



A Guide to Modifying, Varying or Discharging a Planning Obligations (Section 50 or 75 Legal Agreement)

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

There are numerous Section 50 or Section 75 Agreements (“Planning Obligations”) which have been recorded or registered in the General Register of Sasines or Land Register of Scotland (as applicable) affecting properties and/or land in the National Park. Where the planning obligation was entered into by a Council as the previous planning authority then we have inherited them as the planning authority covering the area. Any changes to those planning obligations must be dealt with in compliance with the Planning etc. (Scotland) Act 2006 (Saving and Transitional Provisions) Amendment Order 2011 (‘the 2011 Order’).

This note is intended to explain the legal background where a person would like to have an existing planning agreement/obligation varied in some way or discharged.

Examples

Examples of where a modification or discharge of a planning obligation might be relevant include:

- in the case of a payment obligation, where the planning obligation is still in place and there has been a change in circumstances, the person may apply to have the level of payment amended,
- where there is a restriction on the use of the affected property and there has been a change in planning policy the person may apply to have the restriction modified or discharged,
- where all of the obligations contained

within the planning obligation have been met, the relevant person can apply for a discharge.

Pre-Application Advice

We would advise that you submit a pre-application enquiry before submitting an application. We would then be able to give you advice on whether the application is likely to gain support or not. Further information on making a pre-application enquiry can be found on our website.

Submitting an Application

An application must meet the criteria set out in the Amendment Order 2011 and the easiest way to do this is to complete and submit the application form found on the Scottish Government’s planning portal at: www.eplanning.scotland.gov.uk/

You or any agent will be required to provide details of your name and address, and of any agent presenting the application. A location plan will be required and the following information:

- A copy of the relevant planning obligation, or otherwise sufficient information to identify the planning obligation. (this means a copy of the recorded/registered agreement or details of the date it was recorded/registered) ;
- State whether the applicant seeks modification or discharge of the planning obligation. If modification of the obligation is sought, the detailed changes in wording which the applicant wishes to be made to the obligation must be set out;

- The grounds on which the applicant seeks modification or discharge of the planning obligation;
- A statement setting out (to the extent known to the applicant)—
 - (i) the names of other parties to the original agreement and any other interested parties; and
 - (ii) the address at which those parties may be contacted.

Decision Making Process

Once the application has been validated then we will notify all the noted interested parties, and ask for any comments to be made. We must allow a minimum of 21 days for any comments to be received by us.

We are required to issue a decision within two months of receiving a valid application (which includes all of the documents and information referred to above).

The decision notice will state the decision and the reasons for that decision. If the application is approved then the modification or discharge will be undertaken.

Requirements and Considerations for an Applicant

A planning obligation (Section 50/75 Agreement) is a legal document. Any changes are likely to have legal consequences. Therefore, any person looking to modify or vary such an obligation should seek independent legal advice and consider appointing a solicitor to act on their behalf. The applicant will be responsible for any solicitor's fees incurred and will generally be required to **pay the legal fees** and expenses incurred by the planning authority in connection with the formal discharge or modification of a planning obligation.

Where there is to be variation or modification then further information may be required and this includes:-

- Plans - including where a plan is required it should clearly show the area of land which to which the modification relates and should be provided by the

applicant at their expense. Any such plans should correspond with the title deeds to the land.

- Consents - Any heritable creditor (e.g a mortgage lender or floating charge holder) may be required to consent to the modification of a planning obligation. The applicant will be required to meet any costs associated with procuring such consent.

Right of Appeal

If the application were to be refused then there is a right of appeal to Scottish Ministers. An appeal must be lodged within 3 months of a refusal. Any refusal notice would set out details on how to lodge an appeal.

Information Required to Process the Planning Obligation

It is important to note that until we receive the relevant title deeds or land certificate we are unable to progress the preparation of the planning obligation. It is therefore in the landowner's interest to provide all of those documents as quickly as possible to avoid any delay in the proposed development.

Further Information

The detail of how we would assess this type of application, for modification or discharge of a planning obligation, is set out in the Annex to the Scottish Government's Planning Circular 3/2012 on Planning Obligations.

www.scotland.gov.uk/planning

Enquiries

All planning enquiries should be directed to the planning department. Further information on making a pre-application enquiry can be found on our website.

Phone: 01389 722024

E-mail at: planning@lochlomond-trossachs.org; or by **fax** on: 01389 722633.