



A Guide to Planning Obligations (Section 75 Legal Agreements)

September 2014

As the planning authority we use planning obligations to preserve and encourage sustainable development of land within Loch Lomond and the Trossachs National Park.

Planning obligations are entered into by us with any person who has the ability to 'bind' the land (most commonly the landowners). We commonly used the term Section 75 Agreement which was derived from the relevant section of the Town and Country Planning (Scotland) Act 1997 when referring to a planning obligation entered into with a planning permission.

In the course of determining applications for planning permission we may decide to grant permission subject to a planning obligation being completed and registered against the title of the affected property. The types of situations these are used in can be found in our [Local Plan](#) policies.

Why a planning obligation?

Planning obligations are required for the purposes of restricting and/or regulating development or use of the land when approving an application for planning permission.

The following are examples of some common reasons for the use of a planning obligation:

- to secure long-term site management;
- to restrict further development of the land;
- to provide for financial contributions by the landowner; or
- to require the provision of affordable housing as part the development.

Please note this list is not exhaustive.

Restrictions or agreements can be permanent or for a specific period.

Effect of a planning obligation

A planning obligation must be registered against the title of the land in either the General Register of Sasines or Land Register of Scotland (as applicable).

Once a planning obligation has been registered it becomes binding on all future owners of the land. It may affect tenants and other occupiers, depending on the specific terms. Any restrictions on future use of the land or property will affect all future transfers or sales.

Land Ownership

In the majority of cases the party applying for planning permission will also be the owner of the land. There can however be a number of situations where the land is owned by another party. In those situations the landowner as well as the applicant will require to enter into the Section 75 Agreement.

Bank or other Secured Lender

The existence or creation of a planning obligation will be of interest to any bank or building society with an interest in a standard security or floating charge over the affected land. This is also known as the heritable creditor. The bank or building society will be required to formally consent to the creation of the planning obligation.

Requirements and considerations for an applicant (and landowner if not the applicant)

A planning obligation is a legal document with legal consequences. Therefore, any affected applicant/landowner must seek independent legal advice and appoint a solicitor to act on their behalf. The applicant/landowner will be responsible for their own solicitor's fees and will also be required to pay the legal fees and expenses incurred by the planning authority.

Information required to process the planning obligation

Items that will require to be provided to the planning authority's solicitor include the following:-

1. Titles

In every case all title deeds to the land must be provided for examination. These should demonstrate that the landowner has the ability to enter into the planning obligation in respect of the affected property. Where there are other interests in the property further titles may be required and other parties might need to enter into the planning obligation.

2. Plans

Plans which clearly show the extent of the area of land which is to be subject to the planning obligation may be required. These should correspond with the title deeds to the land.

3. Searches

Searches over the General Register of Sasines or Land Register brought down to a date as close as possible to the date when the planning obligation is to be sent for recording (or registration). The searches must show no competing interest to the land or matter restricting the ability to enter into the planning obligation. Searches should be provided to our Solicitor by the applicant/landowner's solicitor.

4. Heritable Creditor Consents

Any heritable creditor (e.g. a mortgage lender or floating charge holder) will be required to consent to the granting of the planning obligation. The heritable creditor will need to sign the planning obligation and the landowner will meet any costs associated with procuring such consent. We would encourage you to make contact with any heritable creditor as soon as the requirement for a planning obligation is identified as it can often take some time for the creditor to approve applications for consent.

It is important to note that no progress can be made on the planning obligation until our solicitor has received the relevant title deeds or land certificate from your solicitor. It is therefore advisable to provide those documents as quickly as possible to avoid any delay in the proposed development.

Enforcement of a planning obligation

A planning obligation is enforceable by the planning authority against the owners of the land and any of their successors in title. Should the landowner or any of their successors in title breach the terms of the planning obligation, the planning authority can take appropriate enforcement action to rectify the breach.

Further Information

The details of how and when planning obligations are used are set out in the Scottish Government's Planning Circular on Planning Obligations.

www.scotland.gov.uk/planning

Enquiries

All enquiries should be directed to the planning department.

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