

DEPARTMENT OF DEVELOPMENT SERVICES  
**PLANNING SERVICES – DEVELOPMENT MANAGEMENT**

#059

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**ORKNEY**  
ISLANDS COUNCIL

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Consultation on Planning Enforcement  
Regulations  
Planning Directorate  
The Scottish Government  
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EH6 6QQ

Date: 13<sup>th</sup> February 2008

Dear Sir/Madam,

**Re: Consultation on Planning Enforcement Regulations**

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

The principle of increasing the penalty for continued non-compliance with an Enforcement Notice or a Breach of Condition Notice is supported, although it is difficult to envisage such a time when this mechanism will be used in practice. If an individual is served with an Enforcement Notice, requiring certain actions to be taken to regularise a breach of planning controls, why would they choose to pay a fixed penalty for failing to comply with said Notice when they would then receive another Notice once they have paid their fine? It may be the case that an individual may forget to take the necessary actions to rectify a breach and would prefer to pay a fine, in effect extending the period of time by which the necessary actions must be taken, although this is unlikely. It is more likely that the option of paying a fine would be declined in favour of taking ones chances in court (especially if the individual intends to carry out the works prior to the court date to increase the chance of a favourable result). Even if an individual did pay a fixed penalty once, why would they choose to continue paying the penalties unless the delay in complying with the Notice was in their own best interests? The use of a fixed penalty Notice (FPN) would seem only to be of benefit to either large scale developers who wish to delay prosecution proceedings, or else the owners of unauthorised businesses who stand to make more money from continuing to operate unlawfully than they would have to pay through fixed penalty fines. The fact that each incremental fixed penalty increase requires a further Notice to be served is also of concern, especially if the recipient would

be entitled to appeal against each subsequent Notice, thus increasing the delay in rectifying any breach.

It may be a deterrent to unscrupulous developers if details of any Enforcement Notices served were required to be published in the Local Press. Whilst it may be somewhat draconian to publish details of all Enforcement Notices issued, any 2<sup>nd</sup> and subsequent Notices issued for the same offence following issue of a FPN could be advertised. This would act as 'naming and shaming' exercise, demonstrating to the public that action is being taken to combat unauthorised activities in the locality, it would advise the public of the developers with a history of contravening planning controls and would serve to prompt said developers to take more care to ensure that the unauthorised activities aren't carried out lest they be discredited and potentially lose future contracts.

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

The £1000 initial fixed penalty fine for failing to comply with an Enforcement Notice may be too great to expect the average householder to choose to make a payment rather than take their case to court. The penalty is of such a level, however, that small businesses may be persuaded to comply with a Notice. The level of the Breach of Condition Notice fixed penalty fine is appropriate for small scale developers and may work well. With the larger developers it would still be the case that a prosecution could be more appropriate for failing to comply with a Breach of Condition Notice and the Council would still be in a position to take direct action if necessary.

**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?**

The proposed increase in the level of fixed penalty fines seem acceptable although the potential for abusing the system is high considering that separate Enforcement Notices are required for each individual FPN. If there is a right of appeal against each Notice then there is potential for greatly extended periods of time to resolve breaches of planning control. Perhaps fewer FPNs would be more appropriate (three stage system) with larger increases in fine with each incremental rise to the next FPN stage.

**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?**

While the consultation document recognises that some Authorities already use NIDs, it states that the requirement to return them has never been legally binding. There is no information within the consultation document regarding the penalty for failing to submit a NID and a suggestion is made that this be controlled by planning condition. NIDs and NCDs are useful tools for Planning Departments but there is nothing preventing their

being a conditional requirement of a planning consent under current legislation. Orkney Islands Council currently operates a NID system and it is hard to imagine how this proposed new statutory requirement will have any effect if there is not a specific penalty in place for failing to return the Notifications. The only information that is required by a NID is the name and address of the developer and the appropriate reference number of the planning consent. Any suspensive conditions that have been satisfied should already have been recorded on the planning file and any outstanding conditions will be obvious to the Monitoring Officer. Controlling this section of legislation by condition will lead to an increase in the number of conditions attached to each planning consent issued and subsequently to an overall increase in the workload for every Monitoring Officer/ Enforcement Team in the country.

It would make sense to have the NIDs and NCDs as separate, statutory, stand-alone Notices. It would be easy to include them as tear-off sections accompanying a Decision Notice. If the developer/land-owner were to fail to return the NID or NCD then it should be a breach of specific legislation with a specific penalty and not a breach of planning condition.

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

Yes.

**Q6. 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.

**Q7. 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 hard to see the reasoning behind adding this section of legislation, along with the requirement to submit NIDs and NCDs, when there is no penalty for failing to comply with their requirements. The process will have to be controlled by planning condition and will therefore increase the number of conditions within many Decision Notices (all in the case of NIDs and NCDs) and will subsequently increase the workload of enforcement teams across the Country. This, when considered alongside the proposed alterations to the General Permitted Development Order (requiring that enforcement staff visit more sites to ensure compliance with the extended permitted development rights), will put more pressure on the resources of Development Management Departments nationwide and the size of many enforcement teams will need to be increased to deal with the heavier workloads.

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

The proposals are sufficient.

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

The Temporary Stop Notice is a useful tool and has been used by Enforcement teams in England for some time now. The main area where the Scottish legislation is inferior is in the same area that all Enforcement Notices issued under the Scottish Planning Acts are let down, namely in that Notices are not registered as a charge on the land in Scotland. This measure ensures that potential buyers of the site, and third parties with an interest in the land (such as mortgage providers), are made fully aware of the existence of any Enforcement Notices. Solicitors ensure that any potential purchaser is aware of the Notice when searches are made and make it clear that to breach the Notice would constitute a criminal offence. Consideration should be given to ensuring that Enforcement Notices are lodged as charges upon the land in future as this change would assist enforcement officers greatly, going a great way to preventing developers from breaching conditions or carrying out unauthorised works. Mortgage providers take on a much more active roll in ensuring breaches of planning control cease in England. This is due to the fact that the property, in which they have a financial interest, becomes much less desirable once an Enforcement Notice has been issued in England.

**Q10. Are there any other situations where you believe the use of a Temporary Stop Notice should not be permitted?**

No.

**Q11. Do you wish to comment generally on the draft regulations, RIA, EqIA, or other issues in respect of this consultation?**

No.

Yours sincerely



Mr S West  
Planning Control Officer