

Application for Modification or Discharge of a Planning Obligation



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COUNCIL

Guidance Note

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Background

Legislation for securing, varying and discharging planning obligations (sometimes referred to as planning agreements) are contained in Section 75 of the Town and Country Planning (Scotland) Act 1997. [Circular 3/2012](#) Planning Obligations and Good Neighbour Agreements (Revised November 2020) details the Scottish Government's policy on the use of planning obligations, including unilateral obligations, and good neighbour agreements made under Section 75 and Section 75D respectively, of the Town and Country Planning (Scotland) Act 1997.

Section 75A provides two means by which an obligation can be modified; the first is by a minute of variation, which is agreed with the planning authority, and the second is following a formal process requiring an application to have the obligation either modified or discharged with a right of appeal if this is refused. This guidance note covers both options.

Application Process

Due to the determination period of two months for a Modification of Planning Obligation (MPO) application, it is important that all the required information and documents are submitted with the application. If an application is submitted and mandatory information is missing, the application will not be validated, and a formal letter will be sent detailing the missing information and a date for which it must be provided, before the application is formally returned.

Should any relevant information that is not mandatory but required to allow the case officer to make a determination be missing, the application will be validated, meaning the two-month period starts, but a refusal may still be issued due to a lack of evidence

or information. This guidance note will help with completion of the application form and ensure that all the required information is submitted.

In determining an application under Section 75A the planning authority may decide that the obligation:

- Is modified/ discharged (i.e. approve the application);
- Is to have effect subject to modifications (with agreement from the applicant); or
- Is to continue to have effect without modification (i.e. refuse the application)

It is important to note that although the planning authority may determine to modify or discharge a planning obligation – or enter into an agreement to do so – it does not take effect until the date it has been registered or recorded in the appropriate land register. This is a procedure normally undertaken by a solicitor.

[The Town and Country Planning \(Modification and Discharge of Planning Obligations\) \(Scotland\) Regulations 2010](#) set out the procedures that apply to applications made under Section 75A.

The Council's legal team will work with the applicant's agents to agree the wording of the MPO determination to give effect to modifications to be granted and to ensure that the MPO determination is registered against the relevant title. A fee between £150 and £350 (no VAT) is usually charged, payable by the applicant, depending on complexity and which party deals with registration. The Council reserves the right to charge a higher fee in cases of extreme complexity.

Minute of Variation

As stated, the other means by which a planning obligation can be modified is by agreement between the person (or persons) against whom that obligation is enforceable and the planning authority.

A Minute of Variation may be a suitable alternative to a formal MPO application. The planning authority will determine whether the modification sought would be appropriately secured by a Minute of Variation. There is no notification undertaken to a neighbour or other interested parties with this option. Accordingly, the planning authority will not agree to this option where there are parties who, in its judgement, might have an interest in the proposed modification and wish to make a representation. This option may be appropriate where the terms of the Section 75 Agreement require updating without a material change to the obligation(s). An example may be to update the Agreement to reflect an update to the proposed development's site design or layout, but where the overall scale and impact of development is unchanged.

The terms of a Minute of Variation must be mutually acceptable to both parties.

Once signed by both parties the Minute of Variation will require to be registered or recorded in the appropriate land register by either the Council or the applicant's solicitors so that the modification(s) are registered against the relevant title.

The Council's legal team will work with the applicant's agents to agree the wording of the Minute of Variation to give effect to modifications granted and to ensure that the MPO determination is registered against the relevant title. A fee between £150 and £350 (no VAT) is usually charged, payable by the applicant, depending on complexity and which party deals with registration. The Council reserves the right to charge a higher fee in cases of extreme complexity.

Discharging Section 75 Agreements

As planning obligations (Section 75 Agreements) are registered on the title of the land, in the Land Register of Scotland or the General Register of Sasines, they are enforceable against future owners or occupiers of the land.

To remove a Section 75 Agreement as a burden upon the title of the land, an application may be made to discharge the Agreement (an MPO application). If granted, any determination to modify or discharge the obligation or any agreement to do so does not take effect until the determination or the agreement, as the case may be, is registered or recorded in the appropriate register (see section 75A(6) and (7)). It is the responsibility of the applicant to ensure that this is done in order that the determination can take effect. Again, this is a process which is normally undertaken by a solicitor.

If some circumstances, the Council may agree to enter into a Minute of Agreement to effect a discharge. This might apply where a discharge is required to clear a Planning Agreement from title where no planning considerations apply in the consideration of the issue. An example might be where a Section 75 remains in place on a site where the development's planning consent lapsed, and no development commenced.

The Council's legal team will work with the applicant's agents to agree the wording of the minute of agreement to effect the discharge and to ensure the minute of agreement is registered against the relevant title. A fee of between £150 and £350 (no VAT) will be charged depending on which party deal with registration.

Notes on the MPO Application Form

1. Applicant Details

The applicant is the party which planning obligation(s) is enforceable against. If the original agreement was between a company rather than an individual person, then the companies name should be entered rather than the name of an owner of a company etc. Ensure that all sections are complete.

2. Agents Details

The contact details of the agent acting on your behalf, if applicable. A full address and telephone number should be provided. If you are using the services of an agent, please be aware that correspondence will be sent directly to them should further information be required through the application process.

3. Legal Representative Details

The full contact details of your legal representative, if different from the agent details. Our legal team may wish to contact your legal representative should they have any enquiries through the application process.

4. Application Type

Select the type of application you are making.

5. Address/Location of Site

The full postal address for the site to which the application relates should be provided and if the site does not have a postal address, a full description of the location of the land. A scaled (1:1250 or 1:2500) location plan identifying the land in question outlined in red should also be supplied as part of the application. If we are not able to clearly identify the land to which the application and obligation relates then it will be made invalid and further information requested.

6. Details of the Planning Obligation

The obligation you wish to be modified or discharged from the agreement should be listed, including the clause or paragraph of the relevant agreement, and quoted if possible. Along with the date the obligation was registered with the Land Registry, the reference number, details of the applicant's interest in the land, and why the obligation is enforceable against them. A copy of the planning obligation should be provided along with the application. If a copy is not available, then ensure that you have answered the questions fully to allow us to obtain our own copy or identify the obligation in question. If no information is provided, the application will not be made valid.

7. Planning Application Details

The details of the planning application to which the obligation relates to should be listed including the application number, date of decision and description of development i.e. *Erection of 20 dwellings*

8. Name and Address of others that are Party to the Planning Obligation.

Names and addresses of other parties to the planning obligation (to the extent known to the applicant) should be provided to enable the notification process to be undertaken. This section should not be left blank and if full details of are not known, provide what is.

9. Name and Address or any other Interested Parties

Names and addresses of any other interested parties, such as landowners (other than the applicant) and or any other person against whom the planning obligation is enforceable.

10. Applications for Modification of the Planning Obligation

If the application relates to a modification of a planning obligation, provide full details of the changes the applicant wishes to be made.

11. Additional Information

A statement as to why the modification or discharge is being sought should be provided. You may feel there is additional information that is relevant to the application; this should also be provided in this section.

12. Application Requirements Checklist

Please tick the boxes to confirm that you have enclosed the required information with your application.

13. Declaration

Ensure that you sign and date the application. If this section is not completed the form will be returned to complete.

Useful Contact Information

General MPO/ MoV enquiries: Development Management team
DevelopmentManagement@pkc.gov.uk

Section 75 obligation enquiries: Development Contributions Officer
DevelopmentContributions@pkc.gov.uk

01738 475300

Economy, Development and Planning
Perth & Kinross Council
Pullar House
35 Kinnoull Street
Perth PH1 5GD

Legal services: LegalServices@pkc.gov.uk

01738 475102

Legal and Governance
Perth & Kinross Council
2 High Street
Perth PH1 5PH

Process Flowchart

