



RTPI

mediation of space · making of place

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Registered Charity No: 262865

Scottish Charity Registration Number SC 037841

Consultation on Planning Enforcement Regulations
Planning Directorate
The Scottish Government
2H, Victoria Quay
Edinburgh
EH6 6QQ

20 February 2008

Dear Sir or Madam,

PLANNING ENFORCEMENT REGULATIONS 2007

The Royal Town Planning Institute (RTPI) welcomes the opportunity to respond to this consultation, dealing as it does with one of the core activity areas of professional planners in Scotland, in the form of Planning Enforcement, as part of the implementation of the Planning etc. (Scotland) Act 2006.

The RTPI is the UK body chartered to represent the planning profession and offers these comments from the point of view of a diverse and policy-neutral professional body committed to supporting devolved government in Scotland. The Institute has approximately 2100 members in Scotland working across all sectors of central government, local government, government agencies, the voluntary sector, private consultancy, the development industry and academia.

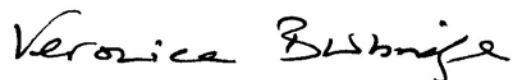
Since devolution, the Institute has empowered its RTPI in Scotland Office, together with its Scottish Executive Committee, with the responsibility for working with government and public bodies generally for the improvement of the planning system in Scotland. This is in accordance with its charter obligation to work for the public interest.

The Institute's response to this consultation has been led by its Task Group on Development Management and has been discussed by members of the Scottish Executive Committee. The full response to the questions posed in the consultation paper is attached at Annex 1. I would like to highlight a number of points, as follows:

- It has been suggested that the payment of a fine as a Fixed Penalty Notice would mean that an Authority could no longer prosecute and ensure that the breach is actually remedied, the latter being the essence of successful planning enforcement;
- It is considered that if implemented, there should be a doubling of the fixed penalty for each subsequent offence;
- We would recommend that consideration might also be given, in due course, to the application of a Temporary Stop Notice to possible breaches of Listed Building Consent; and
- We would reiterate that the Fixed Penalty Notice should only be introduced if it can be a positive weapon in the planning enforcement armoury.

The Institute trusts that these comments are of assistance and has no objection to them being made available to the public in the usual way. Should you wish any clarification or further assistance, please do not hesitate to contact me by email at veronica.burbridge@rtpi.org.uk or at our Edinburgh office, 57 Melville Street, Edinburgh, EH3 7HL, phone: 0131 226 1959.

Yours faithfully

A handwritten signature in black ink that reads "Veronica Burbridge". The signature is written in a cursive style with some capital letters.

National Director RTPI in Scotland

RESPONSE BY THE ROYAL TOWN PLANNING INSTITUTE TO THE CONSULTATION ON THE 'PLANNING ENFORCEMENT REGULATIONS'

Question 1: Do you support the proposal that penalties should be increased for continuing breaches and if not, why not?

1. Yes. However, it has been suggested that the payment of a fine as a Fixed Penalty Notice would mean that an Authority could no longer prosecute and ensure that the breach is actually remedied, the latter being something which must underpin all successful planning enforcement. We consider that these legislative provisions should be re-examined as they do not appear to serve the purposes for which they were designed. If introduced, FPNs should be able to address, quickly and effectively relevant breaches of planning law.

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

2. We consider that initial amounts should be increased:
Breach of Enforcement Notice: £1500 is suggested
Breach of Condition Notices: £150 is suggested

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

3. If implemented in this manner, we consider that there should be a doubling of the fixed penalty for each subsequent offence:
a. Breach of Enforcement Notice: £1500 £3000 £6000
b. Breach of Condition Notices: £150 £300

Question 4: Do you have any views on the proposed level of information requested in the Notification of Initiation of Development (NID) or any suggestions for other information, for example declaring that any suspensive conditions had been met, might be useful?

4. The developer's agent should also be mentioned and required to provide the same range of information.

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

5. Perhaps the time period within which to record successful planning enforcement action(s) should be 5 years rather than 3 years prior to the NID. This would provide a

better, more typical, baseline. Alternatively, the time limits might reflect any time limits for enforcement action – four years, ten years, and/or an unlimited period for listed building enforcement.

Question 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?

6. Contact details should include telephone and email addresses. The architect/designer and agent (where appropriate) should be identified similarly.
7. It might also be appropriate to mention the relevant Local Plan and/or other planning framework elements.

Question 7: Are you content with the proposed categories of development for which notices would be required to be displayed, and if not, why not?

8. Consideration should be given to application of this procedure to applications affecting protected or special areas, including Listed Buildings, Conservation Areas, Scheduled Monuments, Gardens or Designed Landscapes on the Scottish Inventory or its supplements, or their settings, where this does not already happen.

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

9. Instead of the phrase 'readily visible', it is suggested that 'readily readable' be inserted into the criteria. The size of the site notice should be consistent with that part of the advertisement regulations dealing with temporary signage.

Question 9: Are you content with the proposed draft Regulations and if not, why not?

10. Yes.

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

11. No. Consideration should also be given, in due course, to such an application of a Temporary Stop Notice to possible breaches of Listed Building Consent, where the same arguments about the (unlikely) use of interdict generally apply.

Question 11: Do you wish to comment generally on the draft Regulations, RIA, EqIA, or other issues in respect of this consultation?

12. We consider that the phrase 'Some other compelling reason' in para 38 is too imprecise and requires further explanation. Additional guidance on the circumstances

that this might cover - health and safety or more-than-local amenity, perhaps - would be helpful. In addition, there seems to be an omission of associated material in Annex E at the foot of Para 4 on p17 of the consultation document.

13. We would reiterate that the Fixed Penalty Notice should only be introduced if it can be a positive weapon in the planning enforcement armoury. If, as in one interpretation, it is not possible by using the FPN to achieve actual remedying of the breach, then most enforcement officers are unlikely to wish to use it. We consider that these legislative provisions should be re-examined as they do not appear to serve the purposes for which they were designed. If introduced, FPNs should be able to address, quickly and effectively relevant breaches of planning law.

RTPIS February 2008

RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name: Dr Veronica Burbridge
Postal Address: Royal Town Planning Institute in Scotland
57 Melville Street
Edinburgh
EH3 7HL

Consultation title: **PLANNING ENFORCEMENT REGULATIONS 2007**

1. Are you responding as: (please tick one box)
(a) an individual (go to 2a/b)
(b) **on behalf of** a group or organisation (go to 2c)

2a. INDIVIDUALS:

Do you agree to your response being made available to the public (in SG library and/or on SG website)?

- Yes (go to 2b below)
No, not at all

2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

- Yes, make my response, name and address all available
Yes, make my response available, but not my name or address
Yes, make my response and name available, but not my address

2c. ON BEHALF OF GROUPS OR ORGANISATIONS:

Your name and address as respondees **will be** made available to the public (in the SG library and/or on SG website). Are you content for your response to be made available also?

- Yes
No

3. We will share your response internally with other SG policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future for consultation or research purposes?

- Yes
No