

## **WEST DUNBARTONSHIRE COUNCIL**

### **Report by Acting Executive Director of Housing, Environmental and Economic Development (Housing & Regeneration Services)**

**Planning Committee: 8 January 2008**

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**Subject: Consultation on Planning Enforcement Regulations 2007.**

#### **1. Purpose**

- 1.1** To advise the Committee of the publication of a Consultation Paper by the Scottish Government on Draft Planning Enforcement Regulations and to recommend the Council's response to this Consultation.

#### **2. Background**

- 2.1** Enforcement has a fundamental role in the operation of an effective planning system. Unauthorised development and breaches of planning control need to be discouraged and, if necessary dealt with quickly, efficiently and vigorously to demonstrate to the public that the planning system operates fairly and in the public interest.
- 2.2** The Planning etc.(Scotland) Act 2006 introduced a number of new powers and changes to the operation of existing enforcement powers.
- Notice requiring application for retrospective planning permission for developments already carried out.
  - Temporary stop notices.
  - Notification of Initiation of Development and Completion of Development.
  - On-site Notices.
  - Fixed Penalty Notices
  - Enforcement Charters.
  - Removal of certain grounds for appeal against Enforcement Notices.

#### **3. Main Issues**

- 3.1** Secondary legislation is now required in order to implement a number of the above powers. The purpose of the consultation is to seek views on the proposed regulations through a number of specific questions which are detailed in Appendix A.

### Fixed Penalty Notices

- 3.2** This provides an alternative option to address breaches of enforcement notices (EN) or breach of condition notices (BCN) in addition to existing powers. The Planning Authority can seek a prosecution and a fine on conviction of up to £20,000 in respect of breach of Enforcement Notice or £1,000 in respect of breach of a Breach of Condition Notice. The new regulations provide Planning Authorities with the power to issue a fixed penalty notice giving a person the opportunity to pay a penalty as an alternative to prosecution. They propose a scale of penalties based on the breach in question with a Planning Authority issuing increased fines if the breach remains uncorrected over time. They propose this would be set at £1,000 in respect of breach of the first Enforcement Notice and for each breach of a subsequent Enforcement Notice would be increased by £500 up to a maximum amount of £5,000. For breaches of breach of condition notices the penalty would be set at £100 rising by £50 steps to a maximum of £300. The maximums proposed would be in keeping with established legal precedents in respect of Fixed Penalty Notices issued under other legislation. If the breach is more serious and would need a higher penalty all the existing options remain open such as prosecution and/or direct action rather than a Fixed Penalty Notice.

### Notification of Initiation of Development (NID), Notice of Completion of Development (NCD) and On-Site Notices

- 3.3** This requires anyone intending to carry out developments for which they have been given permission to inform the Planning Authority before starting development of the date on which they intend to start and provide further NID information as required. Once a development is completed, a completion notice must be supplied to the Planning Authority (Notice of Completion of Development). Where a development falls within certain categories the developer must display a notice from the date development starts and for the duration of the development until it is completed. The NID will cover a period of 3 years prior to the date planning permission was granted and extending up to the date the NID was submitted. The information will inform the Planning Authority as to the developers "track record". The NID would comprise of developers name and address and details of any recent planning enforcement action taken against the developer. The on-site notices will raise public awareness of development taking place in their area. They would provide basic information as to the nature of the development, name and address of the developer, planning application reference number, contact details for the relevant planning authority enquiry and an enforcement section. The class of development for which site notices would be required, would include developments identified as major, national and/or bad neighbour development. The notices shall be displayed in a prominent place, readily visible to the public and printed on durable material.

#### Temporary Stop Notice (TSN)

- 3.4** This provides planning authorities with the power to issue a TSN as a means of speeding up and simplifying the procedure for stopping unauthorised development. These notices are valid for up to 28 days and could be effective from the time they are served, without requiring an enforcement notice. There would be no right of appeal. There should be a few restrictions on the Planning Authority's ability to consider the use of Temporary Stop Notices as a response to breaches of planning control. The Temporary Stop Notice may not prohibit the use of a building as a dwelling house and it may not be served on a caravan occupied by a person as their main residence purely for the purpose of removing them from the site. However there should be provision that where the siting of a caravan creates a danger to either the occupants or the public in general or would be unacceptable for some other compelling reason, the Planning Authority would have the power to serve a Temporary Stop Notice.

### **4. Personnel Issues**

- 4.1** It is recognised that as the role of the Enforcement is strengthened and with increased administrative requirements this will significantly increase the workload of the Enforcement Officer and the Development Management Section as a whole.

### **5. Financial Implication**

- 5.1** There are likely to be cost implications for the Council in undertaking these new requirements.

### **6. Risk Analysis**

- 6.1** There is no known risk at this stage.

### **7. Conclusion**

- 7.1** The proposed Enforcement Regulations embody the Scottish Government's objectives that planning enforcement should remedy the undesirable effects of unauthorised development and bring unauthorised development under control. The basic principles of the enforcement process have not changed, however the new regulations improve the delivery of planning enforcement. They have introduced measures to increase public awareness of development taking place in their locality and also make the Planning Authority aware of the commencement of developments in their area. Planning conditions can be addressed at an early stage which has benefits for both the developer and the Planning Authority. It is hoped that the proposed changes will address the previous criticisms of the planning enforcement process of being lengthy and unfair in that there appears to be no penalty for unauthorised development.

## **8. Recommendation**

**8.1 It is recommended that Appendix A forms the basis of this Council's response to the Scottish Government on the Consultation paper.**

**Irving Hodgson**

**Acting Executive Director of Housing, Environmental and Economic  
Development (Housing and Regeneration Services)**

**Date: 17 December 2007.**

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<b>Appendices:</b>	Appendix A
<b>Background Papers:</b>	Modernising the Planning System: Consultation on Planning Enforcement Regulations 2007.
<b>Wards Affected:</b>	All

## **Appendix A**

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

**Response** It is important that penalties for Fixed Penalty Notices are increased for continuing breaches to ensure that the breach is ceased as soon as possible. If the penalties are not increased for continuing breaches developers would absorb the cost of the Fixed Penalty Notice within their overall costs and continue with the unauthorised breach. It would also ensure that the Fixed Penalty Notice is a powerful enforcement tool for the Planning Authority and deter developers from carrying out unauthorised breaches.

**Q2.** Do you have any views on the proposed amounts for the Fixed Penalty in particular the proposed initial amounts?

**Response** The initial amounts for the Enforcement Notice are sufficient for small and medium sized developers. But for larger developers, mineral operators and waste operators the initial amount is low and such operators would easily be able to absorb these extra costs. The initial amount for Fixed Penalty Notices for a Breach of Condition Notice is very low. It is suggested that £500 as an initial amount would be more appropriate. If a condition has been breached and a Planning Authority is issuing a Fixed Penalty Notice, there will be various opportunities for the developer to remedy this breach and therefore the Fixed Penalty Notice will be issued as a last resort and therefore the penalty should reflect this course of action.

**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 that would be required to reach the maximum and whether the fixed penalty should increase by a large amount for each subsequent offence?

**Response** The Fixed Penalty Notice should be increased by a large amount for each subsequent offence. The number of Fixed Penalty Notices should be restricted to a maximum of 3 in order to reach the maximum fine for Enforcement Notices and Breach of Condition Notice quicker. This would help to reduce personal and resource implication for the Planning Authority issuing Fixed Penalty Notices.

**Q4.** Do you have any view on the proposed level of information requested in the Notification of Initiation of Development Notice

or any suggestions for other information for example declaring that any suspensive conditions have been met might be useful?

**Response**

The Notification of Initiation of Development Notice should also include the telephone number and the person to contact with regard to the development. It should also include details of all suspensive conditions and confirmation that these details have been discharged by the Planning Authority.

**Q5.**

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

**Response**

A 5 year time limit for recording relevant enforcement action would be appropriate as this would link with the time period for implementation of planning permission. It also gives a more comprehensive enforcement history especially if it is concerning a major development which may take 5 years to develop.

**Q6.**

Bearing in mind that the purpose of the notice is to make people aware of the development and direct them to the approved contacts for further information are you content with the level of information to be included?

**Response**

The level of information provided is largely appropriate, however it should also include telephone numbers and the person to contact.

**Q7.**

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

**Response**

The categories of development specified would be appropriate, however some indication of the type and scale of major developments to be included should be provided. It would be appropriate that notices would not be required for small-scale developments. The notices do not address medium-sized developments which often cause interest from the community.

**Q8.**

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

**Response**

The measure specified seem appropriate.

**Q9.**

Are you content with the proposed draft regulations and if not, why not?

**Response**

The Regulations in relation to caravans are not clearly defined and they would be difficult to enforce as it would be difficult to determine how the benefit to the occupier of the caravan will outweigh the compelling public interest.

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

**Response** The exclusions specified seem appropriate.

**Q11.** Do you wish to consent generally on the draft Regulations, RIA, Eq1A or other issues in respect of this consultation?

**Response** The proposed Enforcement Regulations strengthen the planning enforcement role. They will have significant personnel and enforcement implications for the Planning Authority. The workload of the Enforcement Officer and associated administrative duties will significantly increase. The Fixed Penalty Notices and Temporary Stop Notices will allow the Planning Authority to deal with unauthorised development more quickly. Notification of Initiation of Development will increase the awareness of the public of development within their area and give them information regarding the development.

