

Appendix 2

DRAFT

RESPONSE TO SCOTTISH GOVERNMENT CONSULTATION

DRAFT PLANNING ENFORCEMENT REGULATIONS

Fixed Penalty Notice (FPN)**Q1 Do you support the proposal that penalties should be increased for continuing breaches and if not, why not?**

The proposals that penalties should be increased for continuing breaches are supported. However, the need to serve successive enforcement notices (EN) or breach of condition notices (BCN) is considered too cumbersome.

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

To provide a sufficient deterrent, the initial fine for ENs should be £1,000 and the maximum fine should be increased to £6,000 (this would not be more than 30% of the maximum that can be imposed through summary conviction). The initial fine for BCNs is considered to be too low to be a deterrent for a major developer (and would not cover the planning authority's administrative costs); an increase to £300 (the maximum) is suggested. Potentially less use will be made of BCNs because of the huge disparity in the respective fines for ENs. Perhaps a separate scale of fines for individuals and corporate bodies or different types of development might be preferable, but it is appreciated that this might be difficult to regulate for.

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 is concern about the number of FPNs (and the number of ENs or BCNs that will have to precede them) that would require to be served to reach the maximum fine level. To reduce the administrative burden it is considered that the number of notices required to reach the maximum fine level should be 3 and that the incremental fine levels should be as follows: EN £1,000 - £3,000 - £6,000 BCN £100 - £200 - £300 (if the suggestion that the initial fine of £300 is not accepted).

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?

There may be limited benefit in including the enforcement history of the developer as there is no mechanism for ensuring that the information provided is accurate (there is no national data base of enforcement and it is unlikely that resources would be available for checking the accuracy of information and no penalty if incorrect information is provided). It is doubtful that the requirement to provide enforcement information would help to allocate resources to those sites where there is more likely to be a need to monitor the activities of a particular developer as, those are likely to be the developers who do not provide the information in the first place. If enforcement information is to be provided, it is not clear why the developer should not be required to include any enforcement action which is subject of an appeal (particularly as the appeal may be dismissed) or had been withdrawn as this information would be relevant in informing the planning authority of the developers 'track record'. ENs and BCNs are generally not served unless the developer has failed to comply with earlier 'less formal' requests to comply. An additional requirement that the NID include a declaration that suspensive conditions have been complied with would assist with the task of ensuring compliance.

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

If information on enforcement action is required, it should be for a 5-year period, rather than the 3-year period proposed, and for the period prior to the date the NID is submitted rather than from the date planning permission was granted. This would result in a consistent period of information for all developers, as the time that lapses before development commences varies in each case.

On-site Notices

Q6 Bearing in mind that the purpose of the on-site 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?

The level of information to be included in the notice is considered acceptable. It is noted that there is no requirement for the planning authority to 'direct the attention of the applicant' to the requirement to display an on-site notice. Further regulation or guidance is required to clarify whether it is intended that this be done through the use of a standard condition?

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 for which notices would be required are acceptable.

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

The regulations should specify the minimum size of the notice, which should be at least A3 size and there should be more prescriptive regulations regarding how and where the notice should be displayed and the durability of the notice, for example, legible and complete for the period of the development, readily visible from any public pathway or roadway that borders the site.

Temporary Stop Notice

Q9 Are you content with the proposed draft regulations for temporary stop notices and if not, why not?

The terms '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?

It is not considered necessary to extend the situations where the service of a temporary stop notice would not be permissible.

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 new regulations make no comment on how the various statutory notices would be policed. Further regulation or guidance is required on the penalties for non-compliance.

The regulations are somewhat rudimentary in relation to the FPNs. The legal framework within which the system would operate has been omitted and as a result, many questions remain unanswered. These questions include the following:

1. Regulation or further guidance should be provided on the form and content of a FPN.

2. Enforcement notices are often served on a number of different parties. In these circumstances, guidance will be needed on the service of multiple notices?
3. It will be necessary to specify whether or not normal evidence corroboration procedures or will there be specific arrangements for FPN's?
4. It is not clear whether there should there be a mechanism for appealing the FPN.
5. The planning authority's options if the maximum fixed penalty fine has been paid and the breach remains uncorrected, are unclear. Further guidance on this issue will be welcome.