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**DEVELOPMENT &  
ENVIRONMENT  
COMMITTEE**

**DATE: 15 JANUARY 2008**

**REPORT NO: D&E 780-08**

**BY CORPORATE DIRECTOR -ENVIRONMENT**

**CONTACT OFFICER**

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**SUBJECT**

**SCOTTISH GOVERNMENT CONSULTATION ON PLANNING  
ENFORCEMENT REGULATIONS 2007**

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**1.0 PURPOSE**

1.1 The purpose of this report is to advise the Committee of a Scottish Government Consultation on revised Planning Enforcement Regulations and to recommend that a response be returned by the due date of 20 February 2008.

**2.0 SUMMARY**

2.1 The Planning etc (Scotland) Act 2006 proposed a number of new powers and changes to the operation of existing powers including:-

- Notice requiring application for retrospective planning permission for development already carried out.
- Temporary Stop Notices.
- Notification of initiation of development and of completion of development.
- On Site Notices.
- Fixed penalty notices.
- Enforcement Charters.
- Removal of certain grounds for appeal against enforcement notices.

2.2 Secondary legislation is however required in order to implement a number of these powers including provision for Scottish Ministers to set:-

- The level of penalty in respect of fixed penalty notices
- the information to be submitted in a notice of initiation of development
- the information to be displayed in an onsite notice and
- activities which may not be prohibited by a temporary stop notice.

2.3 This consultation seeks views on a draft of the above regulations and a consultation paper is structured around 11 specific questions. The attached paper proposes responses to each of the questions asked.

2.4 There is significant concern over the public expectations which may be raised by the new requirements for notices to be lodged at the start of, during, and on completion of a development. If the Council is to respond to these it is estimated that additional resources would be required in terms of posts to ensure that the responsibilities and duties arising could be undertaken.

### **3.0 RECOMMENDATION**

3.1 It is recommended that

(a) a copy of this paper is submitted to the Scottish Government as the Councils response to consultation and

(b) attention be drawn especially to the importance of adequately augmenting the resources available to planning authorities to enable them to implement the additional responsibilities proposed in the draft regulations.

### **Head of Planning, Development and Property Assets**

## 4.0 CONTENTS OF THE CONSULTATION DOCUMENT

4.1 The consultation paper recognises that enforcement plays a “fundamental role in the operation of an effective planning system” and that this requires breaches of planning control to be “dealt with quickly, efficiently and rigorously”. The paper also recognises that the significant majority of such breaches of control are inadvertent and are usually easily resolved without the need for formal action to be taken. To observers however the lengthy procedures and lack of an effective means of imposing a penalty for unauthorised development can be perceived as unfair. In response to this the Scottish Government is proposing to introduce “new or extended powers” as outlined in the 2006 Act. These include

- Fixed Penalty Notices – under current legislation the Council may take out a prosecution and seek a fine on conviction of up to £20,000 for a breach of an Enforcement Notice or £1,000 for a breach of a Breach of Conditions Notice. Preparing a prosecution case can however be costly and time consuming and there is often doubt over whether a case will be pursued by the courts. The proposed new provision gives planning authorities the power to issue a fixed penalty notice as an alternative to prosecution. The proposed penalties for failure to comply with Notices would be:-
  - Enforcement notice £1,000 rising to a higher sums, (not exceeding £5,000), for each subsequent offence
  - Breach of conditions notice £100 rising to a sum (not exceeding £300) for subsequent breaches

The maximum penalties have been set to be less than 30% of the maximum fine imposed following conviction. If however the offence is considered by the planning authority to be unusually serious the option of pursuing a prosecution remains open.

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

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

**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?**

**It is recommended that the Committee responds to questions 1 to 3 by offering support for the rising scale, the sums involved and the proposed maxima.**

- The Notification of Intention to Develop (NID), Notice of Completion of Development (NCD) and On Site Notices – A very significant set of new responsibilities requires anyone commencing development (for which they already have permission) to inform the planning authority of the date on which they intend to start. (The planning authority is advised to draw applicants attention to this new requirement through a standard planning condition). This gives the planning authority the opportunity to confirm that pre-start conditions have been met and to allocate resources to monitoring progress of the development. It should be noted that prior to this requirement being introduced the responsibility for ensuring that conditions have been complied with and that development takes place in accordance with

the approved plans has lain with the applicant. Although the proposals do not change this, by creating an opportunity for planning authorities to confirm that pre-start conditions have been met and monitor a development in order to ensure that it is undertaken in compliance with approved plans, whilst being welcomed, will create a public expectation that the authority is able to allocate resources to these functions. Consideration will therefore need to be given to how the increased profile of these roles will be resourced.

It is proposed that the notice should also contain details of any planning enforcement action taken against the developer concerned over the preceding three year period as an indication of the developers "track record".

**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?**

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

**In response to questions 4 and 5 it is considered to be appropriate that a list of pre-start or other suspensive conditions should be appended to the notice together with an opportunity for the applicant to indicate how and when they have been met. In addition, a three year time limit on enforcement against a particular developer is considered to be too short and that this should therefore be extended to five years.**

An additional new power requires developers to return a NCD once the development is completed. This will enable the planning authority to confirm that the development has been completed in accordance with the approved plans and any associated conditions. Again, whilst this is welcomed, the new power will increase the profile of development monitoring and public expectation that the planning authority is able to adequately resource "signing off" processes for every single development in its area. Experience indicates that a significant number of developments are, often inadvertently, not completed entirely in accordance with the relevant planning consent. In East Dunbartonshire this could involve carrying out detailed checks and site visits on over a thousand cases every year. If this level of monitoring is to be expected it would be inescapable for there not to be a requirement for additional resourcing.

The third new provision requires that during the course of a development (for major, national or bad neighbour cases) an On Site Notice is displayed in order to raise public awareness. The notice will include basic information about the nature of the development and details of the developer, planning application reference number and details of where to find further information on any conditions which may apply etc.

**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?.**

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

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

**In response to questions 6 to 8 it is recommended that this requirement be limited to Major, National and Bad Neighbour developments as proposed but that in order to avoid uncertainty, the distinction from local developments be clear at the application stage. Whilst the intention of raising public awareness is welcomed this could result in a very significant increase in requests for copies of lists of planning conditions. In order to manage the increased burden on planning authority work load in meeting this public expectation it would be appropriate for a full list of conditions and reasons to be appended to the notice. In addition, in order to adequately meet with public expectations, the regulations should set out a minimum font size, height above ground level and distance from a publicly accessible place for the display of the notices and also place a responsibility on the developer for ensuring that the notices remain on display and in a legible condition.**

- **Temporary Stop Notices** – there is already a power to serve a Stop Notice in association with an Enforcement Notice where unauthorised activity is a serious threat to amenity through irreparable damage to buildings or the environment. This is however a relatively slow and unwieldy process as, in addition to the time taken to prepare an enforcement notice there is a three day notification period before it can take effect. Under current legislation this can only be tackled through a court interdict which is still time consuming and is a power rarely resorted to. The new power enables a planning authority to serve a Temporary Stop Notice, valid for up to 28 days, without the need to serve an enforcement notice. There would be no right of appeal against this measure. At the end of 28 days, if matters have still not been resolved the planning authority would be required to have served an Enforcement and Stop Notice as appropriate. It should be noted however that it is not intended that such a notice could be used to prohibit people from occupying a dwelling and therefore caravans are specifically excluded from the provision unless there was a clear danger to the occupants or the public in general.

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

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

**In response to questions 9 and 10 it is recommended that support be given to the proposals and to limiting exceptions the powers to caravans, as set out in the regulations.**

**Q11. Do you wish to comment generally on the Draft Regulations, Regulatory Impact Assessment (RIA) Equalities Impact Assessment (EqIA) or other issues in respect of this consultation?**

**It is very strongly recommended that the Scottish Government gives very careful consideration to the introduction of extended powers and responsibilities for planning authorities aimed at increasing public awareness and expectations, without very significant provision of additional resourcing. Failure to increase resources in line with public expectation could result in severe difficulties and failure to meet with public expectations.**

## **5.0 IMPLICATIONS**

- 5.1 Finance                      The proposal would place very significant additional burdens on the Planning Authority. On receipt of an NID if the Council requires pre-start conditions to be checked and the progress of the development to be monitored this would require at least a full time equivalent member of staff. OSN are likely to generate an increase in enquiries from neighbours and will impact on workload for all staff. If the Council requires that NCD are followed up with checks that the development has been completed in accordance with approved plans and conditions, a further two full time equivalent staff members are anticipated to be required.
- 5.2 Legal                        Potential additional requirements for Legal Services input
- 5.3 Human Resources        None
- 5.4 Public Relations         None