

**Scottish Government Consultation Paper: Planning Enforcement Regulations
2007**

Response of South Lanarkshire Council

This response from South Lanarkshire Council will cover the questions raised in the consultation document.

Consultation questions

QUESTION 1: Do you support the proposal that penalties should be increased for continuing breaches and if not, why not?

Yes. It is agreed that there should be an increase in penalties for continuing breaches that are not remedied. Persons who do not comply with enforcement notices or breach of condition notices should be aware that they may be liable to increasing fines of a level which will act as an appropriate deterrent to them.

QUESTION 2: Do you have any views on the proposed amounts for the fixed penalty, in particular the initial amounts?

The initial amounts are far too low, particularly if subsequent fixed penalties can only rise by such small increments. Penalties of such low levels are only likely to act as a deterrent to householders rather than larger developers who would easily absorb such relatively small amounts. The fact that discounts for early payment are also available further reduces the extent to which such fines will act as a deterrent.

QUESTION 3: Do you have any views on the proposed increase in the amount of each subsequent fixed penalty, in particular with regard to the number of FPNs that would be required to reach the maximum and whether the fixed penalty should increase by a larger amount for each subsequent offence?

The increase in the amount of each fixed penalty should be greater than proposed. If the fines are determined by the level of existing court fines, then there should be a review of court fines to enable these fixed penalties to :

- a) be set at an initially higher level
- b) have higher maximum fines
- c) have more substantial incremental increases or allow scope for moving immediately to the maximum fine if justification can be provided for so doing.

It is also considered that subsequent fines should not necessarily rise by the same incremental value but should have scope for being significantly increased if the case merits such a response. This is necessary to ensure that fixed penalties actually do act as a deterrent – something unlikely to be achieved by the current levels of penalty proposed.

It would also be desirable to be able to serve subsequent fixed penalty notices without the requirement for the serving of a further enforcement notice/breach of condition notice, if the initial notice is not complied with.

Consideration should also be given to having different levels of fines for, example, householders and companies/developers, or at least, having the discretion to impose

different levels of fine depending on the type of person/body who has not complied with the notice – this should, to an extent, reflect ability to pay.

QUESTION 4: Do you have any views on the proposed level of information requested in the NID or any suggestions for other information, for example declaring that any suspensive conditions had been met, might be useful?

The information to be provided in a NID is satisfactory, subject to 'trading as' also having to be provided where applicable. The consultation states that if a notice is not submitted in compliance with a planning condition, then enforcement action may be taken. However, what happens if wrong information is knowingly provided in the NID? Is that an offence? What action can be taken?

It is also suggested that a standard pro-forma is produced for the NID so that they are all provided in a consistent format. Clarification is also sought on whether the details of formal enforcement action which have to be provided are simply for the local authority area in which the development is proposed, or is it for anywhere throughout the country? Finally, it would also be desirable, as suggested, for confirmation to be given of compliance with suspensive conditions.

QUESTION 5: are you content with the proposed time limits for recording relevant enforcement action?

Yes.

QUESTION 6: Bearing in mind that the purpose of the notice is to make people aware of the development and direct them to further contacts for further information, are you content with the level of information to be included?

The information is generally satisfactory, but should include a contact telephone number for the developer/site agent, as well as their email and web address if they have these.

QUESTION 7: Are you content with the proposed categories of development for which notices would be required to be displayed, and if not, why not?

It may not be particularly useful for all 'Bad neighbour' proposals to require a notice to be displayed. For example, some proposals involving a hot-food use or licensed premises may simply involve a change of use with only internal alterations involved. In some cases, a notice would only be required to be displayed for a very short period of time until the use is instituted. It may be more appropriate to allow planning authorities to have discretion to impose a condition requiring the display of a site notice, thereby enabling the planner to require a site notice where deemed necessary.

QUESTION 8: Do you consider this sufficient, or would you like to suggest other criteria for the siting, display, size etc of these notices?

The broad headings are satisfactory.

QUESTION 9: Are you content with the proposed draft Regulations and if not, why not?

While the content of the draft regulations is generally satisfactory in relation to NIDS, the on-site display of notices and Temporary Stop Notices, the regulations in respect of Fixed Penalty Notices are weak. The levels of proposed fines, the offer of discounts for early payment and the need to re-serve notices before further penalties

can be imposed all combine to introduce an option to prosecution which is unlikely to act as a deterrent to offenders. In addition, for these same reasons, planning authorities may be reluctant to use the fixed penalty notice as any penalty imposed may not be considered to be in proportion to the harm caused by the breach. As such, authorities may find it preferable to try and pursue prosecution where greater fines can be imposed.

QUESTION 10: Are there any other situations where you believe use of a Temporary Stop Notice should not be permitted?

No.

QUESTION 11: Do you wish to comment generally on the draft Regulations, RIA, EqIA, or other issues in respect of this consultation?

No – all points have been covered in response to the questions above.