

PE1465/G

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Mr Andrew Howlett
Public Petitions Committee
T3.40
Scottish Parliament
EH99 1SP



Your ref:
Our ref:
18 October 2013

Dear Andrew

Consideration of Petition PE1465

Calling on the Scottish Parliament to urge the Scottish Government to put legislation in place to enable local authorities to force owners of vacant plots of land within towns, including former green belt land and previously developed areas, to maintain and keep these plots of land in a manner befitting the local community.

Thank you for your letter of 19 September setting out further questions from the Committee and drawing the Scottish Government's attention to the petitioner's e-mail of 27 August regarding comments from his local authority.

It may be helpful to address the points raised in the petitioner's e-mail; that 'the landowner just will not comply', and 'the councilhave been told by landowners that they themselves will be prosecuted for entering their land'.

On the issue of non-compliance; it is for this reason that the planning authority have the power to enter the land and carry out the work themselves. This power of direct action is, in fact, only exercisable once the period specified for compliance in the notice has expired. The Scottish Government therefore considers that planning authorities do have powers to address non-compliance. It is for the planning authority to decide whether or not to exercise their powers in any particular case.

On the second point, planning legislation specifically empowers the planning authority to both enter the land and carry out the required work. It seems unclear, therefore, what grounds the landowner would have to seek a prosecution for trespass. While the Scottish Government note the comment that the planning authority have allegedly been told they could be prosecuted, we also note that in the petitioners own evidence to the Committee on 19 February he stated that the planning authority have in fact entered at least one site on the estate and carried out work. It is the Scottish Government's view therefore that the planning

authority are not only aware of their powers to enter land and carry out work, but have also exercised these powers where they considered it appropriate.

It may also be worth noting, in this respect, that the planning legislation not only provides the legal power to enter the land, but also sets out that any person who wilfully obstructs a person exercising the planning authorities powers to enter the land and carry out work required by the notice is guilty of an offence and liable to a fine on summary conviction.

To address the specific questions asked by the committee;

1. What information does the Scottish Government record or gather from planning authorities on issues that are encountered in issuing or enforcing Amenity Notices?

The Scottish Government does not collect such information on a formal basis. Scottish Government officials do however maintain links with planning enforcement officers through other arrangements, including the Enforcement Officers Forum. In this way officials are made aware of general problems that arise in regard to planning enforcement, including the issuing of enforcement, breach of condition and amenity notices. Other than the issue already noted by the Committee that it can be difficult in some cases to identify the appropriate person on whom the notice should be served, we are unaware of any particular difficulties raised by issuing or enforcing Amenity Notices.

2. What are the reasons for less than 1% of planning enforcement notices resulting in prosecution?

There are a number of reasons for this, the primary one being that the vast majority of planning breaches are resolved without the need to consider referral to the procurator fiscal. Secondly, where there is continued non-compliance the planning authority can consider direct action and/or issuing a fixed penalty notice; prosecution is simply another one of their options. Additionally, the actual decision to prosecute is taken by the Procurator Fiscal rather than the planning authority, albeit based on the evidence supplied by the planning authority. The Fiscal may decide it is not in the public interest to seek a prosecution or that there is insufficient evidence to secure a conviction in court.

Taking formal enforcement action is generally only considered after informal attempts to resolve the matter have failed. The committee may wish to note that in the year 2012-2013 planning authorities took up 5,632 enforcement cases of which 527 reached the stage of issuing a formal notice. 13 cases were reported to the procurator fiscal and there were 2 prosecutions. (Source; Planning Authority Performance Statistics - 2012/13 – Annual)

3. What action will be taken to provide clarification and guidance to local authorities on the issuing and enforcement of Amenity Notices?

Guidance on the issuing and enforcement of Amenity Notices is set out in Planning Circular 10/2009: Planning Enforcement. There have been no changes to the legislation since the publication of the Circular and there are currently no plans to revise the guidance.

I hope this information is useful to the Committee.

David Reekie
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