



**IMPORTANT – THIS COMMUNICATION AFFECTS THIS PROPERTY AND HAS IMMEDIATE EFFECT. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE NOTICE MAY RESULT IN PROSECUTION**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006)**

## **ENFORCEMENT NOTICE**

**REFERENCE NUMBER: ED2013/0149/ENF**

**ISSUED BY: East Dunbartonshire Council**

**ISSUED TO: Mr Richard Eadie  
88B Drymen Road  
Bearsden  
East Dunbartonshire  
G61 2SY**

- 1. THIS IS A FORMAL NOTICE** issued by East Dunbartonshire Council (hereafter referred to as the Council) as Planning Authority under the provision of Section 127(1)(a) of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning Etc. (Scotland) Act 2006 because it is considered by the Council that there has been a breach of planning control, as defined by Section 123(1)(a) of this Act at the land described below.

The Council considers that it is expedient to issue this Notice, having regard to the provisions of the Development Plan and to other material planning considerations.

- 2. THE LAND AFFECTED BY THE NOTICE**

The land to which this Notice relates forms an area of land and premises at **88B Drymen Road, Bearsden, East Dunbartonshire, G61 2SY** as shown edged in red on the attached Location Plan (Page 5 of this Notice).

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

Without the required planning permission the carrying out of development comprising of the erection of a timber boundary fence in the approximate position marked with a dashed line between points "A" and "B" as shown on the attached Location Plan (Page 5 of this Notice).

4. **REASONS FOR ISSUING THIS NOTICE**

The erection of the fence constitutes "development" as defined by Section 26 of the Town and Country Planning (Scotland) Act 1997 as amended.

The fence is erected within the curtilage of a residential property which is located within the Old Bearsden Conservation Area, designated as such on 3 March 1990.

The Old Bearsden Conservation Area Article 4 Direction was approved on 5 June 1990 and removes certain householder "permitted development" rights throughout the aforementioned conservation area, including those of **Schedule 1. Classes of Permitted Development, Part 2. Sundry Minor Operations Class 7.** The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure of **The Town and Country Planning (General Permitted Development) (Scotland) Order 1992** as amended.

*Class 7.*

*(1) The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.*

*(2) Development is not permitted by this class if-*

*(a) the height of any gate, fence, wall or other means of enclosure to be erected or constructed within 20 metres of a road would, after the carrying out of the development, exceed one metre above ground level;*

*(b) the height of any other gate, fence, wall or other means of enclosure to be erected or constructed would exceed two metres above ground level;*

*(c) the height of any existing gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in sub-paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater;*

*(d) it would involve development within the curtilage of, or in respect of a gate, fence, wall or other means of enclosure surrounding, a listed building; or*

*(e) it would be development described in class 3E(1).*

As this particular fence is exempt from Class 7 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended, by virtue of the Article 4 Direction; it requires a planning permission granted either by the Council as planning authority or by the Scottish Ministers. No such permission has been granted.

It appears to the Council that the above breach of planning control has occurred within the last 4 years.

Due to the prominent location of the property within the Old Bearsden Outstanding Conservation Area, the timber fence by virtue of its design, scale and siting is considered inappropriate and detrimental to the overall character of the surrounding area.

It is the opinion of the Council that the unauthorised works have been carried out to the detriment of the character of the conservation area.

It is the opinion of the Council that the unauthorised works are contrary to policy **HE3A - Conservation Areas** of the East Dunbartonshire Local Plan 2 (adopted October 2011), in that the timber fence neither preserves nor enhances the character and amenity of the surrounding Old Bearsden Conservation Area.

**5. WHAT YOU ARE REQUIRED TO DO**

You shall take the following steps:

- (1) The removal of the timber boundary fence and all associated timber work from the curtilage of the property as indicated with a dashed line between points "A" and "B" on the attached Location Plan (Page 5 of this Notice).

**Time Period for Compliance:** 6 weeks from the date the notice takes effect.

- (2) The removal from the land of all associated building materials and rubble arising from compliance with the first requirement above.

**Time Period for Compliance:** 6 weeks from the date the notice takes effect.

**6. WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on **25 February 2014** unless an appeal is made to the Scottish Ministers before the date the notice takes effect.

**7. YOUR RIGHT OF APPEAL**

You can appeal against this notice, however your appeal must be received, or posted in time to be received by the Scottish Ministers before **25 February 2014** i.e. no later than 24 February 2014

Attached in **Schedule 1** are explanatory notes for those in receipt of an "Enforcement Notice". This contains important information on your rights of appeal. **PLEASE READ THEM CAREFULLY.**

**8. WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this notice, it will take effect on **25 February 2014** and you must then ensure that the required steps for complying with it, for which you are held responsible, are taken within the time periods, as specified in the notice. Failure to comply with the requirements of an "Enforcement Notice" which has taken effect can result in prosecution and/or remedial action by the Council.

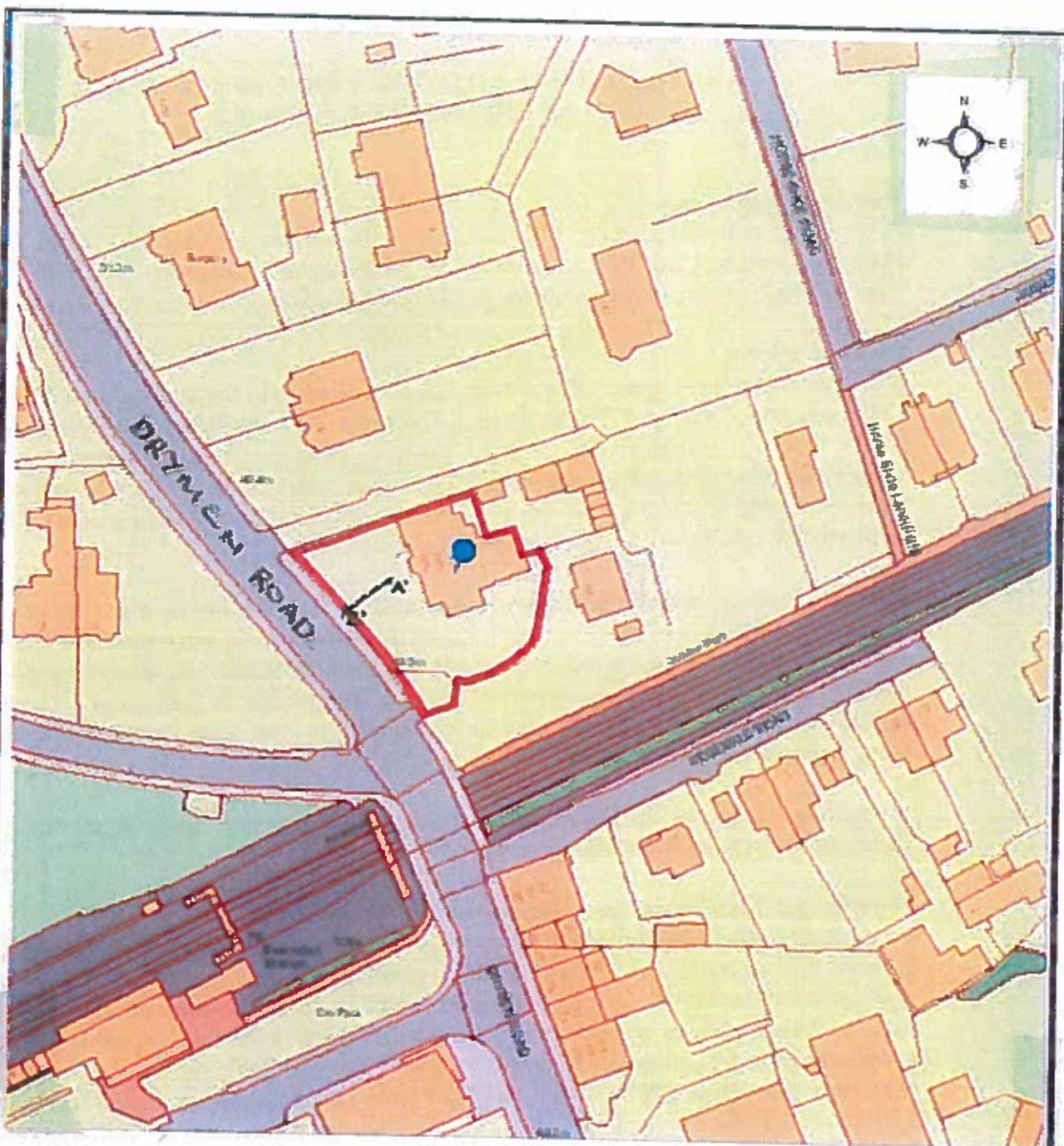
Dated: *16 January 2014*

Signed: *Robert* 

**Diane Campbell**  
**Director of Governance & Regulation**

On behalf of: **East Dunbartonshire Council**  
12 Strathkelvin Place,  
Kirkintilloch,  
East Dunbartonshire,  
G66 1TJ

# LOCATION PLAN



SCALE 1:1250.

This is the plan referred to in the foregoing **Enforcement Notice** in accordance with the terms of Section 127 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning Etc (Scotland) Act 2006 relating to the land and premises as shown edged in red at **88B Drymen Road, Bearsden, East Dunbartonshire, G61 2SY**.

Dated: 16 January 2014

Signed: 

Diane Campbell, **Director of Governance & Regulation**, East Dunbartonshire Council, Broomhill Industrial Estate, Kilsyth Road, Kirkintilloch, East Dunbartonshire, G66 1TJ.

## ENFORCEMENT NOTICE

### SCHEDULE 1

#### EXPLANATORY NOTE FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE

#### **Relevant Legislation**

A copy of Sections 123, 124, 127, 128, 129, 130, 136 and 136A of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning Etc (Scotland) Act 2006 is attached. You will wish to note in particular the points referred below.

#### **Right of Appeal**

If you wish to appeal against this notice, you should write to the Directorate for Planning and Environmental Appeals, 4 The Courtyard, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR. Alternatively, you may submit your appeal online at <https://eplanning.scotland.gov.uk/WAM/>. The appeal must be received, or posted in time to be received by the Directorate before the date on which the notice takes effect. The Scottish Ministers have no power to consider an appeal lodged out of time.

The appeal, which must be made in writing, must be based on one or more of the grounds set out in Section 130(1) subsections (b) to (g) of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning Etc (Scotland) Act 2006, and you should state the facts on which you propose to rely in support of each of the grounds of the appeal. The grounds of appeal and the statement of facts must be submitted with your appeal or within 14 days of your being required to do so by the Scottish Ministers

If you lodge an appeal, the Enforcement Notice will be suspended and will not take effect until such time as the appeal is withdrawn, varied or dismissed.

#### **Penalties for Non-Compliance with an Enforcement Notice**

In terms of section 136 of the Act, where an enforcement notice requires the discontinuance of a use of land or compliance, in respect of a use of land or the carrying out of operations, with any conditions or limitations, then any person who, without the grant of planning permission uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, is guilty of an offence and liable on summary conviction to a **fine not exceeding £20,000, or on conviction on indictment to an unlimited fine.** Furthermore, if the use is continued after conviction the person may be convicted of a second or subsequent offence.

#### **Fixed Penalty Notices**

Alternatively, in terms of section 136A of the Town and Country Planning (Scotland) 1997 as amended by the Planning Etc (Scotland) Act 2006, the Council may serve a fixed penalty notice offering you the opportunity to discharge any liability for conviction. The payment required under the terms of such a notice would be £2,000 if paid within 30 days from the day following the date of service of the notice (reduced to £1,500 if paid within 15 days). There is no right of appeal against a fixed penalty notice.

A fixed penalty notice can be served in respect of a failure to comply with each step required to be taken by the Enforcement Notice or each activity the Enforcement Notice requires to be ceased. Consequently, several fixed penalty notices could be issued.

**Direct Action for Non-compliance with an Enforcement Notice**

If the steps required by an Enforcement Notice are not taken within the specified period (s), the Council may enter the land and take Direct Action under Section 135 of the Town and Country Planning (Scotland) 1997 as amended by the Planning Etc (Scotland) Act 2006, to meet those requirements. Please note that it is an offence for any person to wilfully obstruct a person acting in the exercise of such Direct Action. Furthermore, all reasonable costs incurred by the Council during this process, including administration expenses, will be recovered from the owner, or lessee of the land.

If a fixed penalty is paid, the Council retains the power to take direct action to remedy the breach and recover any associated costs.

## ENFORCEMENT NOTICE

### SCHEDULE 2

#### ENFORCEMENT

**Sections 123, 124, 127,128, 129, 130, 136 and 136A of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning Etc (Scotland) Act 2006**

**Section 123. Expressions used in connection with enforcement.**

- (1) For the purposes of this Act -
  - (a) carrying out development without the required planning permission, or
  - (b) failing to comply with any condition or limitation subject to which planning permission has been granted, or
  - (c) initiating development without giving notice in accordance with section 27A(1) of this Act, or
  - (d) carrying out development without displaying a notice in accordance with section 27C(1) of this Act, constitutes a breach of planning control.
- (2) For the purposes of this Act -
  - (a) the issue of an enforcement notice, or
  - (b) the service of a breach of condition notice, under this Part constitutes taking enforcement action as does the issuing of a notice under section 33A.
- (3) In this Part “planning permission” includes planning permission under Part III of the 1947 Act and Part III of the 1972 Act.

**Section 124. Time limits.**

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
- (4) Subsections (1) to (3) do not prevent—
  - (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect, or
  - (b) taking further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the planning authority have taken or purported to take enforcement action in respect of that breach.



### **Section 127. Issue of enforcement notice**

- (1) The planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them -
  - (a) that there has been a breach of planning control, and
  - (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- (2) A copy of an enforcement notice shall be served -
  - (a) on the owner and on the occupier of the land to which it relates, and
  - (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by this notice.
- (3) The service of the notice shall take place -
  - (a) not more than 28 days after its day of issue, and
  - (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

### **Section 128. Contents and effect of notice.**

- (1) An enforcement notice shall state -
  - (a) the matters which appear to the planning authority to constitute the breach of planning control, and
  - (b) the paragraph of section 123(1) within which, in the opinion of the authority, the breach falls.
- (2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
- (3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
- (4) Those purposes are -
  - (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
  - (b) remedying any injury to amenity which has been caused by the breach.
- (5) An enforcement notice may, for example, require -
  - (a) the alteration or removal of any buildings or works,
  - (b) the carrying out of any building or other operations,
  - (c) any activity on the land not to be carried on except to the extent specified in the notice, or
  - (d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.
- (6) An enforcement notice issued in respect of a breach of planning control consisting of demolition of a building may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7), is as similar as possible to the demolished building.

- (7) A replacement building -
  - (a) must comply with any requirement imposed by or under any enactment applicable to the construction of buildings,
  - (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control, and
  - (c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b) of this subsection).
- (8) An enforcement notice shall specify the date on which it is to take effect and, subject to section 131(3), shall take effect on that date.
- (9) An enforcement notice shall specify the period for compliance with the notice at the end of which any steps are required to have been taken or any activities are required to have ceased, and may specify different periods for different steps or activities.
- (10) Where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.
- (11) An enforcement notice shall specify such additional matters as may be prescribed.
- (12) Regulations may require every copy of an enforcement notice served under section 127 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 130.
- (13) Where -
  - (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so, and
  - (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted under section 33 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
- (14) Where -
  - (a) an enforcement notice requires the construction of a replacement building, and
  - (b) all the requirements of the notice with respect to that construction have been complied with, planning permission shall be treated as having been granted under section 33 in respect of development consisting of that construction.

**Section 129. Variation and withdrawal of enforcement notice.**

- (1) The planning authority may -
  - (a) withdraw an enforcement notice issued by them, or
  - (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 128(9).
- (2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

- (3) The planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were reissued, be served with a copy of it.
- (4) The withdrawal of an enforcement notice does not affect the power of the planning authority to issue a further enforcement notice.

### **Section 130. Appeal against enforcement notice.**

- (1) A person on whom an enforcement notice is served or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds -
  - (a) [...]
  - (b) that the matters which, by virtue of section 128(1)(a) have been stated in the notice, have not occurred;
  - (c) that those matters (if they occurred) do not constitute a breach of planning control;
  - (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
  - (e) that copies of the enforcement notice were not served as required by section 127;
  - (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
  - (g) that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.
- (2) An appeal under this section shall be made -
  - (a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect;
  - (b) by sending such notice to him in a properly addressed and prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date; or
  - (c) by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date.
- (3) A person who gives notice under subsection (2) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing -
  - (a) specifying the grounds on which he is appealing against the enforcement notice, and
  - (b) giving such further information as may be prescribed.

### **Section 136. Offence where enforcement notice not complied with.**

- (1) Where, at any time after the end of the compliance period in respect of an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.
- (2) Where the owner of the land is in breach of the notice he shall be guilty of an offence.

- (3) In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.
- (4) A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
- (5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.
- (6) An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.
- (7) Where -
  - (a) a person charged with an offence under this section has not been served with a copy of the enforcement notice, and
  - (b) the notice is not contained in the appropriate register kept under section 147, it shall be a defence for him to show that he was not aware of the existence of the notice.
- (8) A person guilty of an offence under this section shall be liable -
  - (a) on summary conviction, to a fine not exceeding £20,000, and
  - (b) on conviction on indictment, to a fine.
- (9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

**Section 136A. Fixed penalty notice where enforcement notice not complied with.**

- (1) Where a planning authority have reason to believe that, by virtue of subsection (1) of section 136, a person is in breach of an enforcement notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
- (2) The fixed penalty notice is to specify -
  - (a) the step specified, under subsection (3) of section 128, in the enforcement notice which has not been taken, or
  - (b) the activity so specified which has not ceased.
- (3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.
- (4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in the notice, any liability to conviction for an offence under section 136 as respects the breach of the enforcement notice.

- (5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
- (6) The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
- (7) The conditions are that the fixed penalty notice -
  - (a) is served within the period of 6 months which immediately follows the compliance period in relation to the enforcement notice, and
  - (b) is not served after the person has been charged with an offence under section 136 as respects the breach of the enforcement notice.
- (8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
- (9) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
- (10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.
- (11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.



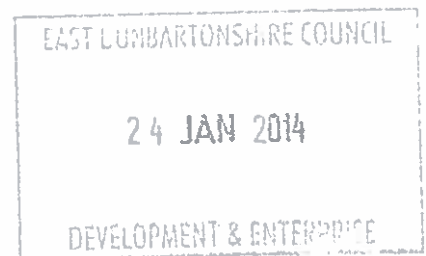


(CK)

**CERTIFICATE OF INTIMATION**

I, ANDREW MCLEAN, SHERIFF OFFICER, 22 Clydesdale Street, Hamilton, ML3 0DA, hereby certify that and upon the Seventeenth day of January, Two Thousand and Fourteen years at 4:15 pm, I lawfully served the within designed Mr Richard Eadie with a copy of the attached Enforcement Notice.

THIS I did by leaving a copy thereof, in a sealed envelope, for the said Mr Richard Eadie in his dwelling place at 88d Drymen Road, Bearsden, East Dunbartonshire, G61 2SY, in the hands of his son Scott Eadie, to be given to him as after due enquiry I could not find the said Mr Richard Eadie personally, before and in presence of Robert McEwen, 22 Clydesdale Street, Hamilton, ML3 0DA, WITNESS to the premises and hereto with me subscribing.



A large, stylized handwritten signature in black ink, appearing to read "Robert McEwen".

.....  
**WITNESS**

.....  
**SHERIFF OFFICER**  
22 Clydesdale Street  
Hamilton  
ML3 0DA  
01698 285706

967155 STDLETS\NOTICE\_LDP.FRM EX NOTICE SER LDP



**WalkerLove**

Messengers-at-Arms Sheriff Officers



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