

FORM TC 90(1)(a)

Application under section 90(1)(a) of the Title Conditions (Scotland) Act 2003 to discharge or vary a title condition and/or for the determination of a question as to the validity, applicability or enforceability of a title condition if it is a real burden or rule of a development management scheme.

1. Name and address of applicant.

2. Applicant's connection with land subject to the title condition.

The applicant is the owner of the land subject to the title condition

or

The title condition is enforceable against the applicant because (*specify*)

3. Particulars of title condition.

(a) Nature of title condition.

(b) Property burdened by title condition (*describe the burdened property sufficiently precisely to enable it to be identified*).

(c) Manner and date of creation of title condition (*describe the deed in which the title condition was created by reference to the names of the parties and date of registration or recording, or, if it was not created in a deed, provide reasons for thinking that a title condition exists*).

(d) Owner(s) of the burdened property (*state names and addresses*).

(e) Persons entitled to the benefit of the title condition (*here state names and addresses of benefited proprietors and/or holders of the title condition*).

If your application is for discharge or variation, complete part A.

If your application is for the determination of a question as to the validity, applicability or enforceability of a title condition which is a real burden or rule of a development management scheme, complete part B.

Note that it is not normally necessary to complete both parts of this form.

Part A

4. Nature of application (*here state whether the application is for complete discharge or variation of the title condition, and if the latter, specify what change is required*).

5. Details of application (*here give a statement of the circumstances in which discharge or variation is required*).

6. Statutory basis of application (*here specify which of the grounds in section 98 applies and give brief details of circumstances bearing on each of the factors referred to in section 100 of the Title Conditions (Scotland) Act 2003. Note that in relation to section 100(j) you should set out full detail of any other circumstances you wish the Tribunal to consider in support of your application.*).

Part B

7. Nature of application (*here state whether the application is for a determination of the validity, applicability or enforceability*).

8. Basis of application (*here give a statement of the reasons for believing that the real burden or rule of a development management scheme is valid or invalid, applicable or inapplicable, enforceable or unenforceable*).

I/We hereby apply for the discharge /variation of the title condition described above.

and/or

I/We hereby apply for the determination of a question as to the validity, applicability or enforceability of the title condition described above which is a real burden or rule of a development management scheme.

Signed

Date

(To be signed by the applicant or by the applicant's solicitor, who should add a designation and the words: Agent of the said AB)

NOTES FOR THE INFORMATION OF APPLICANTS

1. You should enclose with this application a copy of any conveyance, deed, instrument or writing under which the title condition was created, a large scale plan of the location identifying adjacent properties and any grant of planning permission which has been obtained for any proposed development, with any plans relating to it.

2. Section 98 of the Title Conditions (Scotland) Act reads as follows:-

An application for the variation, discharge, renewal or preservation, of a title condition shall, unless it falls to be granted as of right under section 97(1) of this Act, be granted by the Lands Tribunal only if they are satisfied, having regard to the factors set out in section 100 of this Act, that-

(a) except in the case of an application under subsection (3) of section 34 or, in respect of a deed of variation or discharge granted by the owner of an adjacent unit, subsection (1) of section 37 of this Act, it is reasonable to grant the application; or

(b) in such a case, the variation or discharge in question-

(i) is not in the best interests of the owners of all the units in the community; or

(ii) is unfairly prejudicial to one or more of those owners.

3. Section 100 of the Title Conditions (Scotland) Act reads as follows:-

The factors mentioned in section 98 of this Act are-

(a) any change in circumstances since the title condition was created (including, without prejudice to that generality, any change in the character of the benefited property, of the burdened property or of the neighbourhood of the properties);

(b) the extent to which the condition-

(i) confers benefit on the benefited property; or

(ii) where there is no benefited property, confers benefit on the public;

(c) the extent to which the condition impedes enjoyment of the burdened property;

(d) if the condition is an obligation to do something, how-

(i) practicable; or

(ii) costly,

it is to comply with the condition;

(e) the length of time which has elapsed since the condition was created;

(f) the purpose of the title condition;

(g) whether in relation to the burdened property there is the consent, or deemed consent, of a planning authority, or the consent of some other regulatory authority, for a use which the condition prevents;

(h) whether the owner of the burdened property is willing to pay compensation;

(i) if the application is under section 90(1)(b)(ii) of this Act, the purpose for which the land is being acquired by the person proposing to register the conveyance; and

(j) any other factor which the Lands Tribunal consider to be material.

4. Your application will be intimated to persons who may have an interest to oppose it. It is accordingly in your interest to ensure that you set out your description of any circumstances relied on as fully and accurately as you can. The Tribunal may allow new material to be introduced at a later stage but if this gives rise to expense which could have been avoided by a more careful application, the Tribunal will take that into consideration. You will not be allowed to introduce new material in the later stages of the case if the Tribunal thinks this would prejudice any objectors.