

Your Ref:  
My Ref: 7.1 JMS  
Contact: John Smart  
Telephone: 0141 842 5252  
Fax: 0141 842 5833  
Date: 01/02/2008



Consultation on Planning Enforcement Regulations  
Planning Directorate  
The Scottish Government  
2H, Victoria Quay  
Edinburgh  
EH6 6QQ

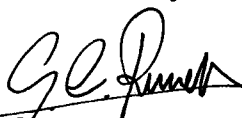
Dear Sir

**Consultation on Planning Enforcement Regulations – Renfrewshire Council Response**

Please find enclosed a copy of the approved Board Report which constitutes the formal response of Renfrewshire Council in respect of the above consultation. Also enclosed is the required respondent information form.

Should you have any queries please contact my assistant Mr Smart.

Yours faithfully,



G.C. Russell  
Head of Planning

Enc:

**Renfrewshire Council**

**To: PLANNING AND ECONOMIC DEVELOPMENT POLICY BOARD**

**On: 22nd January 2008**

**Report by  
Director of Planning & Transport**

**MODERNISING THE PLANNING SYSTEM: CONSULTATION ON DRAFT  
PLANNING ENFORCEMENT REGULATIONS**

**1. Summary**

1.1 The Planning etc. (Scotland) Act 2006 introduced a number of new powers, and changes to the operation of existing powers, namely;

- Temporary stop notices
- Notification of Initiation of Development and Completion of Development
- On-site Notices, and
- Fixed Penalty Notices

1.2 Secondary legislation is required in order to implement a number of these powers. The purpose of this consultation is to seek views on the proposed regulations which will:

- Set the level of penalty in respect of a Fixed Penalty Notice
- Set out the information to be submitted in a Notice of Initiation of Development
- Set out the information to be displayed in an on-site notice; and
- Set out activities that may not be prohibited by a Temporary Stop Notice.

**2. Recommendations**

2.1 It is recommended that the Board agree that this report be forwarded to the Scottish Government as Renfrewshire Council's comments in respect of the consultation.

**3. Background**

3.1 The White Paper *Modernising The Planning System*, published in June 2005, set out Ministers' views that the provisions in the 1997 Act meet The Scottish Government' objectives that planning enforcement should remedy the undesirable effects of unauthorised development, and bring unauthorised development under control.

- 3.2 Ministers further agreed that while the basic principles of the current framework did not need to be changed, there was scope for improving the delivery of planning enforcement with the introduction of some new or extended powers. Primary legislation to introduce these powers was therefore set out in the Planning etc. (Scotland) Act 2006. The proposed changes are set out below:

#### Fixed Penalty Notices (FPN)

- 3.3. These offer planning authorities an alternative option to address breaches of enforcement notices (EN) or breach of Condition notices (BCN) in addition to existing powers.
- 3.4 Where an EN or BCN is not complied with then the landowner is guilty of an offence of breach of the notice. In these circumstances the planning authority can seek a prosecution and a fine on conviction of up to £20,000 in respect of breach of an EN or £1,000 in respect of breach of a BCN.
- 3.5 Planning authorities have in the past expressed concern that prosecution is a potentially lengthy and expensive process, with no guarantee that the desired outcome will be achieved. A consequence of this is that, in some cases, offences go unpunished creating a perception that the planning enforcement system lacks credibility, undermining public confidence in planning. It is believed that the introduction of FPNs will have a significant deterrent effect, particularly for minor breaches, as the developer would be aware that;
- The planning authority is more likely to take action as it will be quicker, cheaper and easier to issue an FPN than to prepare a prosecution, and that,
  - the longer they leave the breach uncorrected the higher the potential penalties would progressively become.
- 3.6 A scale of penalties is proposed, based on the breach in question, with a planning authority issuing increased fines if the breach remains uncorrected over time. It is open to planning authorities to issue a second or subsequent EN or BCN where a breach of planning control remains uncorrected. If any subsequent EN or BCN were also not complied with then there would be the option to issue a further FPN and the penalty would rise to the next level on the incremental scale. This process could be repeated if/as necessary, each time rising to the next level of the scale.

#### **Q1. Do you support the proposal that penalties should be increased for continuing breaches and if not, why not?**

Answer: The ability to escalate the level of fixed penalty in the event of non-compliance is welcomed.

- 3.7 The draft regulations set out the amount of the penalty for breach of an enforcement notice. It is proposed that this would be set at £1,000 in respect of breach of the first EN and for each breach of a subsequent EN would be increase by £500 (i.e. £1,500, then £2,000, then £2,500, etc.) up to a maximum amount of £5,000.

- 3.8 For breaches of BCNs the penalty would be set at £100, rising by £50 steps to a maximum of £300.
- 3.9 The maxima proposed are in keeping with established legal precedents in respect of Fixed Penalty Notices issued under other legislation that the maximum fine does not exceed 30% of the maximum that can be imposed on summary conviction in court. It should be borne in mind that all the existing options remain open and, where the planning authority considers that the breach is more serious and would merit a higher penalty, it would be expected to consider a prosecution and/or direct action rather than an FPN.

**Q2. Do you have any views on the proposed amounts for the fixed penalty, in particular the proposed initial amounts?**

Answer: The proposed amounts are at a level which would not reflect the administrative costs involved in serving the notices and for many developments would not be significant incentive to prompt compliance. The limits set are appropriate for domestic applications but are not punitive enough in relation to larger developments where the amounts are insignificant in relation to other costs of development.

**Q3. 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?**

Answer: In light of the relatively low amounts involved it is suggested that there should be only one step i.e. If the first fixed penalty is not complied with then the next penalty should be the maximum which can be levied.

**Notification of Initiation of Development, Notice of Completion of Development and On-site Notices**

- 3.10 The 2006 Act requires anyone intending to carry out development for which they have been given permission to inform the planning authority before starting development of the date on which they intend to start and must provide further information. (Notice of initiation of development or NID). When granting permission, the planning authority will have to direct the attention of the applicant to the requirement that a NID has to be submitted. This is expected to be done through the use of a standard condition, with the planning authority able to consider enforcement action if a notice was not submitted.
- 3.11 Once development is completed, a completion notice must be supplied to the planning authority. (Notice of completion of development or NCD)
- 3.12 When carrying out certain types of development a notice must be displayed on site containing certain information. The developer must display a notice from the date development starts and for the duration of the development until it is completed. The regulations define the class of development to which these provisions apply, the information to be included in the notice, its form and where it is to be displayed.

- 3.13 In order to further inform decisions as to allocation of resources by the planning authority, certain additional information is to be included in the NID. This would comprise the developers' name and address and details of any recent planning enforcement action taken against the developer. It is proposed that this information would be required to cover a period of three years prior to the date planning permission was granted and extending up to the date the NID was submitted. The information would be supplied purely for the purpose of informing the planning authority as to the developer' ' record'
- 3.14 The developer would not need to record any enforcement action which was subject to an appeal or had been withdrawn (either following a successful appeal or for some other reason).

**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?**

Answer: Additional information on the enforcement history of an applicant is not relevant as a developer would only have to change names to avoid disclosing a past enforcement history. Also past history may not be a reliable guide to current performance. I would suggest that the developer be required to provide the registered address of the company carrying out the development, details of the owner(s) of the land comprising the development site and to certify that any suspensive conditions relating to commencing the development have been complied with. Similarly for an NCD the information required from the developer should include the declaration that all relevant conditions had been met. This information would facilitate the taking of enforcement action in the event of a breach of planning control at either NID or NCD stages..

**Q5. Are you content with the proposed time limits for recording relevant enforcement action?**

Answer: see above , this is of no relevance

- 3.15 For certain types of development, the developer will need to display a notice from the time development begins until it is completed.
- 3.16 The purpose of these on-site notices is to raise public awareness of development taking place in their area. The notice would therefore provide some basic information as to the nature of the development, name and address of the developer. It would also include information such as the planning application reference number which would help interested parties find further information, such as information on any conditions that may apply, and contact details for the relevant planning authority enquiry and enforcement section.

**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?**

Answer: The description of the development, its address and planning authority reference number on the notice should be exactly as contained on the original decision notice. The contact details for the enforcing authority are a necessity and not "as appropriate" in the draft Schedule 1.

- 3.17 With regard to the class of development for which notices would be required, it is proposed that this would include those developments identified as major, national and/or bad neighbour developments. It is not considered that notices would be needed for small scale developments, nor would it be feasible to expect planning authorities to effectively monitor display of notices if they were required to be displayed for every development. It is the view of the Scottish Government that the neighbour notification procedures currently in place would be sufficient for informing neighbours as to the existence of small scale developments.

**Q7. Are you content with the proposed categories of development for which notices would be required to be displayed, and if not, why not?**

Answer: Provided that the definition of what is comprised within the prescribed categories is widened from that suggested in the Hierarchy of development consultation, it is considered appropriate to restrict the need for a continuing site notice to the proposed categories.

- 3.18 In order to be of any value in informing the public, the notices have to be placed appropriately. The Regulations therefore prescribe that notices shall be displayed in a prominent place, readily visible to the public and printed on durable material.

**Q8. Do you consider this sufficient, or would you like to suggest other criteria for the siting, display, size, etc., of these notices?**

Answer: In principle, the criteria are appropriate though it should be possible for the planning authority to require the re-siting of a notice if they consider the location chosen by the developer to be inappropriate.

Temporary Stop Notice

- 3.19 Under the 2006 Act planning authorities have the power to issue a Temporary Stop Notice (TSA), as a means of speeding up and simplifying the procedure for stopping unauthorised development. These notices are valid for up to 28 days, and could be effective from the time they were served, without requiring an enforcement notice. Such a notice would be valid for 28 days before a formal enforcement notice and stop notice would require to be served. There would be no right of appeal.
- 3.20 A TSN may not prohibit the use of a building as a dwelling house and provides Ministers may prescribe other activities where a TSA may not be used.

- 3.21 It is the Scottish Government's view that there should be as few restrictions as possible on planning authority' ability to consider the use of TSNs as a response to breaches of planning control. However it could be argued that, by stating that the use of a building as a dwelling house could not be prevented by use of a TSN, the use of such powers could be seen to discriminate against people who live in accommodation other than a building (primarily Gypsy/Travellers and others living in caravans) and would therefore go against the requirement for Scottish Ministers and planning authorities to observe equal opportunities provisions.
- 3.22. It is therefore proposed that a TSN may not be served on a caravan occupied by a person as their main residence purely for the purpose of removing them from the site. However there would be provision that where the siting of a caravan creates a danger to either the occupants or the public in general or would be unacceptable for some other compelling reason, the planning authority would have the power to serve a TSN.

**Q9. Are you content with the proposed draft Regulations and if not, why not?**

Answer: The additional power to serve a Temporary Stop Notice is welcomed and the intention to include a caravan which is occupied as a main residence is appropriate to ensure that gypsy/travellers are not treated differently from householders. The Council would wish to be able to service notices in respect of temporary sites which result in significant detriment to the local area.

**Q10. Are there any other situations where you believe use of a Temporary Stop Notice should not be permitted?**

Answer: None

General comments on consultation

**Q11. Do you wish to comment generally on the draft Regulations, RIA, EqIA, or other issues in respect of this consultation?**

Answer: Generally the regulations are to be welcomed though the provisions requiring information on the past enforcement history of the developer provide for irrelevant information which would be of no utility to the planning authority in carrying out the enforcement function. The ease by which these provisions could be circumvented, and the lack of any effective sanction in the event of false declaration, are such that it would add nothing to the process.

It is necessary for there to be regulations relating to the notification of completion of development which would be similar to those relating to the notification of initiation of development.

**Implications of this Report**

1      **Financial Implications** - none

2      **Personnel Implications** - none

3      **Community Plan Implications**

Social inclusion - will improve the enforcement process open to the Council in controlling development. More information will be available to the public

Modernising government - none

Sustainable development - the incidence of unauthorised development may be reduced.

4      **Legal Implications** - may result in additional legal action as the number of enforcement notices and temporary stop notices served may increase

5      **Property Implications** - none

6      **Information Technology Implications** - none

7      **Equal Opportunity Implications** - none