



Each case is unique and must be considered on its merits. It is for the person appointed to determine the case to satisfy him/herself that the application of the practice contained in this note is appropriate to the circumstances of the case. A reporter who intends to depart from the guidance should advise a Principal or Assistant Chief Reporter so issues emerging can be considered for future case work.

Guidance note:	Good Neighbour Agreement Appeals
Relating to:	This note relates to appeals submitted under section 75F of the Town and Country Planning (Scotland) Act 1997.
Background/ legislative and policy framework:	<p>Background</p> <p>The 2006 Planning Act brought in significant changes to section 75 of the Town and Country Planning (Scotland) Act 1997 and introduced good neighbour agreements. These are intended to promote a stronger role for communities in monitoring the way development is carried out, giving them access to more information about development and to facilitate communication between the parties to address issues of concern and avoid disputes. Section 75D(1) states:</p> <p style="padding-left: 40px;">‘A person may, by agreement with a community body, enter into an obligation governing operations or activities relating to the development or use of land, either permanently or during such period as may be specified in the agreement.’</p> <p>A good neighbour agreement obligation may be modified or discharged by agreement between the community body¹ and the person against whom it is enforceable². If they can not reach agreement either party may apply to the planning authority for the obligation to be modified or discharged³.</p> <p>The form, content and procedure for such an application is set out in the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement)(Scotland) Regulations 2010, which came into effect on 1 February 2011</p> <p>Such an application to the planning authority is to be made in writing and is to⁴:</p> <ul style="list-style-type: none"> (a) contain the postal address of the land to which the obligation relates, or if the land in question has no postal address, a description of the location of the land; (b) be accompanied by a plan sufficient to identify that land; (c) be accompanied by a copy of the good neighbour agreement containing the obligation to which the application

¹ Community body is clarified at Section 75D(2)

² Section 75E(1)

³ Section 75E(2)

⁴ Regulation 3 of the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement)(Scotland)Regulations 2010

	<p>relates or otherwise contain sufficient information to identify that obligation;</p> <p>(d) contain the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent;</p> <p>(e) state if the applicant is a community body and, if not, state the relationship of the applicant to the land to which the obligation relates and why the obligation is enforceable against the applicant;</p> <p>(f) state whether the applicant seeks the modification or discharge of the obligation and, if modification of the obligation is sought, set out the changes which the applicant wishes to be made to the obligation;</p> <p>(g) set out the grounds on which the applicant seeks modification or discharge of the obligation;</p> <p>(h) be accompanied by, a statement setting out (to the extent known to the applicant)—</p> <ul style="list-style-type: none"> (i) the names of the other parties to the good neighbour agreement and of other interested parties; and (ii) the address at which such parties may be contacted; and <p>(i) be accompanied by evidence that the applicant has attempted to reach agreement regarding the modification or discharge of the obligation but has been unable to do so.</p> <p>Circular 3/2012 details Scottish Government policy on the use of good neighbour agreements, and the determination of applications for modification and discharge.</p> <p>Appeals Section 75F of the Act gives the applicant the right to appeal to Scottish Ministers where:</p> <ul style="list-style-type: none"> (i) the planning authority fail to make a decision within 2 months⁵ of the receipt of a valid application or (ii) the authority determine that the obligation is to continue without modification, is discharged, or is to have effect subject to the modifications specified in the application. <p>Regulation 22 of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 applies to a good neighbour agreement appeal.</p>
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⁵ Regulation 7 clarifies that a planning authority are to reach a decision within 2 months of the receipt of a valid application. The right of appeal for non-determination arises on the expiry of this 2 month period. There is no provision for a planning authority to extend the this period by agreement.

	<p>An appeal must be submitted by the applicant on the good neighbour agreement appeal form which is available from the DPEA web site and the form should be accompanied by the documentation as set out above. An appeal must be lodged within 3 months from the date of the decision by the planning authority or, in the case of non-determination, within 3 months of the date a decision should have been made⁶.</p> <p>The Planning Authority will be asked to provide a response to the appeal using the Planning Authority Response Form and any documents which were taken into account in reaching their decision that have not already been submitted. If the appeal is against the non-determination of an application the Act states that it is to be assumed that the planning authority have determined that the obligation is to continue to have effect without modification⁷.</p>
DPEA practice:	<p>Good Neighbour Agreement Appeals will be received by the administration team, added to the case handling system and checked for validity. The case officer will request the planning authority response to the appeal and the Head of Performance & Administration will allocate the case to a reporter for consideration.</p> <p>Reporters should note that an 'interested party' to a GNA is defined in the regulations and is, other than the applicant, the community body, the owner of the land to which the GNA relates or a person against whom the obligation is enforceable.</p> <p>Our targets for dealing with planning obligation appeals are as for other appeals held under the 2013 regulations (See Guidance Note 3.)</p>
Process:	<p>A good neighbour agreement appeal will follow the same procedure as appeals under Part 3 of the 2013 regulations (planning permission appeals and other appeals under section 47). See Guidance notes 3, 7 and 8.</p> <p>Section 75B(4) provides that a reporter who is allocated a good neighbour agreement appeal may determine that the obligation:-</p> <ul style="list-style-type: none"> (a) is to continue to have effect without modification; or (b) is discharged; or (c) is to have effect subject to the modifications specified in the application. <p>There is no scope for a reporter to modify a good neighbour agreement other than as proposed by the appellants.</p> <p>Where an appeal relates to a good neighbour agreement obligation that has been recorded in the Register of Sasines or registered in the Land Register of Scotland, the determination to modify or</p>

⁶ See regulation 4 – an application is valid on the date the last of the items required by regulation 3 is received.

⁷ Section 75F(2)

	<p>discharge the obligation does not take effect until the date on which the notice is so recorded or registered.⁸ A decision that the obligation is to continue to have effect without modification does not need to be recorded/registered.</p> <p>If an obligation is modified it is enforceable from the date that it is recorded or registered (where that is required). Where it is discharged or is to continue without modification, it is enforceable from the date of the reporter's decision.⁹</p>
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⁸ Section 75(F)(8)

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