

North Lanarkshire Council

**Scottish Government Consultation on Planning Enforcement Regulations 2007
Response to questions 1-11****1. Do you support the proposal that penalties should be increased for continuing breaches and if not, why not?**

Yes, penalties should be increased for continuing breaches. It is disappointing that an Enforcement Notice or BCN would need to be served on each occasion, but appreciated this cannot be changed.

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

The sums proposed are too low to be a deterrent in many cases, particularly for larger developments/developers. Whilst there is still the option to seek prosecution, this is costly and time consuming, with little success for planning authorities.

The sums take no account of the scale of the development or the nature of the breach. In the case of a breach of condition by a householder, £100 may seem reasonable, but for a large development, where the breach could have serious consequences £100 is completely inadequate.

3. 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 maximum and whether the fixed penalty should increase by a larger amount for each subsequent offence?

It is suggested that the Planning Authority should have the ability to start with a higher amount, especially in cases where a developer has a record of breach, and also to increase the fine by more than one increment at a time. This may go some way to addressing the concerns at 2 above.

4. 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 have been met, might be useful?

It would be extremely beneficial if the developer could certify on the notice those conditions which be considered to have been implemented. This would have a significant beneficial impact on the resources of the Planning Authority and it could also heighten the awareness of the developer of the need to comply with certain conditions, thereby reducing the potential for enforcement action.

A similar requirement could be placed on completion notices ie for the developer to certify that all relevant conditions have been complied with. The term " completion " requires to be defined.

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

It is suggested 5 years would be more appropriate and that only successful aspects should be excluded, not those failed or withdrawn

- 6. 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 level of information required is considered adequate.

- 7. 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 noted that the definition of “national” and “major” are part of a separate consultation, however if different or additional criteria were applied, it would become too confusing. With regard to “bad neighbour developments”, this could include e.g. the siting of a snack bar or a small extension to a public house such as a store room, and so perhaps some further qualification such as size or floor space should be added to this category.

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

More important than the size of the notice is the font size at the text. A minimum should be specified so that the contents are reasonably legible.

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

The increase in enforcement powers is welcome. With regard to Temporary Stop Notices, guidance should be given to Planning Authorities on the criteria to be considered when deciding whether to issue a TSN, so that the Authority can reasonably support its position if challenged by Judicial Review.

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

No other situations.

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

With regard to the costs identified in the Draft Regulatory Impact Assessment, it is indicated that the Fixed Penalty Notice will provide a cost – effective alternative to prosecution. It seems that little consideration has been given to the real costs of preparing and serving an enforcement notice at each step of the incremental change. In the case of the breach of BCN, the additional change proposed is £50, whilst the cost of preparing and serving the notice is likely to be many times £50.