

BT/SGenf/180208

20 February 2008

Ben Train  
Town Planning Manager – Scotland  
Tesco Stores Limited  
Property Acquisitions  
Carnegie Road  
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Dear Sir/Madam

**TESCO STORES LIMITED - COMMENTS ON THE SCOTTISH GOVERNMENT  
DRAFT REGULATIONS ON ENFORCEMENT**

Tesco Stores Limited welcomes the opportunity to comment on the draft Regulations on enforcement. We note the changes introduced through the Planning etc (Scotland) Act 2006 to increase enforcement controls. Whilst we understand that enforcement action is required to ensure that the public and developers work within the rules set down by the planning system it is important that a level playing field is maintained and that Planning Authorities are consistent in their application of enforcement procedures. The size or profitability of a developer should not be taken into consideration when deciding what enforcement action to take rather it should be the nature of the breach of planning controls.

It is also important that Planning Authorities make an effort to understand the reason for a planning breach before taking action. It is also recommended that any funds raised through enforcement activity be ring fenced to assist the resourcing of the Planning Authority, thereby improving the efficiency of the planning process.

Detailed comments on the questions asked in the consultation are set out below:

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

This is dependant on the characteristics of the breach. There are times when circumstances beyond the control of a building operator/developer may require them to breach planning controls, for example there could be a reason for the breach which relates to another licence requirement or an unforeseen health and safety issue. If a building operator/developer is taking reasonable action to amend the activity or is about to submit an application to seek a relaxation of planning controls then it would seem to be unreasonable to start issuing fixed penalties that increase over time.

We are also concerned at the increase in bureaucracy and expense that will result from Planning Authorities repeatedly serving fixed penalty notices.

**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?**

The proposed amount of penalty for a breach of enforcement notice is set at £1,000 in respect of the breach of the first enforcement notice with an increase of £500 for each breach of a subsequent enforcement notice up to a maximum of £5,000. The Regulations similarly set out that for failure to comply with a breach of condition notice the penalty would be set at £100 rising by £50 steps to a maximum of £300.

We believe these levels for breach of enforcement notices are too high and may act as an incentive for Planning Authorities to take enforcement action in circumstances where it is not expedient for them to do so. Additionally, the incremental increase will encourage Planning Authorities to move quickly to the next breach of enforcement notice rather than seeking to resolve the issues through discussion and negotiation. The proposed levels do not take cognisance of the different scales in breaches – theoretically small scale breaches could result in fines of £1,000 or more, which seems excessive. We therefore recommend reduction in the breach of enforcement notice fines to levels that reflect other fixed penalty regimes.

We recommend that penalties for breaches of condition notices are also reduced and that there are limitations placed on the number of notices that can be served in relation to a breach of condition and the frequencies that such notices can be served.

Most developers will not view the levels proposed as simply “running costs” as has been indicated by some Planning Authorities. Instead fixed penalties will be taken seriously by building operators/developers and will focus attention on resolving issues as quickly as possible. Large penalties, as currently proposed, will be detrimental to the development industry and may potentially reduce the economic competitiveness of businesses in Scotland. The Scottish Government can always increase the level of penalties if it is found that they are not acting as an incentive for developers to fix breaches of planning controls, but it would seem wise to start at a low level and increase overtime rather than starting at the high levels currently proposed.

It would be detrimental to the planning system if Planning Authorities started to use the fixed penalty mechanism as a mean of raising funds. Furthermore, to ensure enforcement activity is undertaken consistently we suggest that Planning Authorities be required to make enforcement information, such as fixed penalties, publicly available.

**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?**

Tesco welcomes the introduction of regulations that require developers to inform Planning Authorities before starting development of the date they intend to start and the requirement for a Completion Notice to be supplied to the Planning Authority. However, we see no reason for developers submitting information on enforcement actions taken against them

with the Notice of Initiation of Development as this is information that the Planning Authority should be aware of through their Planning Register. Planning Authorities hold this information electronically for their area and it can therefore be accessed easily. Requiring developers to provide this information will simply act as a bureaucratic overhead adding to the expense of dealing with the planning system. Developers who have a bad enforcement records could use different company names to overcome this, which undermines the purpose of this statutory requirement. It is also weighted in favour of small developers and will place an unnecessary burden on all developers.

We consider that there should be no punitive measures if a developer does not meet the target date as set out in the Notice of Initiation of Development, rather there should simply be a requirement for the developer to renotify the Planning Authority.

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

For the reasons stated above we do not welcome the move to require developers to provide information on enforcement activity taken against a developer in the previous 3 years.

**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?**

We welcome the requirement that a notice must be displayed on site containing prescribed information about the development. Tesco is keen to engage with communities and considers this to be one of many ways to ensure local communities are aware of the development activity in their area. The Planning Authority website should be included on the notice as this will be the principal means of people accessing information on developments. However, we do not think it is beneficial to require notices to set out information on suspensive conditions. If people are interested in this level of detail they can either contact the developer or the planning authority. Requiring this information to be included would merely act as a bureaucracy requirement that brings little benefit to local communities.

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

We are content that site notices should only be displayed for developments identified as major, national and/or bad neighbour developments.

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

The Regulations should make it clear that developers must take reasonable steps to make sure the site notice is visible, but they need to acknowledge that circumstances beyond the control of developers may result in the notice being removed or damaged, for example extreme weather conditions.

**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?**

We are aware that Section 26 of the 2006 Act introduced powers for Planning Authorities to issue a Temporary Stop Notice and we make no further comments.

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

In terms of the Regulatory Impact Assessment (RIA), we consider that there will be potential impacts on businesses stemming from the changes in enforcement. While we understand the need to have enforcement procedures that instil public confidence in the planning system the increased power to Planning Authorities, particularly fixed penalties, may result in more enforcement action taking place as there will be a financial incentive for Planning Authorities. There are other elements of the Regulations, such as the requirement to inform Planning Authorities of all enforcement action against a developer, that seem to increase the burden to business without bring any real benefits. We therefore believe that the RIA underestimates the impact this will have on businesses.

Yours sincerely  
For and on behalf of  
**TESCO STORES LIMITED**

**BEN TRAIN**  
**TOWN PLANNING MANAGER – SCOTLAND**