

FORM TC 90(1)(c)

Application under section 90(1)(c) of the Title Conditions (Scotland) Act 2003 to preserve a community burden

1. Name and address of applicant.

2. Applicant's connection with land subject to the community burden.

The applicant is the owner of a unit in a community (*describe the applicant's benefited property sufficiently precisely to enable it to be identified*).

3. Particulars of community burden to be preserved.

(a) Nature of community burden.

(b) Manner and date of creation of community burden (*describe the deed in which the community burden was created by reference to the names of the parties and date of registration or recording*).

4. Circumstances giving rise to application (*here give details of the notice received of a proposal to register a deed of variation or discharge, including the name and address of the person proposing to register. Alternatively a copy of the notice may be enclosed.*).

5. Date specified in that notice (*give the date by which an application for preservation must be made to the Lands Tribunal*).

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.*).

I/We hereby apply for the preservation of the community burden described above.

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 the conveyance, deed, instrument or writing under which the title condition was created and a large scale plan of the location identifying adjacent properties.

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 were 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.