



**BRIEFING PAPER**

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# Revocation of planning permission

By Louise Smith

**Contents:**

1. England and Wales
2. Scotland
3. Northern Ireland
4. Examples of revocation



# Contents

<b>Summary</b>	<b>3</b>
<b>1. England and Wales</b>	<b>4</b>
1.1 Local authority powers	4
1.2 Discontinuance orders	6
1.3 Compensation	6
1.4 Withdrawal of planning permission granted by a development order	8
1.5 The position when planning permission was improperly granted	9
1.6 Secretary of State powers	9
<b>2. Scotland</b>	<b>11</b>
<b>3. Northern Ireland</b>	<b>13</b>
<b>4. Examples of revocation</b>	<b>14</b>

## Summary

This briefing paper describes the circumstances in which local authorities, the Secretary of State and devolved Government Ministers can revoke planning permission. Sections 1-4 apply to England and Wales. Section 5 sets out the law in Scotland and section 6 covers Northern Ireland. Section 7 provides examples of revocation across the UK countries.

The laws in each of the UK countries are very similar to each other. They all allow councils to revoke or modify a planning consent "to such extent as they consider expedient" with regard to the Development Plan and other material considerations. The powers can only be used before the development, or the change of use given permission for, is complete. In each country there is a liability for the local authority to pay compensation for abortive expenditure and for any other loss or damage directly attributable to the revocation. If the revocation orders are opposed then they must be confirmed by either the Secretary of State in England and Wales, Scottish Ministers in Scotland or the Department of Environment in Northern Ireland.

In England and Wales the power to revoke planning permission stems from section 97 of the Town and Country Planning Act 1990. The rules relating to compensation stem from section 107 of the 1990 Act. The Secretary of State also has the power to revoke planning permission under section 100 of the 1990 Act. If this is done the liability to pay compensation still falls on the local planning authority, as though it had made the revocation order. There is a right to challenge an order confirmed by the Secretary of State in the High Court, within six weeks of it being made.

The law in Scotland stems from section 65 of the Town and Country Planning (Scotland) Act 1997. Under section 66 of the 1997 Act, if the revocation order is opposed then it must be confirmed by Scottish Ministers. Scottish Ministers also have powers to make a revocation order if they consider it "expedient" to do so. Compensation for where planning permission is revoked or modified is set out in section 76 of the 1997 Act.

In Northern Ireland the law allowing a council to make a revocation order is contained in section 68 of the Planning Act (Northern Ireland) 2011. The Department of Environment also has powers, under section 72 of the 2011 Act to serve a revocation order itself. The right to compensation where a revocation order is made is set out in section 179 of the 2011 Act. It makes reference to the relevant provisions in the Land Development Values (Compensation) Act (Northern Ireland) 1965, as amended. The main provisions are in section 26 of the 1965 Act.

Powers to revoke planning permission are very rarely used. Where they are used they are often uncontested and unopposed. Since 2009 only 3 revocation orders issued under section 97 of the Town and Country Planning Act 1990 have been submitted to the Secretary of State for confirmation.

# 1. England and Wales

## 1.1 Local authority powers

Once approved, planning permission grants development rights in the land. The local planning authority has no power simply to withdraw a permission unilaterally without the payment of compensation.

In England and Wales the local planning authority has the power to revoke planning permission under section 97 of the *Town and Country Planning Act 1990* (as amended). The wording of the section suggests considerable freedom for the local planning authority, but it is in practice strictly constrained:

### **97 Power to revoke or modify planning permission**

(1) If it appears to the local planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient.

(2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.

(3) The power conferred by this section may be exercised—

(a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;

(b) where the permission relates to a change of the use of any land, at any time before the change has taken place.

(4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

(5) References in this section to the local planning authority are to be construed in relation to development consisting of the winning and working of minerals as references to the mineral planning authority.

(6) Part II of Schedule 5 shall have effect for the purpose of making special provision with respect to the conditions that may be imposed by an order under this section which revokes or modifies permission for development—

(a) consisting of the winning and working of minerals; or

(b) involving the depositing of refuse or waste materials.

Where there is an objection to a revocation order being made, section 98(1) states that "an order under section 97 shall not take effect unless it is confirmed by the Secretary of State".

A [written question](#) answered on 2 March 2016 show how rarely revocation orders are submitted to the Secretary of State for confirmation:<sup>1</sup>

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<sup>1</sup> Planning Permission: [Commons Written question – 28113](#) Answered on: 02 March 2016

Planning Permission 28113

**Asked by Tulip Siddiq** (Hampstead and Kilburn)

Asked on: 23 February 2016

To ask the Secretary of State for Communities and Local Government, on how many occasions in each year since 2009-10 he has been asked to confirm a local planning authority's decision to revoke planning permission under Section 97 of the Town and Country Planning Act 1990; and on how many such occasions he (a) confirmed and (b) overturned that decision.

**Answered by: Brandon Lewis**

Answered on: 02 March 2016

Section 97 of the Town and Country Planning Act 1990 means that if it appears to the local planning authority that it is expedient to do so, it may make an order revoking any planning permission to develop land. When an order is opposed by the owner and occupier of the land or by other persons who in the authority's opinion will be affected, the order has to be submitted to the Secretary of State and shall not take effect unless it is confirmed by him.

For each year since 2009/10:

Year	Number submitted for confirmation	Confirmed	Overtured (declined to confirm)
2009/10	1	1	None
2010/11	1	None	None
2011/12	None	None	None
2012/13	1	None	None (withdrawn by authority)
2013/14	None	None	None
2014/15	None	None	None
2015/16	None	None	None

The validity of an order made under section 97 may be questioned by application to the High Court within six weeks of its confirmation by the Secretary of State, under section 288(3) of the 1990 Act.

The power to revoke planning permission exists only up until the time any building works or change of use has been completed. Where it is too late to revoke planning permission, the local planning authority may want to consider the use of powers to make a discontinuance order.

## 1.2 Discontinuance orders

The power in section 97 of the 1990 Act can only be used before the development is complete. After that date, a local planning authority in England and Wales can use a power to order discontinuance under section 102 of the Act. Section 102(1) provides the main power:

### **102 Orders requiring discontinuance of use or alteration or removal of buildings or works**

(1) If, having regard to the development plan and to any other material considerations, it appears to a local planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)—

(a) that any use of land should be discontinued or that any conditions should be imposed on the continuance of a use of land; or

(b) that any buildings or works should be altered or removed,

they may by order—

(i) require the discontinuance of that use, or

(ii) impose such conditions as may be specified in the order on the continuance of it, or

(iii) require such steps as may be so specified to be taken for the alteration or removal of the buildings or works,

as the case may be.

Confirmation by the Secretary of State is required under section 103. Again, there is a liability to pay compensation under section 115. Section 115(2) and (3) sets out what compensation is payable for:

(2) If, on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that any person has suffered damage in consequence of the order—

(a) by depreciation of the value of an interest to which he is entitled in the land or in minerals in, on or under it, or

(b) by being disturbed in his enjoyment of the land or of such minerals,

that authority shall pay to that person compensation in respect of that damage.

(3) Without prejudice to subsection (2), any person who carries out any works in compliance with the order shall be entitled, on a claim made as mentioned in that subsection, to recover from the local planning authority compensation in respect of any expenses reasonably incurred by him in that behalf.

## 1.3 Compensation

In England and Wales the rules relating to compensation where planning permission has been revoked are set out in [section 107](#) of the *Town and Country Planning Act 1990*. There is a liability for a local authority to pay compensation in respect of:

- expenditure rendered abortive by the order (e.g. expenditure on preparation of plans for the purposes of works); and

- for any other loss or damage directly attributable to the revocation or modification.

Section 107(3) of the Act makes clear that compensation is *not* payable in relation to any works carried out before the planning permission (which is being revoked by the order) was granted.

[Section 107](#) reads as follows:

**107 Compensation where planning permission revoked or modified**

(1) Subject to section 116, where planning permission is revoked or modified by an order under section 97, then if, on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land or in minerals in, on or under it—

- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the local planning authority shall pay that person compensation in respect of that expenditure, loss or damage.

(2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work.

(3) Subject to subsection (2), no compensation shall be paid under this section in respect—

- (a) of any work carried out before the grant of the permission which is revoked or modified, or
- (b) of any other loss or damage arising out of anything done or omitted to be done before the grant of that permission (other than loss or damage consisting of depreciation of the value of an interest in land).

(4) In calculating for the purposes of this section the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted [—

- (a) subject to the condition set out in Schedule 10, for any development of the land of a class specified in paragraph 1 of Schedule 3;
- (b) for any development of a class specified in paragraph 2 of Schedule 3.]

(5) In this Part any reference to an order under section 97 includes a reference to an order under the provisions of that section as applied by section 102(3) (or, subject to section 116, by paragraph [1(3)] of Schedule 9).

In July 2012 the Supreme Court ruled that when local planning authorities are deciding whether or not to revoke or modify a planning permission they are entitled to take into account the compensation they could have to pay.<sup>2</sup> Lord Carnwath in the Supreme Court in case [R.](#)

<sup>2</sup> For more information see Planning Portal, [Key ruling on revocation of planning permissions and costs](#), 2 August 2012 and [Supreme Court press summary](#), The

*(Health and Safety Executive) v. Wolverhampton City Council* [2012] 1 WLR 2264, said:

In simple terms, the question is whether a public authority, when deciding whether to exercise a discretionary power to achieve a public objective, is entitled to take into account the cost to the public of so doing. Posed in that way, the question answers itself. As custodian of public funds, the authority not only may, but generally must, have regard to the cost to the public of its actions, at least to the extent of considering any case whether the cost is proportionate to the aim to be achieved, and taking into account more economic ways of achieving the same objective.

## 1.4 Withdrawal of planning permission granted by a development order

Local Development Orders are made by local planning authorities and give a grant of planning permission to specific types of development within a defined area. A local planning authority can revoke a Local Development Order at any time.<sup>3</sup>

Section 189 of the *Planning Act 2008* made changes to the 1990 Act in respect of entitlement to compensation in circumstances where planning permission granted by a Local Development Order or a Development Order (e.g. a permitted development orders) is withdrawn.

The explanatory notes to the *2008 Act* set out the changes and how the system works:

300. [Section 189](#) inserts new subsections (2A) (3B), (3C), (3D), (5) and (6) into section 108 of TCPA 1990. Section 107 of TCPA 1990 sets out the entitlement to compensation where planning permission is revoked or modified. Section 108 extends this entitlement to compensation to circumstances where planning permission granted by a development order or a local development order is withdrawn. New subsection (2A) provides that where planning permission of a prescribed description granted by a development order or local development order is withdrawn by the issue of directions under powers conferred by that order, compensation would be payable only if an application for planning permission for development formerly permitted by that order is made within 12 months of the directions taking effect.

301. The effect of new subsections (3B) and (3C) is that, where planning permission granted by a development order is withdrawn, there will be no entitlement to compensation where the permission was granted for development of a prescribed description and is withdrawn in the prescribed manner, and notice of the withdrawal is published not less than 12 months or more than the prescribed period before the withdrawal takes effect. If development is started before the notice is published, compensation will be available unless the order in question contains provision permitting the completion of development.

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Health and Safety Executive (Appellant) v Wolverhampton City Council (Respondent) [2012] UKSC 34, 18 July 2012

<sup>3</sup> HM Government, Planning Practice Guidance, [Can Local Development Orders be revoked and modified?](#), Paragraph: 082 Reference ID: 13-082-20140306, 6 March 2014



302. Where planning permission granted by local development order is withdrawn, subsections (3B) and (3D) provide that there will be no entitlement to compensation where notice of the withdrawal is published not less than 12 months or more than the prescribed period before the withdrawal takes effect. If development is started before the notice is published, compensation will be available unless the order in question contains provision permitting the completion of development.<sup>4</sup>

## 1.5 The position when planning permission was improperly granted

The Sweet & Maxwell Planning Encyclopaedia notes that in cases where the planning permission may not have been properly granted in terms of procedure, it may be better financially for the local council to have the planning permission quashed at judicial review, rather than revoke the planning permission and have to pay compensation:

However, if a planning permission has been granted in a way that was improper and invalid, it may not be “expedient” for the local planning authority to commence revocation proceedings under this section and to pay compensation. The court may instead quash the permission on an application for judicial review, without liability to compensation. Such an application may be made by a person supported by the council, though the Court will in such a case have particular regard to the effect on third parties.<sup>5</sup>

The rules about bringing a judicial review are strict however and a claim must be made within legal time limits. In January 2013 it was reported that a leader of a council in Devon was refused a judicial review of planning permission granted by mistake after the application was lodged too late for judicial review proceedings. The council was left with a choice of paying an estimated £500,000 in compensation to formally revoke the planning consent it had granted, or to allow a supermarket to move into a retail park even though it was not considered to be needed in the area.<sup>6</sup>

## 1.6 Secretary of State powers

The local planning authority has the power to revoke planning permissions under section 97 of the 1990 Act, but this has to be confirmed by the Secretary of State. In England and Wales the Secretary of State also has the power to revoke planning permission under section 100 of the 1990 Act. If this is done the liability to pay compensation still falls on the local planning authority, as though it had made the revocation order. In March 2006, the then Planning Minister described the use of these powers:

**Yvette Cooper:** Local planning authorities have power under s97 of the Town and Country Planning Act 1990 to make an order revoking or modifying a planning permission, prior to it being implemented, where they consider it expedient to do so. They should have regard to the development plan and to any other

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<sup>4</sup> *Planning Act 2008, Explanatory Notes*

<sup>5</sup> *Sweet & Maxwell Encyclopaedia of Planning Law and Practice*, P97.04

<sup>6</sup> “Planning blunder leaves council facing stark choice” [Planning](#), 24 January 2013

## 10 Revocation of planning permission

material consideration. This is not a routine justification since the fact that planning permission was granted indicates that the development was considered acceptable at the time. If an order is opposed, it has to be confirmed by the Secretary of State before it can take effect.

The Secretary of State has power, under s100 of the Town and Country Planning Act 1990, to revoke or modify a planning permission granted by a local planning authority. Revocation or modification can only be made before a planning permission is implemented. The Secretary of State can use these powers as he thinks fit, after consultation with the local planning authority. Such intervention by the Secretary of State can only be justified in exceptional circumstances. However, the Secretary of State will generally use this power only if the original decision is judged to be grossly wrong, so that damage is likely to be done to the wider public interest.

Where orders come before the Secretary of State the decision will be taken only after considering the evidence by way of written representations, a hearing or a public local inquiry. The more controversial cases will almost inevitably go to inquiry.

Since 1997 the Secretary of State has used this power on 5 March 1998 to make a modification order to remove A1 retail use from outline planning permission for an industrial site granted by Alnwick district council and on 9 March 2000 to make a revocation and a modification order in respect of proposals for a factory outlet shopping village in an isolated location in Restormel, Cornwall.

The Office does not record representations received about the powers of the Secretary of State to revoke planning permissions.<sup>7</sup>

The revocation of a planning consent by the Secretary of State is most unusual. The Secretary of State already has a power for preventing consent being granted to major, controversial proposals with effects spreading beyond the local planning authority. That is the Secretary of State's power to call in an application to determine it himself. He is also able to recover to himself an appeal against rejection of a planning application. For further information about the Secretary of States' call-in and recovery powers see Library briefing paper, [Calling in a planning application](#).

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<sup>7</sup> HC Deb 16 March 2006 c2444W

## 2. Scotland

In Scotland section 65 of the [Town and Country Planning \(Scotland\) Act 1997](#) (the 1997 Act) allows a planning authority to revoke or modify a planning consent “to such extent as they consider expedient” and in doing so shall have regard to the Development Plan and other material considerations:

### **65 Power to revoke or modify planning permission.**

(1) If it appears to the planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient.

(2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.

(3) The power conferred by this section may be exercised—

(a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;

(b) where the permission relates to a change of the use of any land, at any time before the change has taken place.

(4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has previously been carried out.

(5) Part II of Schedule 3 shall have effect for the purpose of making special provision with respect to the conditions which may be imposed by an order under this section revoking or modifying permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials

As with the law in England and Wales and in Northern Ireland, the power can only be used before the development, or the change of use given permission for, is complete. Under section 66 of the 1997 Act, if the revocation order is opposed then it must be confirmed by Scottish Ministers.

Section 68 of the 1997 Act provides a power for Scottish Ministers to make a revocation order under section 65 if they consider it “expedient” to do so.

Compensation for where planning permission is revoked or modified is set out in section 76 of the 1997 Act. Again, the wording is very similar to the provision in England and Wales:

76 Compensation where planning permission revoked or modified.

(1) Where planning permission is revoked or modified by an order under section 65, then if, on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land—

## 12 Revocation of planning permission

(a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification, or

(b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the planning authority shall pay that person compensation in respect of that expenditure, loss or damage.

(2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work.

(3) Subject to subsection (2), no compensation shall be paid under this section in respect of—

(a) any work carried out before the grant of the permission which is revoked or modified, or

(b) any other loss or damage arising out of anything done or omitted to be done before the grant of that permission (other than loss or damage consisting of depreciation of the value of an interest in land).

(4) In calculating for the purposes of this section the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted—

(a) subject to the condition set out in Schedule 12, for any development of a class specified in paragraph 1 of Schedule 11;

(b) for any development of a class specified in paragraph 2 of Schedule 11.

(5) In this Part any reference to an order under section 65 includes a reference to an order under the provisions of that section as applied by section 71(3) and paragraph 1(2) of Schedule 8.

## 3. Northern Ireland

In Northern Ireland section 68 of the [Planning Act \(Northern Ireland\) 2011](#) (the 2011 Act) grants councils the power to revoke planning permission:

### **Revocation or modification of planning permission by council**

68—(1) If it appears to a council, having regard to the local development plan and to any other material considerations, that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part or on an appeal under section 143, the council may, subject to subsections (2) to (4), by order revoke or modify the permission to such extent as (having regard to those matters) it considers expedient.

(2) The power conferred by this section to revoke or modify permission to develop land may be exercised—

(a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;

(b) where the permission relates to a change of use of any land, at any time before the change has taken place;

except that the revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

(3) An order made under this section in respect of mining operations by surface working shall not prevent the continuation of those operations on any land in use for the purpose of those operations at the date on which the order comes into operation.

(4) Where the council makes an order under this section it must serve a notice on the owner and occupier of the land affected and on any other person who in its opinion would be affected by the order.

As with the law in England and Wales and in Scotland, the power can only be used before the development, or the change of use given permission for, is complete.

Under section 70 of the 2011 Act if the revocation order is opposed then it must be confirmed by the Department of Environment. The Department of Environment also has powers itself, under section 72 of the 2011 Act to serve a revocation order.

The right to compensation where a revocation order is made is set out in section 179 of the 2011 Act. It makes reference to the relevant provisions in the [Land Development Values \(Compensation\) Act \(Northern Ireland\) 1965](#), as amended. The main provisions are in section 26 of the 1965 Act. Again, the provisions are very similar to those in England and Wales and in Scotland.

## 4. Examples of revocation

When planning permission is revoked it more commonly relates to an old planning consent that has been started but not completed. There may be some good reason why the proposal that gained planning consent would now never be carried out. The local planning authority will have to pay some compensation but it may be worthwhile, in order to enable them to develop derelict land. Unopposed cases are normally approved, but opposed cases require a public inquiry.

Some examples of where planning permission has been revoked include:

- In January 2016 Ards and North Down Borough Council issued two revocation notices under section 68 of the Planning Act (Northern Ireland) 2011. One revoking planning permission for a farm dwelling and detached garage near Ballyglishorn Road Comber and the other revoking planning permission for a dwelling and garage Portavogie. Both orders were unopposed.<sup>8</sup>
- On 27 February 2015 North Lanarkshire Council published a revocation notice in The Gazette, under section 65 of the [Town and Country Planning \(Scotland\) Act 1997](#), to revoke planning permission for a wind turbine.<sup>9</sup> After planning permission was granted for a wind turbine on one particular site, the developer advised that it was not feasible to construct the turbine in that location and submitted another application for a site 45 metres away from the original site with planning permission. It was considered by the council that the impact of 2 turbines side by side in this location would be unacceptable. Whilst the developer has advised that for technical and financial reasons it was highly unlikely that both turbines would be erected alongside each other, on balance it is felt that the best interests of the council and the local environment would be served if the first planning permission was revoked.<sup>10</sup>
- In January 2009 the Department for Communities and Local Government has confirmed a revocation order withdrawing planning permission for Lees Cross and Endcliffe quarries near Matlock in the Peak District.<sup>11</sup>
- In May 2008 planning permission was revoked for eleven dormant quarries in the Brecon Beacons national park.<sup>12</sup>
- In 2007 the Peak District National Park Authority was allowed to revoke planning permission at two quarries without compensation for the operator or landowner.<sup>13</sup>

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<sup>8</sup> Ards and North Down Borough Council, [Planning Applications](#), January 2016

<sup>9</sup> The Edinburgh Gazette, [Notice ID:2294792](#), 27 February 2015

<sup>10</sup> North Lanarkshire Council, Planning and transportation committee report, 20 November 2014

<sup>11</sup> Peak District National Park, [Long-running quarry dispute ends](#), 16 January 2009

<sup>12</sup> "Park quarries lose permits" [Planning](#), 30 May 2008

<sup>13</sup> "National Park Authority allowed to revoke planning permission" [Planning](#), 7 September 2007

- In 1993 Alnwick District Council granted planning permission to Northumberland Estates for a supermarket near Alnwick. A protest campaign was launched two years later when it emerged that Safeway had bought the land. Protestors feared that Safeway would close its existing branch in Alnwick and consolidate operations on the new site. The Secretary of State in 1997 (John Gummer) revealed that he proposed to revoke the permission. The council challenged the decision in the High Court but lost. Safeway submitted a claim for £4.6 million in compensation for the loss of its planning consent. The council feared that it might be bankrupted. However, in the end it was all settled amicably with the Duke of Northumberland buying back the land that he had sold to Safeway. Safeway agreed to forego £2.6 million of their compensation claim and accepted £2 million, which was paid by the council's insurers, Zurich Municipal.<sup>14</sup>

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<sup>14</sup> "Alnwick Relief as Safeway Settles Case", *Daily Telegraph*, 10 February 2000

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