STATUTORY RULES OF NORTHERN IRELAND

2005 No. 222

PLANNING

The Planning (Fees) Regulations (Northern Ireland) 2005

Made - - - -	*27th April 2005*
Coming into operation	*18th May 2005*

The Department of the Environment, in exercise of the powers conferred by Articles 127 and 129(1) of the Planning (Northern Ireland) Order 1991(**1**) and all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Planning (Fees) Regulations (Northern Ireland) 2005 and shall come into operation on 18th May 2005.

Interpretation

2.—(1) In these Regulations –

"the 1991 Order" means the Planning (Northern Ireland) Order 1991;

"area of townscape character" and "area of village character" have the same meaning as in a direction issued by the Department under Article 11(2)(f) of the 1991 Order;

"the Control of Advertisements Regulations" means the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992(**2**);

"the Commission" means the Planning Appeals Commission;

"dwellinghouse" means a building or part of a building which is used as a single private dwellinghouse, and for no other purpose;

"the General Development Order" means the Planning (General Development) Order (Northern Ireland) 1993(**3**);

"glasshouse" means a building which –

(a) has not less than three-quarters of its total external area comprised of glass or other translucent material;

(**1**) S.I.1991/1220 (N.I. 11) as amended by S.I. 2003/430 (N.I. 8)
(**2**) S.R. 1992 No. 448
(**3**) S.R. 1993 No. 278

(b) is designed for the production of flowers, fruit, vegetables, herbs or other horticultural produce; and

(c) is used, or is to be used, solely for the purposes of agriculture;

"the Hazardous Substances Regulations" means the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993(**4**);

"outline planning permission" means planning permission granted in accordance with the provisions of a development order, conditional on the subsequent approval by the Department of the particulars of the proposed development;

"reserved matters" has the same meaning as in Article 2 of the General Development Order;

"use for residential purposes" means use as a dwellinghouse;

"use of land" includes use of land for the winning and working of minerals.

(2) Expressions used in regulation 14 have the same meaning as in the Control of Advertisements Regulations.

Fees for planning applications

3.—(1) Subject to regulation 4, where an application is made to the Department for planning permission or, for the approval of reserved matters, a fee shall be paid to the Department in accordance with the provisions of these Regulations.

(2) Subject to regulations 10 and 19(2), the fee in respect of the application shall be calculated in accordance with the provisions of Schedule 1.

(3) Any fee paid pursuant to this regulation shall be refunded if the application is rejected as invalidly made.

Exemptions

4.—(1) Regulation 3(1) shall not apply where the Department is satisfied that the application relates solely to –

(a) the carrying out of operations for the alteration or extension of an existing dwellinghouse; or

(b) the carrying out of operations (other than the erection of a dwellinghouse) in the curtilage of an existing dwellinghouse, for the purpose, in either case, of providing means of access to or within the dwellinghouse for a disabled person who is resident in, or is proposing to take up residence in, that dwellinghouse, or of providing facilities designed to secure his greater safety, health or comfort.

(2) Regulation 3(1) shall not apply where the Department is satisfied that the application relates solely to the carrying out of operations for the purpose of providing means of access for disabled persons to or within a building or premises to which members of the public are admitted (whether on payment or otherwise).

(3) In this regulation, "disabled person" means a person who is within any of the descriptions of persons to whom section 1 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978(**5**) applies.

5. Regulation 3(1) shall not apply where the Department is satisfied –

(**4**) S.R. 1993 No. 275
(**5**) 1978 c. 53 as amended by Article 136, Schedule 5 Part II to S.I. 1986/595 (N.I. 4)

(a) that the application relates to the use of a building or other land for a purpose of a class specified in the Planning (Use Classes) Order (Northern Ireland) 2004(**6**) and solely to such use; and

(b) that the existing use of that building or other land is for another purpose of the same class; and

(c) that the making of an application for planning permission in respect of the use to which the application relates is necessary by reason of (and only by reason of) a condition imposed on a permission granted or having the like effect as a permission granted under Part IV of the 1991 Order.

Cases where reduced fees apply

6.—(1) Regulation 3(2) shall not apply where –

(a) the application relates to development which is within one or more of the classes specified in Schedule 1 to the General Development Order and solely to such development; and

(b) the permission granted by Article 3 of that Order does not apply in respect of that development by reason of (and only by reason of) –

(i) a direction made under Article 4 of that Order which is in force on the date when the application is made; or

(ii) the requirements of a condition imposed on any permission granted or having the like effect as a permission granted under Part IV of the 1991 Order.

(2) The reference in paragraph (1)(a) to an application which relates to development which is within one or more of the classes specified in Schedule 1 to the General Development Order shall be construed as including an application for planning permission to carry out such development without compliance with a condition subject to which a previous planning permission has been granted, where the condition in question prohibits or limits the carrying out of any development which is within one or more of the said classes.

7.—(1) Where the conditions set out in paragraph (2) are satisfied, regulation 3(2) shall not apply to –

(a) an application for planning permission which is made by or on behalf of the same applicant following the granting of planning permission (whether by the Department or by the Commission on appeal) for development which the Department is satisfied is of the same character or description as the development to which the application relates;

(b) an application for approval of one or more reserved matters which is made by or on behalf of the same applicant following the granting of approval (whether by the Department or by the Commission on appeal) of details relating to the same matters reserved in the same outline planning permission.

(2) The conditions referred to in paragraph (1) are –

(a) that the application is made before the end of a period of 12 months following the date of the relevant grant of planning permission or grant of approval of details of reserved matters, as the case may be;

(b) that the application relates –

(i) in the case of an application for planning permission, to the same site as that to which the grant of planning permission related, or to part of that site, and to no other land (save that where additional land is included in the application solely for the purpose of providing a means of access to the site which differs from that authorised

(**6**) S.R. 2004 No. 458

by the planning permission, that land shall be disregarded for the purposes of this paragraph);

(ii) in the case of an application for approval of reserved matters, to the same land as that in respect of which the approval was granted, or to part of that land (and no other land);

(c) in the case of an application for planning permission which is not made in outline, that the planning permission which has been granted is not an outline planning permission;

(d) that no previous application has at any time been made by or on behalf of the same applicant which related to the site to which the relevant grant of planning permission or grant of approval of reserved matters, as the case may be, relates (or which related wholly or in part to any part of that site) and which was exempted from regulation 3(2) by this regulation.

8.—(1) Where the conditions set out in paragraph (2) are satisfied, regulation 3(2) shall not apply to –

(a) an application for planning permission which is made following the withdrawal (before notice of decision was issued) of an application for planning permission made by or on behalf of the same applicant;

(b) an application for approval of one or more reserved matters which is made following the withdrawal (before it is determined) of an application made by or on behalf of the same applicant for approval of details relating to the same matters reserved in the same outline planning permission.

(2) The conditions referred to in paragraph (1) are –

(a) that the application is made before the end of a period of 12 months following the date when the withdrawn application was made;

(b) that the application relates in the case of an application for planning permission, to the same site as that to which the earlier application related, or to part of that site, and to no other land (other than additional land required for the provision of access to the development);

(c) in the case of an application for planning permission, that the Department is satisfied that it relates to development of the same character or description as the development to which the earlier application related (and to no other development);

(d) in the case of an application for planning permission which is not made in outline, that the earlier application was also not made in outline;

(e) that the fee payable in respect of the earlier application was paid;

(f) that no previous application has at any time been made by or on behalf of the same applicant which related to the site to which the earlier application related (or which related wholly or in part to any part of that site) and which was exempted from regulation 3(2) by this regulation or exempted under the corresponding provisions of the Planning (Fees) Regulations (Northern Ireland) 1995(**7**).

Fee for application made following a determination as to whether listed building consent required

9. Where the Department receives an application for a determination under Article 48(1) of the 1991 Order and determines that the proposed work to a listed building would involve the alteration or extension of the building in a manner which would affect its character as a building of special architectural or historic interest, the fee for the application for listed building consent made by or

(**7**) S.R. 1995 No. 78

on behalf of the same applicant as a result of the determination shall be reduced by the amount paid for the determination under regulation 17(1).

Amount of reduced fees and refunds

10.—(1) The fee for an application for planning permission to which regulation 6, 7 or 8 applies shall be £50.

(2) Any fee paid pursuant to this regulation shall be refunded if the application is rejected as invalidly made.

Fees for deemed applications

11.—(1) Subject to regulation 12(1), a fee shall be paid where an application for planning permission is deemed to have been made by virtue of the provisions of Article 71(5) of the 1991 Order (in consequence of an appeal under Article 69 of that Order against an enforcement notice).

(2) Subject to regulation 12(3) and regulation 13(6) the amount of the fee payable in respect of a deemed application shall be calculated in accordance with the provisions of Schedule 1.

(3) A fee shall be paid in respect of a deemed application by every person who appeals against the relevant enforcement notice.

Exemption, etc. – deemed applications

12.—(1) In the case of a deemed application, regulation 11(1) shall not apply where the appellant, before the date when the relevant enforcement notice was issued, made –

(a) an application to the Department for planning permission for the development to which the relevant enforcement notice relates (and had paid to the Department the amount of the fee payable in respect of that application, in accordance with the requirements of regulation 3); or

(b) an appeal to the Commission against the refusal of the Department to grant such permission, and that application or that appeal (as the case may be) had not been determined on or before the date when the relevant enforcement notice was issued.

(2) Regulations 4, 5 and 6 shall apply to a deemed application as they apply to an application for planning permission with the following modifications –

(a) references in regulations 4 and 5 to regulation 3(1) shall be construed as a reference to regulation 11(1);

(b) reference in regulation 6(1) to regulation 3(2) shall be construed as a reference to regulation 11(2);

(c) references to the Department shall be construed as references to the Commission; and

(d) references to the development to which the application relates shall be construed as references to the development to which the relevant enforcement notice relates.

(3) The fee for an application deemed to have been made by virtue of Article 71(5) of the 1991 Order to which regulation 6 (as applied by regulation 12(2)) applies shall be £50.

Refunds – deemed applications

13.—(1) If, in the case of a deemed application, the Commission declines jurisdiction on the grounds that the relevant appeal does not comply with one or more of the requirements of Article 69(1) to (4) of the 1991 Order, the fee paid in respect of the deemed application shall be refunded.