



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 6

DEVELOPMENT MANAGEMENT SCHEME

71 Development management scheme

- (1) The development management scheme may be applied to any land by registering against the land (in this Part of this Act referred to as “the development”) a deed of application granted by, or on behalf of, the owner of the land or, if and in so far as the terms of the order mentioned in subsection (3) below so admit, may be thus applied with such variations as may be specified in the deed; and the scheme shall take effect in relation to the development on the date of registration or, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.)—
 - (a) on such later date as may be so specified (the specification being of a fixed date and not, for example, of a date determinable by reference to the occurrence of an event); or
 - (b) on the date of registration of such other deed as may be so specified, and different provision for the taking effect of the scheme may be made for different parts of the development.
- (2) The deed of application shall include specification or description of the matters which the scheme requires shall be specified or described and shall in any event include—
 - (a) the meaning, in the scheme, of such expressions as “the development”, “scheme property” and “unit”;
 - (b) the name by which any owners' association established by the scheme is to be known, being a name which either ends with the words “Owners Association” or begins with those words preceded by the definite article;
 - (c) the name and address of the first manager of any association so established.
- (3) In this Act, “the development management scheme” means such scheme of rules for the management of land as is set out in an order made, in consequence of this section, under section 104 of the Scotland Act 1998 (c. 46) (power to make provision consequential on legislation of, or scrutinised by, the Scottish Parliament) or, in relation to a particular development, that scheme as applied to the development.

72 Application of other provisions of this Act to rules of scheme

In so far as the terms of the order mentioned in section 71(3) of this Act so admit, sections 2, 3, 5, 10 (except subsection (4)(a)), 11, 13, 14, 16, 18, 59 to 61, 67 to 70, 98, 100, 104 and 105 of this Act apply in relation to the rules of the development management scheme as those sections apply in relation to community burdens; except that, for the purposes of that application, in those sections any reference—

- (a) to an owner of a benefited property shall be construed as to the manager of any owners' association established by the scheme;
- (b) to a benefited property shall be construed as to a unit of the development in so far as advantaged by those rules;
- (c) to a burdened property shall be construed as to a unit of the development in so far as constrained by those rules;
- (d) to a community shall be construed as to the development; and
- (e) to a constitutive deed shall be construed as to the deed of application.

73 Disapplication

- (1) The development management scheme may be disapplied to the development, or to any part of the development, by an owners' association established by the scheme registering against the development or as the case may be the part, a deed of disapplication granted by that association in accordance with the scheme; and subject to subsection (3) below the disapplication shall take effect—

- (a) on the date of registration; or
- (b) notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.), on such later date as may be specified in the deed (the specification being of a fixed date and not, for example, of a date determinable by reference to the occurrence of an event).

- (2) The deed of disapplication may by means of real burdens provide for the future management and regulation—

- (a) in the case of disapplication to the development, of the development or of any part of the development; or
- (b) in the case of disapplication to a part of the development, of that part or of any part of that part,

and section 4 of this Act shall apply accordingly except that paragraph (b) of subsection (2) of that section shall, for the purposes of this subsection, apply with the substitution, for the reference to the owner of the land which is to be the burdened property, of a reference to the owners' association.

- (3) The deed of disapplication shall not, on registration, disapply the development management scheme or impose a real burden unless, after the expiry of the period mentioned in subsection (3) of section 74 of this Act, there is endorsed on the deed (or on an annexation to it referred to in an endorsement on it and identified, on the face of the annexation, as being the annexation so referred to) a certificate executed by a member of the Lands Tribunal, or by their clerk, to the effect that no application for preservation of the scheme has been received under that subsection or that any such application which has been received has been withdrawn; and where more than one such application has been received the certificate shall relate to both (or as the case may be all) applications.

- (4) An owners' association proposing to submit a deed of disapplication granted as mentioned in subsection (1) above for registration shall, before doing so, swear or affirm before a notary public (the deed being endorsed accordingly)—
 - (a) that section 74 of this Act has been complied with; and
 - (b) as to the date on which the period mentioned in subsection (3) of that section expires.
- (5) Subsection (2)(b) of section 22 of this Act applies in relation to the owners' association and for the purposes of subsection (4) above as it applies in relation to a terminator and for the purposes of subsection (1) of that section.

74 Intimation of proposal to register deed of disapplication

- (1) Where a deed of disapplication is granted as mentioned in section 73(1) of this Act, any proposal to register that deed shall be intimated by the owners' association to every person who is the owner of a unit of the development.
- (2) Such intimation to an owner shall be given by sending a copy of the deed, together with a notice stating—
 - (a) what the effect of registering the deed would be; and
 - (b) that an owner who has not agreed to the granting of the deed and who wishes to apply to the Lands Tribunal for preservation of the development management scheme must do so by a date specified in the notice (being the date on which the period mentioned in subsection (3) below expires).
- (3) A person to whom intimation is given under subsection (2) and who has not so agreed may, during the period of eight weeks beginning with the date by which subsection (1) above has been complied with fully, apply to the Lands Tribunal for preservation of the scheme.