

SCOTTISH SOCIETY OF DIRECTORS OF PLANNING

Scottish Government Consultation on Planning Enforcement Regulations 2007 Response to questions 1-11

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

It is extremely disappointing that an Enforcement Notice or BCN would need to be served on each occasion, but the reason is understood. It is agreed that penalties should be increased for continuing breaches

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

Breaches can be very different in size and impact. This is not reflected in the amounts proposed eg for a large development where a breach has a serious consequence £100 is insignificant. If the 30% "rule" cannot be altered then consideration should be given to revaluing the maximum fine of the court so that the sums can be greater.

- 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 maximum and whether the fixed penalty should increase by a larger amount for each subsequent offence?**

At the very least consideration should be given to a maximum of £6000 with increases from £750 - £1500. - £3000- £6000

- 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 have been met, might be useful?**

The application reference of the planning authority would be helpful. Serious consideration should be given to requiring the developer to certify on this notice the conditions that he considers have been met. This would impact greatly on the resources of the Planning Authority by reducing the need for monitoring. It may also heighten the awareness of the developer of the need to comply with certain conditions, thereby reducing the potential for enforcement action.

A similar requirement could be placed on completion notices ie for the developer to certify that all relevant conditions have been complied with. The terms "commencement " and "completion " require to be defined.

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

The relevance of this is questionable as the permission goes with the land and not the developer. It is difficult to get this point across to the community and to now require this type of information is likely to confuse.

- 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?**

Yes.

- 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 is noted that the definition of "national" and "major" are defined albeit part of a separate Consultation. It is considered that if other categories were to be used it would be quite confusing. Consideration should be given to qualifying "bad neighbour developments" as often they can be very small scale.

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

More important than the size of the notice is that it is legible.

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

The form of a fixed penalty notice would be helpful, as would the form of commencement and completion notices.

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

Clarification is required on whether a TSN can be served on a HMO.

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

With regard to the Fixed Penalty Notice, clarification is required on whether there is a right of appeal for each Enforcement Notice served. If so, the cost of this could outweigh the amount of the fine, certainly initially.

The consultation contains little practical advice on the process and practice eg how you would serve a FPN. It is hoped that this will be included in an advice note or circular to accompany the Regulations

It is noted that the FPN is only an options however there is concern that if a first FPN is served and then it is decided that prosecution is more appropriate, the PF may take the view that the FPN process should be exhausted before the case is taken up.

**Shirley Linton
Chair, Development Management Sub Committee**

18th February 2008