

## **The Scottish Government Development Management Consultation Paper: January 2008**

### **Response on behalf of the Scottish Churches Committee to Questions 27, 28, 41, 42, 47 and 48**

This Response is issued on behalf of the Scottish Churches Committee, an inter-denominational body which represents the main Christian denominations in Scotland namely:-

- The Church of Scotland
- The Roman Catholic Church in Scotland
- The Scottish Episcopal Church
- The Associated Presbyterian Church
- The Baptist Union
- The Free Church of Scotland
- The Free Presbyterian Church
- The Methodist Church
- The Salvation Army
- The United Free Church of Scotland
- The United Reformed Church (Scottish Synod)

The Response is limited to the particular Questions noted above, as follows.

#### **Section 7: Neighbour Notification and Publicity for Applications**

##### **Q 27: Do you consider the proposals on service of notice to neighbours to be appropriate?**

No.

The Committee considers that the effect of limiting neighbour notification to the service of a single notice on the relevant neighbouring land will be, in many instances, to disenfranchise the owners of that land so as to remove their opportunity to comment on the proposed development. If the owner is not at the relevant date personally occupying his property he will be dependent on the goodwill of the occupier of the property – who may have no financial or other investment in the property – to intimate the development to him. Titles to the church buildings, domestic dwellings and other properties owned by the various churches in Scotland are held in various ways but in most instances the owners of such properties are a central body of trustees, whilst the occupiers are a local congregation in the case of church buildings and a minister in the case of manses and similar dwellings. It would not appear to the Committee to be appropriate that if, for example, a manse happened to be tenanted during a period when a congregation does not have a minister; or a minister is absent from home for a period of up to 21 days; or a notice delivered to a church building is not picked up and transmitted timeously to central church bodies; or a property is simply empty and unoccupied then the owner of that property should lose the right to comment on development proposals.

The Committee also has reservations as to whether what is proposed is compatible with the Human Rights Act, in particular Article 6 of the ECHR namely the entitlement to a fair hearing in the determination of civil rights.

**Q28: Do you agree that, in order to minimise costs and potential delay, a single notice sent to the address of the neighbouring land is sufficient for these purposes?**

No.

It is noted that this change is suggested to minimise delays and costs associated with identifying named individuals and in the service of separate notices. The Committee does not feel that the minimal additional cost in continuing the present requirement to notify both owners and occupiers outweighs the very substantial disadvantage to owners which would flow from the adoption of the proposals. Given the valuation roll information readily available to Planning Authorities, it is difficult to see how there would in fact be a significant additional burden placed on them as a result of the continuing requirement to notify neighbouring proprietors.

The proposal would also appear to be at odds with one of the stated objectives of the new Regulations, being to deliver a planning system that is inclusive and has a clear sense of priorities. The effect of the adoption of this proposal would be in many instances to exclude from the planning system those with the greatest interest in it, namely the owners of properties situated adjacent to properties which are the subject of a Planning Application.

The Regulatory Impact Assessment at paragraph 8.7 indicates that this change is aimed at strengthening public confidence and participation in the current system. If this is the aim, then it would be appear to the Committee to be better achieved by ensuring that full participation is indeed made possible via a full notification of planning proposals to all those with a direct interest in them.

**Q41: What might be an appropriate alternative name for “bad neighbour development”?**

The Committee agrees that this terminology carries unnecessarily pejorative overtones and considers that it is particularly inappropriate in that in the main, the types of development listed are activities which are of benefit to the communities in which they are situated. It is suggested that this problem might simply be remedied by the deletion of the phrase “(bad neighbour development)” from Section 12 (5) (b) of the GDPO. If any term was to be retained for such developments then a more suitable one would be “community developments”.

**Q42: Do you support the proposed additions and deletions to the list of “bad neighbour developments” and do you have other suggestions?**

The Committee specifically wishes to object to the inclusion of places of worship within this list.

Developments currently termed bad neighbour developments in the GDPO are of course those which are considered to have a significant and potentially adverse effect on amenity. Existing developments falling within this category are largely those which are likely to have such an effect as a result of antisocial behaviour, noise and disturbance at unsocial hours or generally the release of noxious odours into the environment. The Committee is of the view that these

are precisely the considerations which should properly be taken into account when requiring the advertisement of development proposals and that the inclusion of places of worship within such a list has no clear justification. The effect of doing so would be to impose an additional and unwarranted financial burden on the voluntary/charitable sector which it can ill afford to bear in a climate in which it is already undertaking a great many of the functions which would otherwise be provided by the public sector.

The Committee finds it difficult to discern the reason behind the proposed inclusion of places of worship within the list. Class (8) as set out in Schedule 7 to the GDPO operates as a “catch-all” to cover operations which will alter the character of an area of established amenity; bring crowds into a generally quiet area/cause activity and noise between the hours of 8pm and 8am; or generally introduce significant change into a homogeneous area. Assuming that these are the relevant considerations in planning terms, then even if the construction of places of worship was deemed to fall into any of these categories (which would not appear to be the case), such development works are already caught by the existing legislation and there is no need for a new, specific, category which simply lumps all places of worship together with no distinction being made as to size, location and general purposes. To single out places of worship in this way has no underlying logic and ignores, for example, the fact that the development of retail units, whether large or small, will raise many of the same issues but in a considerably more acute way.

Places of worship provide a focus for activities which benefit the community in which they are situated and are not, as are many of the other developments listed, commercial ventures seeking solely to profit from their activities. They derive their membership from and seek the inclusion and involvement of local people in doing so. They are thus formed from the community itself and not from any “external” body or agency, unlike most if not all of the other entities listed. Any purported distinction between the particular denomination or faith group operating a place of worship and “the local community” is therefore a false one and it is not meaningful to require the advertisement of the development of such a place of worship to “the local community”. The Committee is also concerned that, in the context of the aggressive secularism which is frequently encountered by the churches, a requirement to advertise could lead to discrimination against the Christian churches (and indeed other faith groups) by affording to individuals with philosophical objections to religion a platform for vocal opposition which is not merited in Planning terms.

If it is felt that any additional steps are needed to advertise more widely developments such as the construction of new places of worship then a more cost-effective and effective way to do so would be via a site notice, which would alert all those genuinely affected as near neighbours of the development. It is doubtful whether the advertisement of a development proposal in a newspaper will in fact achieve the stated aim of publicising the development as widely as possible since it must be considered unlikely that, in reality, such an advertisement will be widely read.

If it is resolved that places of worship are to be included in the list, then the Committee would wish to see the definition of “development” adjusted to be restricted to new build developments only, as otherwise the existing definition of development contained within Section 26 of the Town and Country Planning (Scotland) Act 1997 is simply too broad in the context of this proposal. It will capture forms of development which are minor in nature and will have no impact of any sort on the wider community e.g. minor structural alterations.

**Q47: Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations or the order?**

The voluntary sector as represented by the congregations of the various Scottish Christian churches makes a substantial contribution to social capital in Scottish communities, using its own resources and personnel to do so. Any additional financial burden placed on this sector will have to be met from its own already stretched resources. As previously noted, the imposition of a requirement to advertise as bad neighbour development any “development” (as currently defined) of places of worship would have a significant adverse financial impact on the Scottish churches, who are already labouring under the burden of having to maintain the fabric of many historic buildings which form an integral part of the built landscape of Scotland. This impact would be quite disproportionate to any perceived benefit in terms of community inclusion.

**Q48: Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or the order?**

As stated above in answer to Question 47.

Finally, on behalf of the Committee I would wish to express its disappointment that the Scottish Government has not followed its own stated processes in relation to this Consultation as set out in Annex E to the Consultation, comprising the Equalities Impact Assessment. Step Two of this process states that the Government “has sought to raise awareness with such groups [i.e. religious and faith groups] by advising a number of representative organisations of the draft proposals during the pre-consultation stage”. Step Three acknowledges that the Government has “no information” on the potential impact of these proposals on this group and states “We will look at the arrangements during the public consultation in an attempt to engage with organisations representative of religious and belief groups. **We will particularly encourage this group to engage in the consultation process**” (my highlighting).

In fact, no attempt of any sort was made to make the denominations represented by the Committee aware of the very significant changes proposed and no opportunity was given to the Scottish churches to contribute to the process or, indeed, to respond to the Consultation. The Committee considers this to be a substantial failure and would welcome further comment as to how this came about.

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Depute Solicitor  
Church of Scotland  
**On behalf of the Scottish Churches Committee**

4th April 2008

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