

# PLANNING ETC. (SCOTLAND) ACT 2006

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## EXPLANATORY NOTES

### THE ACT – SECTION BY SECTION

#### Part 3 – Development Management

#### *Section 15 – Additional grounds for declining to determine application for planning permission*

96. **Subsection (a)** amends section 39 of the 1997 Act by substituting new subsections (1) to (1D) for the existing subsection (1).
97. **The new subsection (1)** sets out the circumstances in which a planning authority may decline to determine an application for planning permission.
- Paragraph (a) applies where the Scottish Ministers have refused a similar application in the previous two years and there has been no significant change to the development plan or any other material considerations.
  - Paragraph (b) applies where the planning authority has refused more than one similar application in the previous two years and there has been neither an appeal to Ministers nor any significant change to the development plan or other material considerations since the more recent of these refusals.
  - Paragraph (c) applies where the planning authority has refused more than one similar application in the previous two years, there has been an appeal to Ministers but no such appeal has yet been determined, and there has been no significant change to the development plan or other material considerations since the more recent of these refusals.
  - Paragraph (d) applies where there has been no refusal by the planning authority but an appeal following non-determination of an application has been made in the previous two years in respect of two or more similar applications, and those appeals remain undetermined and no significant change to the development plan or other material considerations have occurred since the more recent of the appeals was made.
  - Paragraph (e) applies where two similar applications have been received in the previous two years. Where the planning authority has refused one application and an appeal that has been made on another similar application has still to be determined, the planning authority may decline to determine a further application if there has been no significant change to the development plan or other material considerations since the more recent of the refusal or the appeal.
98. **The new subsections (1A) to (1D)** place a duty on the planning authority or the Scottish Ministers to refuse an application for planning permission if the applicant has failed to comply with the pre-application consultation requirements introduced by new section 35B. The authority or the Scottish Ministers are required to inform the applicant of the reason for refusing it but may request additional information from the applicant before doing so. As the Act allows for pre-application requirements to apply

*These notes relate to the Planning etc. (Scotland) Act 2006  
(asp 17) which received Royal Assent on 20 December 2006*

to applications which are made directly to the Scottish Ministers under the new “urgent development” procedures introduced on the removal of Crown immunity from planning control, the duties in these new subsections can also apply to the Scottish Ministers.