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Your Ref:

28 January 2008

Consultation on Planning Enforcement Regulations  
Planning Directorate  
Scottish Government  
2H Victoria Quay  
EDINBURGH  
EH6 6QQ



**INFRASTRUCTURE SERVICES**

Director: Eric S Lowson

**Planning & Transport**

County Buildings

Market Street

Forfar

Angus DD8 3LG

T: (01307) 461460

F: (01307) 461895

E: [planning@angus.gov.uk](mailto:planning@angus.gov.uk)

**Ask for: Iain Mitchell**

**Direct Line: 01307 473290**

Dear Sirs,

**CONSULTATION RESPONSE  
NEW ENFORCEMENT POWERS AND PROPOSED ENFORCEMENT REGULATIONS 2007**

Please find enclosed a copy of Report No. 84/08 which provides Angus Council's response in respect of the proposed new enforcement powers.

This report was endorsed by the Infrastructure Services Committee on 22 January 2008 and in addition the Committee wished to further emphasise its view that the proposed compensation payments in relation to temporary Stop Notices should be removed and that the proposed Fixed Penalty for a Breach of Condition Notice was too low.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'I Mitchell'.

**IAIN MITCHELL  
SENIOR SERVICE MANAGER**

Encl.



ANGUS COUNCIL

INFRASTRUCTURE SERVICES COMMITTEE  
DEVELOPMENT STANDARDS COMMITTEE

22 JANUARY 2008  
29 JANUARY 2008

**SUBJECT: MODERNISING THE PLANNING SYSTEM, NEW ENFORCEMENT POWERS  
AND CONSULTATION ON ENFORCEMENT REGULATIONS 2007**

**REPORT BY DIRECTOR OF INFRASTRUCTURE SERVICES**

**Abstract: The Planning etc. (Scotland) Act 2006 introduced new powers for enforcement of planning controls in Scotland. The Act allows detailed aspects of the new powers to be prescribed by Scottish Ministers through regulations. This report summarises the new powers and the Council's response to the Scottish Government Planning Directorate's consultation on drafts of these regulations.**

**1 RECOMMENDATION**

- 1.1 It is recommended that the Infrastructure Services Committee agree to the draft response set out in Annex B.
- 1.2 It is recommended that the Development Standards Committee note the content of the report.

**2 INTRODUCTION**

- 2.1 Enforcement has a fundamental role in the operation of an effective planning system. Unauthorised development and breaches of planning control need to be discouraged, dealt with quickly, efficiently and rigorously to demonstrate to the public that the planning system operates fairly and in the public interest.
- 2.2 The Town and Country Planning (Scotland) Act 1997 (the 1997 Act) (Part VI, Sections 123-158 set out the current powers available to enforce planning control see summary of these powers at Annex A.
- 2.3 The Planning etc. (Scotland) Act 2006 (the 2006 Act received Royal Assent in December 2006 and will update the 1997 Act and other primary legislation affecting planning. Royal Assent of the 2006 Act means that it has been approved by the Scottish Parliament, but its contents will not come into force, or update relevant sections in the 1997 Act, until they have been enacted by commencement regulations.

**3 BACKGROUND**

- 3.1 A report 128/06 was previously made to the Infrastructure Committee on 26 January 2006 and to the Development Control Committee on 2 February 2006 outlining the provisions of the 2006 Act.
- 3.2 The Scottish Government are now asking Councils for their comments on specific questions related to the proposed regulations under this Act. A copy of the consultation has been placed in the Members' Lounge.

## 4 PROPOSALS

4.1 It is the Scottish Government's view that the provisions of the 1997 Planning Act meet the objective. The current enforcement system meets the Scottish Government's objectives: i.e. that planning enforcement should remedy the undesirable effects of unauthorised development and bring unauthorised development under control. The principle of the current system in the view of the Government is not therefore in need of change.

4.2 The 2006 Act proposes a number of new powers, and changes to the existing powers aimed at improving delivery of planning enforcement, namely:

### **Notice requiring application for retrospective planning permission for Development already carried out**

4.3 Presently where there has been a breach of planning control which could be corrected by the grant of planning permission, the authority may invite the Developer to submit a retrospective planning application. This does not constitute enforcement action and the developer is not obliged to comply.

4.4 The 2006 Act will close this loophole and planning authorities will have the option to issue the notice referred to at 4.3. It would constitute enforcement action and be recorded in the enforcement register.

### **Temporary Stop Notices**

4.5 This has been introduced as a means of speeding up and simplifying the procedure for stopping unauthorised development where irrevocable change or harm is threatened. They will be valid for 28 days without having to serve a formal enforcement notice and have no right of appeal, therefore it is not possible for the developer to delay the process. The main benefit of a Temporary Stop Notice is that it has immediate effect. However in certain circumstances the Planning Authority may be liable for compensation and this may reduce the use of a Temporary Stop Notice. They may not be used to prevent a building being used as a dwelling house.

### **Notification of Initiation of Development, Completion of Development On-site Notices**

4.6 It is proposed that a developer will have to inform the Planning Authority of the intended date of commencement and also the date of completion. The notice will also include information in respect of any enforcement action against the developer within the last three years. This measure will enable local authorities to give a higher profile to proactive Enforcement, by targeting those developments/developers where a breach might be expected.

### **Fixed penalty Notices**

4.7 This measure will offer planning authorities a further alternative option to address breaches of enforcement notices rather than take them to the Fiscal for prosecution.

4.8 The Ministers propose a sliding scale of fines increasing if the breach remains uncorrected over time. The levels have been set at 30% of the maximum fine that a court could impose on a summary conviction.

- 4.9 Failure to comply with a breach of enforcement notice would attract an initial fine of £1000 rising in £500 increments to £5000 maximum.
- 4.10 Failure to comply with a breach of condition notice would attract an initial fine of £100 rising in £50 increments to £300 maximum.

#### **Enforcement Charters**

- 4.11 The Act requires that planning authorities prepare a charter which must be updated every two years and to be available on the internet and in local libraries. This Council already has a Charter.

#### **Removal of certain grounds for appeal against Enforcement Notices**

- 4.12 The effect will be that there will no longer be opportunity for appeals against Enforcement Notices on the basis that planning permission ought to be granted or that any condition or limitation on a planning permission should be removed/discharged.

#### **Other measures not requiring legislation**

- 4.13 Restate and clarify the need for and information required by a Planning Contravention Notice.
- 4.14 Improve and update Planning Advice Note 54.

### **5 CONSULTATION**

- 5.1 The Chief Executive, Director of Corporate Services, Head of Law & Administration and Head of Finance have been consulted in the preparation of this report.

### **6 FINANCIAL IMPLICATIONS**

- 6.1 There are no financial implications arising from this report.

### **7 CONCLUSION**

- 7.1 The Scottish Government Planning Directorate have asked Councils to respond to certain questions about the new powers in the 2006 Act. and the proposed enactment regulations. The Planning and Transport Division's suggested responses are shown at Annex B attached.
- 7.2 The measures in the 2006 Act should ensure improved planning enforcement delivery and allow the Council to target those developments requiring monitoring at an early stage.

#### **NOTE**

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

P&T/RS/IAL  
14 January 2008

Eric S. Lowson  
Director of Infrastructure Services

## ANNEX A

## EXISTING ENFORCEMENT POWERS

Power	Description of Power	Aim of Power
PCN	A Notice served on owner or occupier of land whenever planning authorities suspect a breach of planning control, specifying information required and allowing 21 days to reply.	To obtain information about unauthorised development
BCN	A notice served where a valid planning condition has been breached. It may specify positive steps or prohibition and there is no right of appeal against a BCN	An alternative to an EN specifically where the threat of action is likely to secure compliance with the condition
EN	A notice served where it appears there has been a breach of planning control, stating accurately what constitutes the breach, the remedial steps to be taken, the date, the compliance period, reasons for the notice and the precise boundaries of land it relates to. The recipient may appeal.	To secure the cessation or removal of unauthorised development where it is expedient to do so.
Stop Notice	A notice served in association with an EN prohibiting the carrying out, on the EN land, any activity described as a breach of control in the EN until the expiry of the compliance period specified in the EN. There is no right of appeal and non compliance is an offence	The aim of a stop notice is to prevent the activity specified in an EN continuing where there is a significant threat to amenity or a building if it continued
Direct Action	It is a "default" power allowing local authorities to enter land subject to an EN and to carry out the unfulfilled requirements of the EN themselves and to recover the costs of the action.	The aim is to enable an authority to make development comply with any planning permission granted or to remove or alleviate any injury to amenity caused by development.
Interdict	A power to allow planning authorities to seek to restrain or prevent any breach of planning control, whether actual or apprehended through the Civil Courts	To stop or control unauthorised development with more certainty of prosecution if ignored, as it is a court order
Prosecution	Prosecution involves the submission of a case to the Procurator Fiscal where the use of the powers above has still not resolved the breach of planning control	The aim is to secure compliance through the Courts and subject to the maximum fine payable of £20,000 to penalise the transgressor

## ANNEX B

## PROPOSED RESPONSES

**Fixed Penalty Notice Questions**

- Q1** Do you support the proposal that penalties should be increased for continuing breaches and if not, why not?
- *This Council supports the view of the Scottish Ministers that penalties should be increased for continuing breach.*
- Q2** Do you have any views on the proposed amounts for the fixed penalty In particular the proposed initial amounts?
- *This Council is concerned that the initial amounts for breach of notice at £100 is too low to be a deterrent.*
- Q3** Do you have any views on the proposed increase in the amounts 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.
- *This Council's view is that the second breach and subsequent breaches should attract the maximum fine to act as a deterrent and that too many scale points could encourage some developers to continue a breach.*

**Notification of Initiation of Development and on site Notices(NID)**

- Q4** 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?
- *This Council's view is that the Developer should have to declare that any suspensive conditions that required purification prior to the commencement of development had been met.*
- Q5** Are you content with the proposed time limits for recording relevant enforcement action?
- *This Council finds three years acceptable.*
- Q6** Bearing in mind that the purpose of the notice is to make people aware of the development and direct them to the appropriate contacts for further information are you content with the level of information to be included?
- *This Council recommends that the notice should have the name of a responsible person and contact number on it.*
- Q7** Are you content with the proposed categories of development for which notices would be required to be displayed and if not, why not?
- *This Council recommends that the Notices should be required for all developments other than single householder applications.*
- Q8** Do you consider this sufficient or would you like to suggest other criteria for the siting, display, size etc of notices.
- *This Council supports the view that the notice should be displayed in a prominent place readily visible to the public and printed on durable material.*

**Temporary Stop Notices**

- Q9**      **Are you content with the proposed draft regulations and if not, why not?**
- *This Council finds them generally acceptable but is concerned that the potential threat of compensation may reduce its use. A situation could be envisaged where the nature of an existing planning consent is open to interpretation. In such circumstances the Planning Authority may be reluctant to serve a Temporary Stop Notice. As a responsible Planning Authority there should be no threat of compensation.*
- Q10**      **Are there any other situations where you believe use of a Temporary Stop Notice should not be permitted?**
- *This Council supports the view of the Scottish Government.*
- Q11**      **Do you wish to comment generally on the draft regulations, or other issues in respect of this consultation?**
- *The proposed regulations are welcomed particularly the initiation of development legislation and the introduction of Fixed Penalty Notices.*