



Scottish Rights of Way and Access Society

Planning Enforcement Consultation
Planning Directorate
Scottish Executive
2H Victoria Quay
EDINBURGH
EH6 6QQ

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Dear Sir

PLANNING ENFORCEMENT CONSULTATION

The main function of the Scottish Rights of Way and Access Society (ScotWays) is to safeguard and promote public access, whether on rights of way or under the new statutory right of access, and we also act to protect amenity, especially where enjoyment of the outdoors is involved. Through these functions, we engage with the planning system, mainly by commenting on development proposals that affect our interests.

This consultation (and the draft Regulations on which views are sought) address an important, but under-regarded part of the planning system. Anyone who has an interest in the operation of the planning system will be aware of breaches of conditions. There is evidence that enforcement is often lacking: no doubt neighbours will often be reluctant to make public complaint; breaches of conditions on how a development is to be implemented are difficult to check; and effort by authorities to monitor adherence to conditions can be limited. Scotways welcomes action to secure better compliance with conditions, in particular the requirement on planning authorities to be more up-front on how they do this through the proposed enforcement charters.

Fixed penalty notices The penalty proposed is set at a fierce level for small-scale transgressions, say, at the domestic level. While the aim might be to provide developers with a strong incentive to behave, arguably, the level of penalty could work against enforcement of small-scale failures, on the basis that Council officers may be reluctant to move on from warnings and an EN, given a penalty on this scale. On the other hand, the penalty is very modest as seen against the cost of a major development, or against a very truculent developer. In response to your question 1, we agree the need to ramp up the fine for continued failure. At (questions 2 and 3), Councils should have some flexibility to act reasonably, according to the circumstances of the case: perhaps the new hierarchy might be a basis for discriminating on the level of fine, with a further optional lower level fine for small-scale transgressions.

On-site notification We have no comments on questions 4 and 6. We welcome the suggestion (question 5) that the NID act as marker for the satisfaction of any suspensive conditions. There may be a minor interaction here with section 7(3) of part 1 of the Land Reform Act, which effectively declares that any changes to public

rights of access, following planning consent, commence once development starts, although s7(3) does imply active works on the ground. This does not mean that public access rights are necessarily lost – this would depend on the nature of the development and how it interacts with the terms of section 6 of that Act.

Temporary stop orders Temporary stop-orders and strengthened action on tree preservation are welcomed. We have no responses to your questions 9 to 11, but hope that orders of this kind can be used to resolve blight arising from unauthorised roadside commercial advertising.

Yours sincerely

John W Mackay
Director SRWAS