

improving living in scotland



**PLANNING ENFORCEMENT REGULATIONS 2007
CONSULTATION PAPER
20 FEBRUARY 2008**

Homes for Scotland is the representative body for the private home building industry in Scotland. Homes for Scotland represents the interests of over one hundred and thirty member organisations who provide 95 of every 100 homes built for sale in Scotland and we have a rapidly expanding membership of professional and other service businesses engaged in our industry.

Homes for Scotland has been involved in an ongoing 'conversation' with the Scottish Government during the modernisation of the planning system. We are grateful to the Scottish Government for taking time to present the proposals to our member companies and hope that the early feedback given has been helpful in the drafting of the new regulations. Homes for Scotland will be responding formally to each of the draft regulations forming the planning modernisation package.

Draft Planning Enforcement Regulations 2007

Rather than answer each of the consultation questions posed we have raised issues which we feel need proper consideration before the regulations can be put in place. Our members are particularly concerned about the proposed regulations for Temporary Stop Notices. Therefore, turning first to questions 9 & 10 of the consultation paper.

Temporary Stop Notices

At the moment a stop notice, in association with an Enforcement Notice, can be issued to developers after a 3 day notification period. The proposals for a Temporary Stop Notice (TSN) give planning authorities the power to stop unauthorised development immediately. The TSN would be valid for 28 days with no right of appeal.

If the intention of a TSN is a "means of speeding up and simplifying the procedure for stopping unauthorised development" there is simply no need for a TSN to last for 28 days. We would suggest that the TSN should last 3 days, allowing the planning authority to stop development immediately and, where appropriate, take action to issue a full Stop Notice.

At this stage we would like to draw attention to the intended purpose of stop notices. The draft regulations state that the current power to serve a stop notice is to "*stop unauthorised activity especially where there is a threat to amenity through irreparable damage to buildings or the environment from the unauthorised activity*". This message must not be lost in the new regulations.

Our member companies accept that where the breach involves, for example, the demolition of a listed building or the felling of trees protected by a Tree Preservation Order or lying within a Conservation Area then an immediate stop by a planning authority could be appropriate. The power should not be used for expedience but only where an immediate stop is necessary. Otherwise planning authorities should follow current practice. We would urge the Scottish Government to be much clearer on this in the regulations.

The draft regulations propose that a TSN does not require to be served on individuals and instead is served by displaying on site, taking effect from the time of display. The proposals for Notification of Initiation of Development (NID) insist that the name and address of the developer are displayed. If the planning authority has the contact details for the developer, we would suggest that the requirement should be to serve the notice on the identified individual. Our concern relates to the posting of a NID on site which goes unnoticed by the site staff. By proceeding with development the company would in effect be committing a criminal offence without being aware of it. Homes for Scotland would therefore suggest that reasonable enquiries are made to serve the notice on the appropriate individual who is responsible for the development.

A TSN would be inappropriate if it was an inadvertent breach by the developer, for example, if the planning control is breached by a supplier delivering materials out with the agreed hours. The developer may be unaware that the breach has occurred but technically, the developer would have inadvertently breached the planning control. We accept that it would be fair in this instance to take action to stop the deliveries out with the agreed timescales but entirely unreasonable to take action to stop the full site.

It would be completely inappropriate for TSNs to be used when an applicant is waiting on the discharge of suspensive conditions by the Local Authority. Local Authorities should not be authorised to issue TSNs to delay or stall progress because they have not had the time or resources to make a proper assessment. There is a risk that this delay tactic could snowball with staged TSNs issued by the planning authority against each suspensive condition. Clearer guidelines for Local Authorities to prevent such misuse of the regulations must be issued by the Scottish Government.

Homes for Scotland would urge the Scottish Government to give consideration to the availability of compensation for the developer when TSNs are issued in error. Unlike Stop Notices issued with an Enforcement Notice there is no time for negotiation and TSNs are served immediately. Under the draft proposals, there is no right of appeal and work could stop for 28 days without a full Stop Notice being issued. The impact this would have on developments, a contracted workforce and the supply chain must be taken into account. If it is proven that the TSN was issued in error the developer must be compensated for any loss suffered.

Notification of Development

Another area of concern, going back to questions 4 & 5 of the consultation paper is with regard to Notification of Initiation of Development (NID). Our member companies question the appropriateness of recording any recent planning enforcement action taken against the developer on the NID. The recording of this information “purely for the purpose of informing the planning authority as to the developer’s ‘track record’” is akin to advising a jury of a defendant’s criminal record before a verdict has been reached.

On a practical note, the Scottish Government should give consideration to the detail of this proposal. With many house builders operating through subsidiaries it must be clear whether the declaration of any recent planning enforcement on the NID would take into account the track record of the company as a whole or purely the operating subsidiary. Section 3 (c) of the draft Scottish Statutory Instrument states that *“the date of issue and reference number of any stop notice served under section 140 of the 1997 Act associated with an enforcement notice in (b) on the person carrying out the development”*. Such a requirement might simply encourage the unscrupulous developer to use specific delivery vehicles for each development, if for no other reason, to avoid the implications of these regulations.

We do not wish to make comment on the proposed time limit for recording relevant enforcement action given that we disagree with any record being recorded on the NID.