

OBJECTS AND REASONS

This Bill would amend the *Town and Country Planning Act*, Cap. 240 to make provision for developers who apply for planning permission to enter into agreements with the relevant Government authority for the purpose of

- (a) providing affordable housing; or
- (b) meeting some other planning obligation related to the development of land.

Arrangement of Sections

Section

1. Short title.
2. Insertion of new Part IVA into Cap. 240.
3. Amendment of section 78A of Cap. 240.
4. Amendment of section 79 of Cap. 240.
5. Transitional provisions.

BARBADOS

A Bill entitled

An Act to amend the *Town and Country Planning Act*.

ENACTED by the Parliament of Barbados as follows:

1. This Act may be cited as the *Town and Country Planning* Short title.
(Amendment) Act, 2007.

Insertion of
new Part
into
Cap. 240.

2. The *Town and Country Planning Act*, in this Act referred to as the principal Act, is amended by inserting the following Part as Part IVA:

"Part IVA

PLANNING OBLIGATIONS

Planning
obligations.

32F. (1) For the purposes of this Part, "planning obligation" means an agreement entered into pursuant to subsection (2).

(2) Where a person applies to the Chief Town Planner for planning permission to develop land, that person may, by agreement with the Crown, enter into a planning obligation that

- (a) requires the provision of affordable housing to the satisfaction of the Minister responsible for Housing;
- (b) restricts the development or use of the land in any specified way;
- (c) requires specified operations or activities to be carried out in, on, under or over the land;
- (d) requires the land to be used in any specified way; or
- (e) requires any sum to be paid to the Ministry responsible for Housing either periodically or on a specified date where for any reason the developer cannot carry out the operations for the purposes of paragraph (a) and the Minister responsible for Housing undertakes to carry out the works on behalf of the developer;

(3) A planning obligation shall be enforceable to the extent mentioned in subsection (5).

(4) A planning obligation may

(a) be unconditional or subject to conditions;

(b) impose any restriction or requirement mentioned in subsection (2)(a) to (d) either indefinitely or for such period as may be specified; and

(c) require under subsection (2)(e), the payment of a specified amount determined in accordance with the instrument by which the obligation is entered into; and the agreement may specify that the sum is payable on a specified date or for such period as is agreed.

(5) Subject to subsection (6), a planning obligation is enforceable

(a) against the person entering into the obligation; and

(b) against any person deriving title from that person.

(6) Notwithstanding subsection (5), the instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land.

(7) Where there is a breach of a requirement in a planning obligation to carry out any operations in, on, under or over the land to which the obligation relates, the Minister responsible for Housing

(a) may cause any person to enter the land and carry out the operations; and

(b) recover as a civil debt from the person against whom the obligation is enforceable any expenses reasonably incurred in doing so.

(8) Before the Minister responsible for Housing exercises his powers under subsection (7)(a) the Minister shall give not less than 21 days' notice of his intention to do so to any person against whom the planning obligation is enforceable.

(9) A planning obligation must be entered into by way of an instrument executed as a deed that

(a) states that the obligation is a planning obligation for the purposes of this section;

(b) identifies the land in respect of which the obligation is being made;

(c) identifies the person entering into the obligation; and

(d) states the interest that the person entering into the obligation has in the land.

(10) A planning obligation shall be a charge on the land to which it relates and shall be recorded in the Land Registry in accordance with section 71 or section 157 of the *Land Registration Act* as the case may be. Cap. 229

(11) For the purposes of subsection (1), "charge" means an interest in land securing the payment of money or money's worth or the fulfilment of an obligation arising under this Part and includes a sub-charge and the instrument creating the charge.

(12) The Minister of Housing shall establish guidelines setting out the policy relating to the provision of affordable housing under paragraph (a) of section 32F(2), and the guidelines shall include the following:

- (a) the basis on which the houses will be allocated;
- (b) the terms and conditions governing the sale of such houses;
- (c) the minimum standard of housing that must be provided; and
- (d) the minimum size of lots where land is to be provided.

(13) The guidelines referred to in subsection (12) and any amendments thereto shall be published by Notice in the *Official Gazette* and in at least one daily newspaper published and circulated in Barbados; and shall be made available to the public by the Ministry at such fee as may be prescribed.

Modifica-
tion and
discharge of
planning
obligations.

32G. (1) A planning obligation may be modified

(a) by an instrument executed as a deed between the parties to the agreement; or

(b) in accordance with this section and section 32 I.

(2) A planning obligation may be discharged in accordance with this section and section 32 I.

(3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to the Minister for the obligation,

(a) to have effect subject to such modifications as may be specified in the application; or

(b) to be discharged.

(4) For the purposes of subsection (3), "the relevant period" means

- (a) such period as may be prescribed; or
- (b) where no period is prescribed, the period of 5 years beginning with the date on which the obligation is entered into.

(5) Where an application is made under subsection (3), the Minister may determine

- (a) that the planning obligation shall continue to have effect without modification;
- (b) where the obligation no longer serves a useful purpose, that it shall be discharged; or
- (c) where the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

(6) The Minister shall give notice of the determination made under subsection (5) to the applicant not later than 6 months after the application has been made.

(7) Where the Minister determines that a planning obligation shall have effect subject to any modification specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.

Regulations. **32H.** (1) Regulations may make provision with respect to

- (a) the form and content of applications under section 32G(3);
- (b) the publication of notices of those applications;
- (c) the procedure for considering any representations made with respect to those applications; and
- (d) the notice to be given to applicants in respect of a determination made under section 32G(6).

(2) The Minister may make regulations to provide for anything that is necessary to give effect to planning obligations under this Part.

Appeals. **32I.** (1) Where the Minister

- (a) fails to give notice of a determination as mentioned in section 32G(6); or
- (b) determines that a planning obligation shall continue to have effect without modification,

the applicant may appeal to a Judge in Chambers.

(2) For the purposes of an appeal under paragraph (a) of subsection (1), it shall be assumed that the Minister has determined that the planning obligation shall continue to have effect without modification where no notice has been served on the applicant within the time specified in section 32G(6).

(3) An appeal under this section shall be made by notice served within 28 days of whichever of the following is applicable

(a) the date that notification of the decision is given under section 32G(6); or

(b) the expiration of the period mentioned in section 32G(6)."

3. Section 78A of the principal Act is amended by deleting the words "\$250" and substituting the words "\$2 000".

Amend-
ment of
section 78A
of
Cap. 240.

4. Section 79 of the principal Act is amended in subsection (2) by deleting the words "\$250" and substituting the words "\$2 000".

Amend-
ment of
section 79
of Cap.
240.

5. This Part applies to any application made before the commencement of the *Town and Country Planning (Amendment) Act, 2007* where there has been no determination in respect of the application at the date of commencement.

Transi-
tional
provisions.
S.I. 2007
No.