



**West Lothian  
Council**

**FOR FUTURE COUNCIL EXECUTIVE**

**DEVELOPMENT AND TRANSPORT POLICY DEVELOPMENT AND SCRUTINY PANEL**

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

**REPORT BY PLANNING SERVICES MANAGER**

**A. PURPOSE OF REPORT**

To advise members of the above consultation paper and agree the council's formal response.

**B. RECOMMENDATION**

That members note the terms of this report and agree to submit the comments annexed to the report to the Scottish Government.

**C. SUMMARY OF IMPLICATIONS**

- |   |  |
|---|--|
| <b>I Council Values</b>   | Focusing on our customers' needs.<br>Making best use of resources. |
| <b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b> | The Planning etc. (Scotland) Act 2006.                             |
| <b>III Resources - (Financial, Staffing and Property)</b>   | Utilising existing budget/staffing resources.                      |
| <b>IV Consultations</b>   | None.  |

## **D. TERMS OF REPORT**

### **Background**

The Planning etc. (Scotland) Act 2006 has been approved by Parliament and subsequently granted Royal Assent. The act introduced a number of new powers and changes to the operation of existing powers relating to the enforcement of planning control. These changes include:

- introduction of temporary stop notices;
- notice to require submission of a retrospective planning application;
- on site information notices to be displayed during development;
- notification procedure before work starts on site and on completion of development; fixed penalty notices;
- enforcement charters; and
- removal of certain grounds of appeal against enforcement notices.

Secondary legislation is required in order to implement a number of these powers and the consultation paper published by the Scottish Government in October 2007 seeks views on the proposed regulations. The key changes are explained in more detail in the following paragraphs.

Members should note that the Scottish Government has stressed that it is unable to consider any comments seeking amendment to the provisions of the 2006 Act as that primary legislation has, as mentioned earlier, been approved by Parliament and granted Royal Assent. The attached response to the questions raised in the consultation paper therefore deals only with the detail proposed in the draft regulations.

### **Temporary Stop Notices (TSNs)**

The introduction of TSNs will enable the council to pursue formal action in serious cases of unauthorised development expeditiously. Unlike the existing powers whereby a stop notice can only be issued with a related enforcement notice, which needs to be served on everyone with an interest in land, the TSN would be displayed on site, take effect immediately and would be valid for 28 days. This will enable the council to take urgent action against unauthorised development which is causing demonstrable harm to the environment or seriously adversely affecting amenity.

### **Notice Requiring Application for Planning Permission for Development Already Carried Out**

This new requirement empowers the council to issue a formal notice on a land owner requiring them to submit a planning application for development that has already taken place. Failure to comply will constitute a breach of planning control and expose the owner to formal enforcement action to remedy the breach.

## **On Site Information Notices**

The purpose of introducing on site notices is to require developers of major, national and bad neighbour developments to raise public awareness of developments taking place in their area. The proposed regulations will require developers to display certain information in relation to the development, including details of the relevant planning permission which will help interested parties to find further information.

## **Notification of Start and Completion of Development**

The draft regulations propose that developers will be required to inform the planning authority in advance of works starting on site. Similarly, developers will be required to notify the planning authority when works have been completed. The purpose of these provisions is to enable the planning authority to be better informed of what developments are currently active in their area and to assist them to allocate resources to enforcement monitoring more effectively.

## **Fixed Penalty Notices**

In recognition of the difficulties associated with resolving breaches of planning control where the ultimate recourse is to report non-compliance with enforcement notices and breach of condition notices to the Procurator Fiscal, the Government proposes to introduce a fixed penalty notice scheme as an alternative to prosecuting offenders. The regulations propose that if an enforcement notice or breach of condition notice is not complied with, the planning authority will have the option to issue a fixed penalty. The regulations also propose that if a breach of planning control remains unresolved after the issuing and payment of a fixed penalty, the local authority may issue further notices and fixed penalties. In relation to an enforcement notice, the initial fixed penalty is proposed to be £1,000 rising in increments of £500 to a maximum amount of £5000 if the breach remains uncorrected over time. In relation to breach of condition notices, the initial fine is proposed to be £100 rising in increments of £50 to a maximum of £300. The maximum figures proposed in the draft regulations is in keeping with other established legal precedents in relation to fixed penalty notices issued under other legislation, in that the maximum fine does not exceed 30% of the maximum fine that can be imposed on summary conviction, (£20,000 & £1,000 for enforcement and breach of condition notices respectively).

It should be borne in mind that the council will still have the option, provided no offer to pay a fixed penalty is given to an offender, to report serious offences to the Procurator Fiscal once the first notice issued has not been complied with.

## **E. CONCLUSION**

The proposed regulations governing enforcement will introduce a number of measures to address perceived weaknesses with current legislation and they are broadly welcomed. The measures proposed will enhance the powers already available to planning authorities and also benefit the public by providing more transparency in the planning process. In particular, the proposed statutory requirement for major developments to display site notices during development works will assist local communities in engaging with the planning process by providing useful information for any interested party affected by development.

The introduction of a notification procedure for developers to inform the planning authority prior to works starting on site, and at the time of completion of development, is considered to be a significant step forward in providing planning authorities with information on developments occurring across their administrative areas with the aim of enabling a targeted approach to proactive site monitoring being implemented.

The introduction of fixed penalty notices will further enhance the planning enforcement 'toolkit' giving additional options available to the planning authority in situations where enforcement notices have not been complied with.

Whilst the enhancement of existing enforcement related powers is welcomed, officers consider that additional changes to primary legislation are required in order to address other weaknesses with the legislation. For example, officers consider that the notification procedure for developments which have been completed should include some form of 'signing off' by the planning authority which would act as an approval/acknowledgement from the planning authority that the development has been completed in accordance with the planning permission. This would assist all those involved and/or affected by any development process to ascertain whether there are any unresolved planning conditions or breaches of planning control unresolved at the development site. Clearly, the implications for developments which could not be 'signed off' by the planning authority would need to be given careful consideration, but nonetheless such a scheme could potentially benefit developers, the local authority and the wider community by having such a certification process in place. It is therefore recommended that this issue be raised by the council with the Scottish Government with a view to making changes to the principal 2006 Act in due course.

## **F. BACKGROUND REFERENCES**

Town and Country Planning (Scotland) Act 1997.

The Planning etc (Scotland) Act 2006.

PAN 54, *Planning Enforcement*, The Scottish Office Development Department, March 1999.

Circular 4/1999, *Planning Enforcement*, The Scottish Office Development Department, March 1999.

Appendices/Attachments: Proposed response to questions raised in consultation paper.

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rjk110308 scot gov consultation on planning enforcement regs 2007

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

Yes. Increasing the penalties should act as a deterrent to persons responsible for continuing breaches of planning control.

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

The fixed penalty fine for not complying with a breach of condition notice appears particularly weak. An initial fine of £100 is significantly less than the current cost of submitting a planning application for minor development (£145) and it is unlikely, unless the planning authority intend to pursue a continuing breach, that it will act as a deterrent. Furthermore, if the initial fine was paid within 15 days, the fine would reduce to £70, less than half the cost of a related planning application. This is unlikely to act as a deterrent to householders and even less so to 'professional' developers.

**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 fixed penalty notices (FPNs) that would be required to reach the maximum and whether the fixed penalty should increase by a larger amount for each subsequent offence?**

To reach the maximum fine level for not complying with a breach of condition notice, five FPNs would require to be served. By comparison, this would rise to nine FPNs for non compliance with an enforcement notice. This seems excessive and somewhat burdensome administratively. Consideration should be given in relation to enforcement notices to the fine rising in increments of £1,000 which, in terms of administrative processes, would be comparable to the equivalent breach of condition FP provisions. No mention is made in the consultation paper regarding rights of appeal for 'subsequent' enforcement notices. This needs clarification as the effectiveness of the entire process would be undermined drastically if 'subsequent' enforcement notices could be appealed which essentially delays the resolution of the case.

**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?**

Proposals seem comprehensive enough for the local authority's site monitoring purposes. A requirement to certify whether or not there are any suspensive conditions imposed on the planning permission would further assist the planning authority in prioritising cases.

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

The time limit should relate to the period of three years prior to the submission of the planning application, as opposed to three years since approval of the application. Information on enforcement action associated with a developer after planning permission has been granted will be readily available to the planning authority in any case.

**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?**

The proposals are considered to be comprehensive, but consideration should also be given to the developer having to provide contact details of who will be carrying out the development which would assist both the public and the local authority in raising any matters directly with them.

**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 categories listed are those most likely to give rise to enquiries from the public and will assist the wider community by providing them with information which would otherwise only be generally available by contacting the planning authority directly.

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

The draft regulations are sufficient as they currently stand.

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

Yes. The simplified procedure where a temporary stop notice is served by being displayed on the site will remove the administrative burden associated with serving a normal stop notice. The 28 day validity period should be sufficient time for the council to consider whether it is expedient to issue a formal enforcement notice and stop notice for the unauthorised development. It should however, only be considered in cases where there is a serious breach of planning control and clear demonstrable harm being caused by the activities.

**Q10. Are there any other situations where you believe 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?**

Whilst not specifically covered in the consultation paper, the proposal to introduce a notice requiring submission of planning applications for development already carried out is welcomed as it creates a more formal process than simply requesting an application via letter. There does not appear to be any consequence in the draft regulations of not submitting a planning application, and certainly no criminal liability, which is reasonable given that a breach of planning control is not in itself an offence. It would nonetheless be open to the planning authority in such circumstances to consider enforcement action to address any particular problems the breach has caused or is causing.

In relation to enforcement notices, the consultation paper indicates that certain grounds of appeal may be removed, but no detail is given and this needs clarification from the Scottish Government.