

**PLANNING ENFORCEMENT REGULATIONS 2007
RESPONSE TO SCOTTISH GOVERNMENT CONSULTATION PAPER**

By ABERDEEN CITY COUNCIL

Introduction

Officers have composed this response, taking on board concerns expressed the Council's Planning Committee, especially in regard to the small level of fines proposed for fixed penalty notices and the disparate impact this will have between smaller offenders and those with much greater resources.

Fixed Penalty Notice (FPN)

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

Support the principle that penalties should be increased for continuing breaches but, given the low level of the maximum penalties proposed (and the formulaic approach to this), it has the effect of depressing the initial penalty scale unduly. It is recognised that the need to serve successive enforcement notices (EN) or breach of condition notices (BCN) was a matter specified in the 2006 Act, but it is too cumbersome.

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

Overall, the fixed penalties are far too low to be effective, especially against corporate bodies.

To provide a sufficient deterrent, the maximum penalty should be increased to £6,000 (this would not be more than 30% of the maximum that can be imposed through summary conviction, in terms of the formula), or more.

The initial fine for BCNs is far too low to be a real deterrent. If, in terms of the formula upon which fixed penalties are calculated £300 is the maximum fine possible, this should be the flat rate from the beginning

Less use may be made of BCNs because of the huge disparity in the respective fines for ENs.

A separate scale of fines for individuals and corporate bodies should be introduced, since the latter will not find the fixed penalty notices much of a deterrent compared to the cost of works involved. Otherwise, if these powers are used, it will be perceived that the 'weak and vulnerable' get caught whereas the 'mighty and powerful' will be seen to 'get away with it'.

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?

There are too many stages. These should be reduced to three. If offenders have not responded by then, it is unlikely that further FPNs will be effective. The small increases in each stage currently proposed will not portray any perceptible change in the seriousness of the situation as a result of non-compliance.

Notification of Initiation of Development (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?

It is inappropriate to require the developer include his enforcement history. There is no way of checking whether this is correct and is insulting to him, since he would now be complying with legislation by submitting the NID. However, a mandatory declaration specifying each suspensive condition and a statement as to how each suspensive condition attached to the planning permission has been complied with (with fines for misrepresentation) would assist with the task of ensuring compliance.

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

If, despite the above, information on enforcement action is to be required, it should be for the previous 5 year period, rather than a 3 year period. Furthermore, the period should run back from the date the NID is submitted, rather than from the date on which planning permission was granted. Otherwise recent breaches could be missed out.

On-site Notices

Q6 Bearing in mind that the purpose of the notice is to make people aware of the development and to direct them to the appropriate contacts for further information, are you content with the level of information to be included?

In addition to the information proposed, a copy of the planning permission should be displayed so that interested persons can better identify whether there appears to be a breach of the terms of the planning permission.

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

The proposed categories of development (major, national and 'bad neighbour') are appropriate.

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

The minimum size of the notice, should be at least A3. The regulations should specify how and where the notice should be (in general terms) fixed and displayed; the durability of the notice; that it should remain legible and complete for the period of the development and readily visible from any public pathway or roadway that borders the site, possibly with a distinctive coloured border to draw attention to it.

Temporary Stop Notice

Q9 Are you content with the proposed draft regulations and if not, why not?

The words 'immediately before' and 'main residence' need to be more accurately defined.

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

No. This is unnecessary.

Q11 Do you wish to comment generally on the draft Regulations, Draft Regulatory Assessment, Partial Equalities Impact Assessment, or other issues in respect of this consultation?

The planning authority should be required to 'direct the attention of the applicant' to the requirement to submit a notice of initiation and completion of development and the possible penalties for non-compliance.

Further guidance should be provided on the form and content of a FPN.

Also, where copies of the enforcement notice is served on more than one person who should received the fixed penalty notice and who should be prosecuted (as only one fixed penalty notice can be issued in respect of each particular step or activity)?

19 February 2008