

**APPLICATION FOR MODIFICATION  
OR DISCHARGE OF A PLANNING  
OBLIGATION**

**NOTES FOR GUIDANCE**

**Background**

New regulations came into force on 1 February 2011 that amended section 75 of the Town and Country Planning (Scotland) Act 1997.

The changes establish a formal process to allow a person against whom a section 75 planning obligation is enforceable to apply to have the obligation either modified or discharged. A formal right of appeal to the Scottish Ministers is also introduced where the Council refuse the application or fail to determine such a request within the set time period of two months. The regulations apply to all planning obligations or agreements, even if they were concluded prior to 1 February 2011.

A copy of the explanatory circular “1/2010: Planning Agreements, Planning Obligations and Good Neighbour Agreements” produced by the Scottish Government can be viewed at:

<http://www.scotland.gov.uk/Publications/2011/02/21110750/0>

**Information required to be lodged with your application**

An application must be made in writing and forms are available for this PDF format from the Council's web site, or in paper format by contacting Planning and Regulatory Services directly. The application must include the following information:

- (a) the postal address of the land to which the planning obligation relates, or if the land in question has no postal address, a description of the location of the land;
- (b) a plan sufficient to identify that land;
- (c) a copy of the planning obligation to which the application relates, or otherwise contain sufficient information to identify that planning obligation;
- (d) the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent.
- (e) a statement outlining the relationship of the applicant to the land to which the planning obligation relates and why the planning obligation is enforceable against the applicant;
- (f) a statement outlining whether the applicant seeks the modification or discharge of the planning obligation and, if modification of the obligation is sought, set out the changes which the applicant wishes to be made to the obligation;
- (g) a statement setting out the grounds on which the applicant seeks modification or discharge of the planning obligation; and
- (h) be accompanied by a statement setting out (to the extent known to the applicant)—
  - (i) the names of the other parties to the planning obligation and of other interested parties; and
  - (ii) the address at which such parties may be contacted.

## **Determination of an application**

It is the responsibility of the Council to notify every interested party of the receipt of the application. Interested parties are owners of the land and/or any other person against whom the planning obligation is enforceable. The normal neighbour notification rules do not apply to such applications.

The Council has two months in which to determine the application. In coming to its decision on the application the Council may determine that the obligation be discharged or that the proposed modification to the obligation be made. The Council may also determine that the obligation should continue in its current form. The legislation does not permit the Council to determine that the obligation should be subject to any modification other than the modification, or modifications, as set out in the application. All such applications will be presented to the Planning & Building Standards Committee for determination.

Where a planning obligation has been registered in the General Register of Sasines or in the Land Register of Scotland, any determination to modify or discharge the obligation does not take effect until the determination is also registered in the appropriate register. It is a matter for the applicant to ensure that this is done in order that the determination can take effect. It would be advisable to obtain your own legal advice in the undertaking of this requirement.

## **Appeal**

If a decision has not been taken by the Council within two months of the application's validation or the Council has determined that the obligation should continue to have effect without modification then there is a statutory right of appeal to Scottish Ministers.

Appeal forms can be obtained by contacting the Directorate for Planning and Environmental Appeals, 4 The Courtyard, Callendar Business Park, Callendar Road, Falkirk FK1 1XR or by visiting their [website](#).

The Town and Country Planning (Appeals) (Scotland) Regulations 2008 apply and detailed guidance on appeals procedures, including how to appeal and what information is to be submitted by the appellant and the Council, is contained in Planning Circular 6/2009: Planning Appeals and can be viewed at: <http://www.scotland.gov.uk/Publications/2009/07/03100023/0>

**These notes have been prepared to set out the provisions of these new regulations and to help you fill in the application form. If you need any more help please contact the Council's planning staff.**