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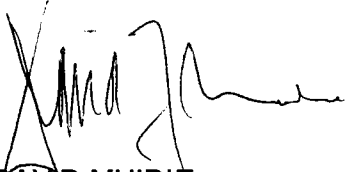
Dear Sirs

CONSULTATION ON PLANNING ENFORCEMENT REGULATIONS

Thank you for providing The Highland Council the opportunity to comment on the above draft Regulations.

I enclose the Council's response to the questions raised which were agreed by the Council's Planning, Environment and Development Committee on 23 January 2008. Also enclosed is a completed respondent information form and equal opportunities monitoring questionnaire.

Yours sincerely



DAVID MUIDIE
Team Leader – Development Management
Planning and Development Service

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

Answer: Essentially yes but it is suggested that the mechanism of repetitive Notices be replaced with one Notice specifying time scales for compliance so that the planning authority may increase the penalty through time. This would save the unnecessary bureaucracy, time and resource in serving repeat Notices. Such a mechanism would make enforcement more immediate and effective, increase the deterrent to wrongdoers and improve public confidence in the planning system. Such a Notice should set out the timescale for compliance with the fixed penalty if this is not achieved. It is also recommended that the issue of a Fixed Penalty Notice and the response to it be part of the publicly available enforcement register. It must also be considered that some operators will hope or choose that planning authorities use FPNs as an alternative as a "running cost" as in 3.5 below.

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

Answer: It is felt that the penalties are inadequate and to generate further confidence in the planning system should be proportionate to the disturbance or disamenity created. There should be differentiation between commercial and domestic breaches. Such limited penalties may be regarded by some operators merely as "running costs". In that respect the legal precedence raised in paragraph 20 of the consultation document should be re-examined. Again the Scottish Government should consider the issue of one notice per breach of planning permission with escalating penalties resulting from the terms of it. It is presumed that the fixed penalties will be set in accordance with inflation.

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 Fixed Penalty Notices that would be required to reach the maximum and whether the fixed penalty should increase by a larger amount for each subsequent offence?

Answer: The responses to Question 2 are appropriate in this instance. Again the level of penalty should be proportionate to the disturbance or disamenity created. It is suggested that the penalties should not escalate by 50% but by 100% i.e. double. Again it is suggested that one Notice is appropriate with increased penalties if prescribed target dates are not met. There should also be a mechanism where the offending party has reached a maximum fine then any further breach should be an automatic referral to the Procurator Fiscal. Again this must be proportionate. What would be the situation if the FPN is challenged as the developer cannot 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?

Answer: It is suggested that the terminology be changed from Notification of Initiation of Development to Notification of Start of Development as the expression NID overlaps with the terminology for the former Notification of Intention to

Development by local authorities. It is also stressed that start dates must be definite not aspirational and consequently misleading. If a developer does not meet his/her start date then what punitive measures are proposed? Would this lead to a Temporary Stop Notice? It is agreed that any enforcement action should be included in the Notice as should the conditions **and the means of addressing these**. However, how would the planning authority account for a developer setting up a different company for each development? The information should also include the details of the site agent if one has been appointed to supervise the development. The NID should be in plain English and well set out.

Question 5: Are you content with the proposed time limits for recording relevant enforcement action?

Answer: No. The time limit should be extended to five years and the information recorded should relate to the site and the developer including instances where another planning authority has taken action against them. There may be instances where a developer seeks to establish a business within another local authority area without that authority being aware of a previous track record in respect of compliance with planning permission. It is also suggested that the information should include all enforcement action including breach of Condition Notices and Fixed Penalty Notices. It is also questioned why enforcement notices under appeal are not included as there would appear to be no mechanism for including this information at a later date. If the appeal were to be successful an addendum could be added to the Notice. Should the requirement for a NID be a standard condition of a planning permission? What is the punitive measure if the developer does not submit the NID? Should the Notices be displayed on the public planning register?

Question 6: 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?

Answer: The level of information should include the conditions of planning permission to be complied particularly suspensive conditions so that the public or any community organisation may assist in bringing failure to comply to the planning authorities attention.

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?

Answer: Not necessarily. It does not take the developer of a large scale development to cause problems within a community. In Highland the development of a 20 house development may cause as much local disturbance, concern and loss of quality of life as a development of 200 houses within a city. This should be acknowledged in the Regulations. It is also suggested that applications which require the production of an Environmental Impact Assessment should be included in this category. "Bad neighbour" developments need not be included in this category as they may not necessarily have a community implication.

Question 8: Do you consider this sufficient or would you suggest other criteria for the siting, display, size etc of these Notices?

Answer: Is the requirement for the Notice to be a condition of the planning permission? If not, then what are the punitive measures if a developer fails to display an appropriate site notice? Who will have the responsibility for monitoring the continued display of the site notice and its replacement if it is damaged or stolen? Thought should be given to the locations of notice(s) for a large scale development site e.g. a windfarm. Perhaps more site notices would be required particularly if more than one community was affected. Lastly, as works progress through a site the site notice may need to be moved and the planning authority should be advised of this.

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

Answer: There is no indication as to the penalties for non-compliance with a Temporary Stop Notice. It is presumed that a Temporary Stop Notice may be issued in respect of each individual breach of a planning permission. The implications of this are that a development may be suspended for considerably longer than 28 days. Is this correct?

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

Answer: No, a temporary Stop Notice must be used as frequently as is necessary to establish the full effectiveness of enforcement action and to regenerate public confidence in the planning system.

Question 11: Do you wish to comment on the draft Regulations, the Regulatory Impact Assessment or the Equalities Impact Assessment or other issues in respect of this consultation?

Answer: The current Scottish Government advice on enforcement in PAN 54 is to encourage negotiation to resolve difficulties rather than instigate enforcement action immediately. Do the proposed enforcement regulations change this emphasis to encourage planning authorities to take more immediate enforcement action through Fixed Penalty Notices and temporary Stop Notices. It is assumed that the Scottish Government will revise its Planning Advice Notice on Enforcement to give comprehensive coverage of this subject. There is no indication in the consultation document as to who may receive the fines from Fixed Penalty Notices. Are they to be paid to the local authority or to the Treasury? If the former, will the developer's perception be that the local authority is issuing FPNs to generate funds?