

PLANNING ENFORCEMENT REGULATIONS 2007 - CONSULTATION PAPER

RESPONSE TO THE SCOTTISH GOVERNMENT
by EAST RENFREWSHIRE COUNCIL

13th February 2008

| Question | Comment |
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| Introduction | <ol style="list-style-type: none"> 1. Paragraph 7 states that there appears to be no penalty for unauthorised development. The experience suggests that when cases go to court that it is often the Procurator Fiscal who imposes no penalty. Therefore <u>part</u> of the problem lies not just with the planning authorities needing more powers, but with the Procurators imposing the penalties that are already available. It is suggested that the Procurator Fiscal be consulted on these Regulations and support should be sought. 2. The process must be simple to avoid a lot of work in re-serving multiple notices. |
| Q1 Increasing penalties for continuing breaches | <ol style="list-style-type: none"> 3. Support |
| Q2 Initial amounts | <ol style="list-style-type: none"> 4. It is our opinion that the use of fixed penalties as proposed will rarely be used. The purpose of taking enforcement action is normally to ensure that the specified breach is <u>remedied</u>. If the penalties are to have any impact whatsoever, they must be punitive in their impact and the offender must see <u>compliance with the Notice</u> as being a <u>better option</u> than paying their penalty. The imposition of the nominally small £100 penalty (which would be reduced to £75 if paid within 15 days) seems to make its use most unlikely. Increases in all amounts is therefore urged. 5. Breach of Condition Notice (BCN) Breach - £100 is rather too small for a local/householder development. However it is <u>far too small</u> for major developments as it would be no deterrent for example for a business or housing developer. A 2-tier approach is suggested based on the 2006 Act definitions of 'local' and 'major/national developments', the latter of which should have penalties starting at £500 or £1000. |
| Q3 Increasing amounts | <ol style="list-style-type: none"> 6. The stepped increases are too small. The proposed Enforcement Notice (EN) rising from £1000 to £5000 in £500 increments would need 9 ENs to reach the maximum amount. It is not considered that any Council is going to go through the procedure 9 times – if after 2 or 3 times a developer is not complying, then more serious prosecution/direct action would be merited. 3-4 steps at maximum with larger increases is urged e.g. either £1000 each time or possibly incremental increases, such as £1,000>£2,000>4,000>8,000. 7. As point 6 above for BCNs which, as proposed, would need 5 notices to reach the maximum. |

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| Q4 Information in the NID | <p>8. In Annex B, 3a, it is not clear who is meant by “the person intending to carry out the development” – is this the owner/applicant or the actual builder? – It is suggested that the notice should include both. Alternatively it must be defined more clearly.</p> <p>9. The Notice of Initiation of Development (NID) must include the site address and the planning consent reference number.</p> <p>10. The NID should also specify what development is about to take place to cover situations where development is being implemented in phases, or where only part of an approved development is to be implemented.</p> <p>11. The Council does not believe that the public displaying of previous enforcement actions serves a useful purpose and also that monitoring it would prove very problematic. It would be questionable whether developers would be accurate in publicising their previous bad record. It would be very difficult for the Council to check the record of a developer who may have enforcement actions served in other Council areas.</p> <p>12. It is suggested that a standardised ‘Form of Notice’ be produced for a NID.</p> <p>13. The NID could additionally state where the site notice(s) (where applicable) will be placed</p> <p>14. The developer in the NID should state whether (and how and when) all suspensive/pre-start conditions have been met.</p> <p>15. Paragraph 22 talks about a standard condition to cover NIDs. A standard condition could perhaps be expanded to include NID, Notice of Completion of Development (NCD) and Site Notices (where required), thus allowing enforcement action (breach of condition) to be taken if any of these are not complied with.</p> |
| Q5 Time limits for recording enforcement action | 16. See comment 11 above. |
| Q6 Form of the site notice | <p>17. Schedule 1 – note b – the wording is unclear, as the person to whom the planning permission has been granted (see first paragraph) may not necessarily be the developer (see note b) – this needs to be clearer, is it the person who obtained the consent?, the current owner? or the actual builder?</p> <p>18. Is the ‘reference’ in (d) the same as in (f) ? – if so, both are not needed.</p> <p>19. It is suggested that the developer or site agent be the first point of contact for enquiries concerning the operation of the development, as they are likely to be the best source of answers for a lot of public questions.</p> <p>20. It is suggested that there should be speedy enforcement powers against developers failing to put up site notices, if not, these could develop into difficult confrontation</p> |
| Q7 Categories of development needing notices | 21. Agree |

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| Q8 Criteria for displaying notices | <p>22. There should be a requirement for developers to check the continuing existence of display notices on a weekly basis during development – as it is envisaged that notices will get damaged or lost over the period of longer developments.</p> <p>23. Where a development site has more than one significant street frontage, site notices should be displayed on each frontage.</p> |
| Q9 Temporary Stop Notices Regulations | 24. Agree |
| Q 10 TSN other situations | 25. None |
| Q11 Other comments | <p>26. No regulations are given as to the form of the Notice of Completion of Development. It is suggested that similar information as required for NID should also be required i.e. application number, address, developer, development completed, compliance with conditions. This should be covered in the T&CP (Notification and Display)(S) Regulations. A standard form for this purpose should also be included.</p> <p>27. In conclusion, the changes to the enforcement powers available to the Council are generally welcomed, subject to the above comments. It should be recognised however that a number of these powers will result in additional staffing and cost implications for planning authorities.</p> |

END

