

19<sup>th</sup> February 2008

**Planning Enforcement Regulations 2007: Comments from Michaela Sullivan, Forth Ports Plc**

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

Answer to Question 1: Yes

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

Answer to Question 2: No

**Question 3: Do you have any views on the proposed increase in the amount of each subsequent fixed penalty?**

Answer to Question 3: No

**Question 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 had been met, that might be useful?**

Answer to Question 4: The requirement for a statement of previous enforcement action is inappropriate. It is a basic principle of Scottish justice that previous offences are not taken into account and therefore it seems wrong that this principle is eroded in relation to enforcement action. Because an applicant has been the subject of previous enforcement action does not inherently mean that they are more likely than any other developer to breach planning controls in the future.

There are also likely to be difficulties in executing the requirement – who is ‘the developer’ – is it the applicant? Is it the parent company of the applicant? Does it involve all subsidiary companies? If it involves all subsidiary companies is it just those in Scotland, or throughout the UK? If the development is a Joint Venture, does it apply to the parent companies of the JV company?

In relation to suspensive conditions they are generally worded to require approval of the planning authority, so the authority should already be engaged in dialogue with an applicant. For example, a suspensive condition may read that *no development can commence on site until suitable ground investigation has taken place, and any remediation of the site required has been completed to the satisfaction of the Planning Authority*. It would be unusual for a suspensive condition not to require confirmation. The declaration suggested here would therefore serve no useful purpose.

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

Answer to Question 5: We consider the recording of relevant enforcement to be inappropriate, and can see no logic in a 3 year time frame either.

**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?**

Answer to Question 6: Yes, with the proviso that we would be concerned that direct encouragement on the notice to check the conditions relating to the application is likely to result in people trying to check for themselves whether conditions are being adhered to, which could result in increase in people trespassing on building sites, and the accompanying dangers. The way the provisions are worded at the moment dwells inappropriately on whether there are any conditions attached to a planning permission. Any concerns about the compliance with conditions should rest with the planning authority not members of the public. We are comfortable with an overall indication that development of a certain type is taking place, the developer's name and address, the application number, and the name and address of the planning authority. Consideration will need to be given as to the location of the notice – for example a major infrastructure development – where is 'the site' upon which the notice should be displayed. E.g. where would you put the notice in relation to the replacement Forth Crossing, a suggested National Development.

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

Answer to Question 7: I agree that major and National Developments are the only appropriate ones and would not wish to see this burden passed down to all developments – it sits uneasily with the requirements of increased public participation in planning.

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

Answer to Question 8: There is a very real unresolved question with this legislation in relation to what constitutes 'on-site'. Development sites can be large and complex, and where such a notice is to be sited is not clear from these proposals. Are they to be moved around over time as development progresses (over a period of many years in relation to some developments?). Will they refer only to the original planning permission or have to be amended every time a reserved matters application is approved? Are they exempt from the requirements to submit a planning application to display a sign under the Advertisement Regulations? Does their siting and design require the approval of the planning authority?

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

Answer to Question 9: The Temporary Stop Notice appears to be proposed in order to act in an emergency, to prevent the loss of trees, listed buildings etc. The regulations should therefore restrict their use to circumstances where there is a threat to such items, and they should only be used where time is of the essence. The period of 28 days would also seem to be too long, as the TSN should surely only apply for as long as it would take to put a regular Stop Notice in place (i.e. 3 days). Display of notices on site needs further consideration, as the site may cover a very large area. It should be clear that the notice must be displayed within a fixed distance of the area of work that is causing concern. The notice must also be of a minimum size and erected in a prescribed manner (For example a minimum of 1mx50cm, and erected at a height of at least 1m above the ground, fixed at either end by poles or posts). Otherwise an A4 size notice attached to a bush may indeed be missed by operatives, even if it is displayed 'on site'.