice as mentioned in subsection (9) of section 106BA begins with [^{F38}the day after] the expiry of the period mentioned in that subsection that applies in the applicant's case.]
- (2) A court may entertain proceedings for questioning a determination by the Secretary of State ^{F33}... that a planning obligation shall continue to have effect without modification only if—
 - (a) the proceedings are brought by a claim for judicial review, and
 - (b) the claim form is filed [^{F39}before the end of] the period of 6 weeks beginning with [^{F40}the day after] the day on which notice of the determination is given under section 106A(7) [^{F41}or 106BA(9)].
- ^{F42}(3) A court may entertain proceedings for questioning a determination by the Secretary of State on an application under section 106BA that a planning obligation shall be modified otherwise than in accordance with the application only if—
 - (a) the proceedings are brought by a claim for judicial review, and
 - (b) the claim form is filed [^{F43}before the end of] the period of 6 weeks beginning with [^{F44}the day after] the day on which notice of the determination is given under section 106BA(9).]

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Textual Amendments

- F33** Words in s. 106C repealed (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), Sch. 13 para. 77(4), [Sch. 25 Pt. 20](#); S.I. 2012/628, art. 7
- F34** Words in s. 106C(1) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(2), [Sch. 2 para. 6\(2\)](#)
- F35** Words in s. 106C(1)(b) substituted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(a\)\(i\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71
- F36** Words in s. 106C(1)(b) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(a\)\(ii\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71
- F37** S. 106C(1A) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(2), [Sch. 2 para. 6\(3\)](#)
- F38** Words in s. 106C(1A) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(b\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71
- F39** Words in s. 106C(2)(b) substituted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(c\)\(i\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71
- F40** Words in s. 106C(2)(b) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(c\)\(ii\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71
- F41** Words in s. 106C(2) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(2), [Sch. 2 para. 6\(4\)](#)
- F42** S. 106C(3) inserted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), s. 35(2), [Sch. 2 para. 6\(5\)](#)
- F43** Words in s. 106C(3)(b) substituted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(c\)\(i\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71
- F44** Words in s. 106C(3)(b) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 92\(2\)\(c\)\(ii\)](#), 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 71

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