



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: ED2019/0066/ENF

ISSUED BY: East Dunbartonshire Council

SERVED TO: Occupier of the land: Paul McKechnie
2 Larch Grove
Milton of Campsie
East Dunbartonshire
G66 8HG

Occupier of the Land: Sharon McDonald
2 Larch Grove
Milton of Campsie
East Dunbartonshire
G66 8HG

Owner of the Land: John T Bell & Sons (1976) Limited
Seaton Burn House,
Dudley Lane,
Seaton Burn,
Newcastle Upon Tyne,
NE13 6BE

1. **THIS IS A FORMAL NOTICE** issued under section 127 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 (hereinafter referred to as “the Act”) by East Dunbartonshire Council (hereinafter referred to as “the Council”) as Planning Authority because it appears to the Council that there has been a breach of planning control as defined by section 123(1)(a) of the Act at the land hereinafter described.

The Council believes it is expedient to issue this Notice as it appears to the Council as Planning Authority that there has been a breach of planning control by the carrying out of development without the required planning permission.

2. THE LAND AFFECTED BY THE NOTICE

The site (hereinafter referred to as "the Site") to which this Notice relates forms an area of land adjacent to the southernmost boundary of the residential property at 2 Larch Grove, Milton of Campsie G66 8HG all as identified and delineated in red and coloured pink on the Location Plan, noted as such, and attached and annexed to this Notice.

3. THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission:

- (a) the unauthorised erection of a fence within 20 metres of a road which exceeds one metre in height above ground level as Identified by the black coloured broken line between points marked "A", "B", "C" and "D" on the Location Plan, and as described in **Schedule 1**, noted as such, and attached and annexed to this Notice, and;
- (b) the unauthorised material change in the use of the land from public open space to private residential garden ground.

4. REASONS FOR ISSUING THIS NOTICE

- (a) The unauthorised erection of a fence within 20 metres of a road which exceeds one metre in height above ground level.
 - (1) The erection of the fence at "the Site" as described in this Notice constitutes development as defined by section 26 of the Act.
 - (2) The erection of the fence at "the Site" as described in this Notice does not fall within the terms of Article 3 and by reference to Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended.
 - (3) As the erection of the fence at "the Site" does not fall within the terms of Article 3 and by reference to Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, planning permission by either the Council or the Scottish Ministers is required, and no such permission has been granted.
 - (4) Full Planning Permission was refused by the Council as planning authority on 14 December 2018 under reference TP/ED/18/0591 for the change of use from open ground to private garden space and erection of boundary fence a 2 Larch Grove, Milton of Campsie, G66 8HG.

The reason for the Council's decision is:

1. By reducing the attractiveness of an established area of greenspace the proposed change of use resulting in the loss of established landscaping is considered to be harmful to the character, function and amenity of the surrounding area and is therefore contrary to Policy 2 - Design and Placemaking which states; *'Development must be designed to ensure a positive impact on the character, function and amenity of the surrounding area.'*
- (5) A review of the decision to refuse the application under delegated powers was subsequently carried out by the East Dunbartonshire Local Review Body. Its decision to uphold the delegated decision of the Appointed Officer to refuse the application under reference TP/ED/18/0591 and dismiss the appeal is dated 24 April 2019.

- (6) In the absence of a valid Planning Permission, the erection of the fence at "the Site" is unauthorised and in breach of planning control.
 - (7) The breach of planning control described herein has occurred within the last 4 years.
 - (8) The erection of the fence at "the Site" is visually obtrusive and detrimental to the amenity of the neighbouring properties
 - (9) The reluctance of the occupier of "the Site" to remove the unauthorised fence and reinstate the land as open space following a request from the Council as planning authority to do so as a means to voluntarily resolve the aforementioned breaches of planning control.
 - (10) The erection of the fence at "the Site" has resulted in the enclosure of the area of open space preventing not only public access to it but also public use of it.
- (b) The unauthorised material change in the use of the land from public open space to private residential garden ground.
- (1) The material change in the use of the land at "the Site" as described in this Notice constitutes development as defined by section 26 of the Act.
 - (2) The material change in the use of the land at "the Site" as described in this Notice does not fall within the terms of Article 3 and by reference to Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended.
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(6) In the absence of a valid Planning Permission, the material change in the use of the land at "the Site" is unauthorised and in breach of planning control.

(7) The breach of planning control described herein with the unauthorised material change in the use of the land at "the Site" has occurred within the last 10 years.

5. WHAT YOU ARE REQUIRED TO DO

You shall take the following steps:

- a) Cease the unauthorised use of "the Site"

Time Period for Compliance: within 28 days (4 weeks) from the date this Notice takes effect.

- b) Remove the boundary fence which currently encloses "the Site" between points marked "A", "B", "C" and "D" as identified by the black coloured broken line on the Location Plan and as described in **Schedule 1**, noted as such, and attached and annexed to this Notice.

Time Period for Compliance: within 28 days (4 weeks) from the date this Notice takes effect.

- c) Remove the artificial grass matting from the area of "the Site" outlined in red and coloured pink on the Location Plan, noted as such, and attached and annexed to this Notice.

Time Period for Compliance: within 28 days (4 weeks) from the date this Notice takes effect.

- d) Remove all of the rubble/hardcore below the artificial grass matting from the area of "the Site" outlined in red and coloured pink on the Location Plan, noted as such, and attached and annexed to this Notice.

Time Period for Compliance: within 42 days (6 weeks) from the date this Notice takes effect.

- e) Remove from "the Site" all associated materials arising from compliance with Steps b), c) and d) above.

Time Period for Compliance: within 42 days (6 weeks) from the date this Notice takes effect.

- f) Reinstate the area of land of "the Site" to its condition before this breach took place by:

1. Ground Preparation

Prepare the ground to a depth of 150mm with all hollows and depressions infilled with imported topsoil and graded to surrounding contour levels. Soil brought to a fine tilth with all weeds, debris and stones larger than 25mm in size removed. Apply pre-seeding granular fertiliser to a rate of 70 g/m² and lightly rake in.

2. Grass

Sow appropriate British Seed House grass seed mix i.e. Hard Wearing – A19 (All Purpose Landscaping) in accordance with the suppliers written instructions generally at a rate of 3-5 g/m². Area to be watered on completion. All work to be carried out in accordance with BS 4428: 1989 Code of practice for general landscape operations.

Or alternatively;

Lay grass turf in accordance with BS 4428: 1989 Code of practice for general landscape operations.

Time Period for Compliance: within **56 days (8 weeks)** from the date this Notice takes effect.

3. Amenity Tree Replacement

Replant at the same places as each of those removed, four replacement trees comprising of a mix of *Pyrus calleryana* 'Chanticleer' (Ornamental Pear), *Sorbus intermedia* (Swedish Whitebeam) and *Betula pendula* (Silver Birch) with a minimum girth of 12-14 cm with a planted height of 3 metres within the area edged in red and coloured pink on the Location Plan as described in Schedule 1, noted as such, and attached and annexed to this Notice.

- (1) The trees are to be selected in accordance with BS 3936-1:1992 "Nursery stock. Specification for trees and shrubs".
- (2) The trees selected to be planted in accordance with BS 4043:1989 "Recommendations for transplanting root-balled trees".
- (3) The replacement trees are to be planted in the first planting season following the date this notice takes effect i.e. between 1 November 2019 and 17 February 2020.
- (4) In the event that any of the trees die within a period of 5 years from the date of planting, it must be replaced with a similar sized tree of the same species.

Time Period for Compliance: within **168 days (24 weeks)** from the date this Notice takes effect.

- g) Remove from "the Site" all associated materials and rubble arising from compliance with Step f) above.

Time Period for Compliance: within **168 days (24 weeks)** from the date this Notice takes effect.

6. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on **Monday 16 September 2019**, unless an appeal is made to the Scottish Ministers before the date the Notice takes effect.

A copy of this Notice is served on both the owner and the occupier of the land to which it relates, and who are believed to be in breach of planning control.

7. YOUR RIGHT OF APPEAL

You can appeal against this Notice. Your appeal must be received, or posted in time for receipt, by the Scottish Ministers before this Notice takes effect i.e. **before 16 September 2019**.

Schedule 2, noted as such, and attached and annexed to this Notice contains explanatory notes for those in receipt of an "Enforcement Notice". The Schedule contains information on your right of appeal.

Schedule 3, noted as such, and attached and annexed to this Notice contains extracts of relevant legislation. It is reproduced to assist you. It is your responsibility to check the legislation that you consider to be relevant to this Notice.

8. WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Notice, it will take effect on **16 September 2019** and you must ensure that the required steps for complying with it have been taken by the end of the Time Period for Compliance as specified in this Notice. Failure to comply with the requirements of this Notice can result in prosecution and/or the taking of certain measures by the Council as hereinafter described.

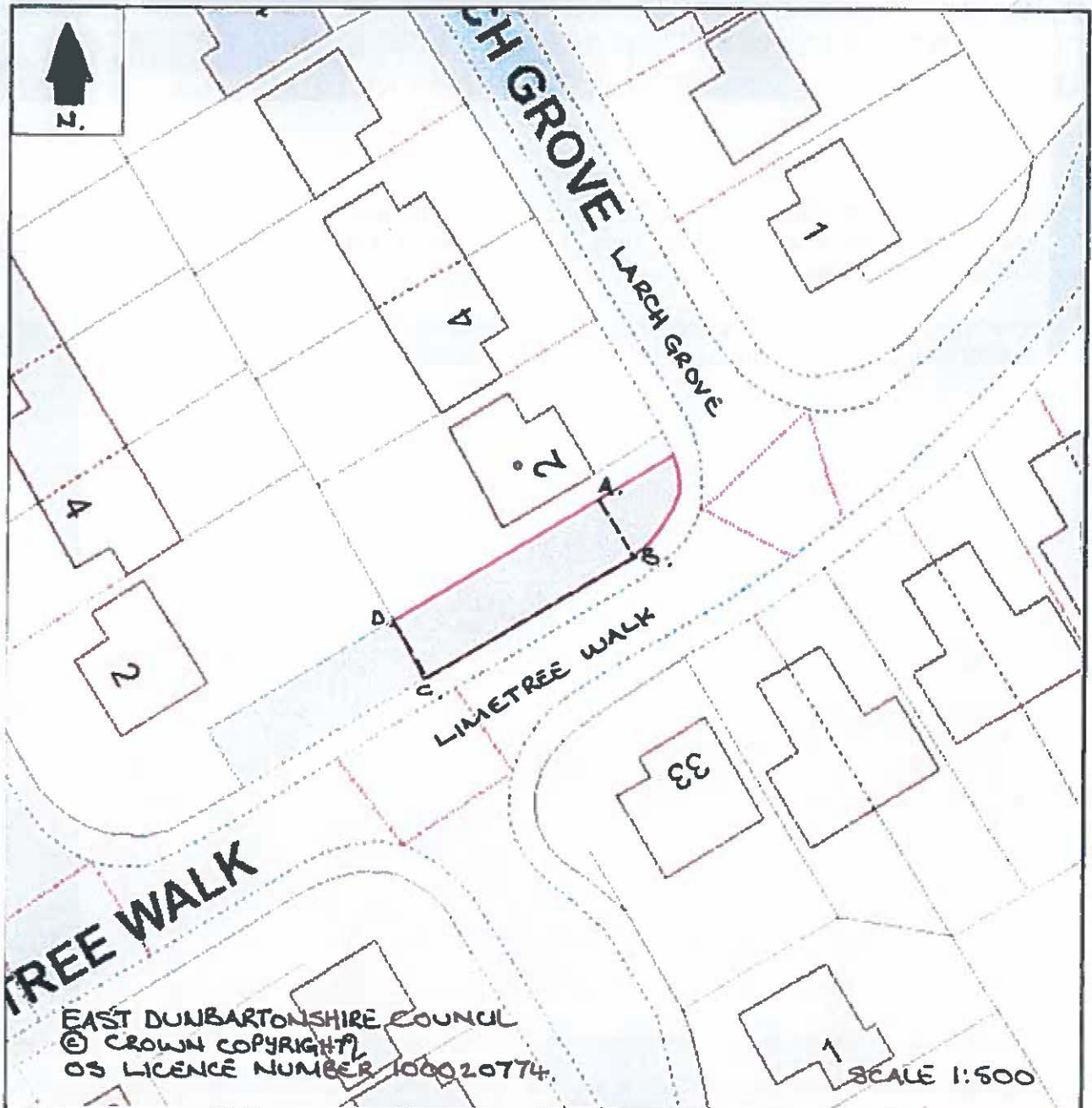
Dated: *12 August 2019*

Signed: *Heather Holland*

Heather Holland
Executive Officer – Land Planning & Development

On behalf of: **East Dunbartonshire Council**
Place, Neighbourhood and Corporate Assets
Broomhill Depot
Kilsyth Road
Kirkintilloch
G66 1TF

LOCATION PLAN



This is the Location Plan referred to in the foregoing Enforcement Notice issued in accordance with section 127 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 in respect of the unauthorised material change in the use of land to private garden ground as shown outlined in red and coloured pink together with the unauthorised erection of a fence as located and identified by the black coloured broken line between points marked "A", "B", "C" and "D".

Dated: 12 AUGUST 2019.

Signed: *Heather Holland*

Heather Holland, Executive Officer – Land Planning & Development on behalf of East Dunbartonshire Council, Place, Neighbourhood and Corporate Assets, Broomhill Depot, Kilsyth Road, Kirkintilloch, G66 1TF

SCHEDULE 1

**DESCRIPTION OF THE BREACH OF PLANNING CONTROL
REFERRED TO IN THIS NOTICE**

The erection of a fence in excess of one metre therein on “the Site” as located and identified by the black coloured broken line between points marked “A”, “B”, “C” and “D” on the Location Plan.

The erection of a vertical wooden slatted timber fence to a height in excess of one metre above ground level. The fence is more particularly identified in the photograph below.



View of fence from Limetree Walk, Milton of Campsie looking northwest.

SCHEDULE 2

EXPLANATORY NOTES FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE

Right of Appeal

If you wish to appeal against this Enforcement 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 for receipt, by the Directorate before the date on which this Notice takes effect. The Directorate acts on behalf of Scottish Ministers and has no power to consider an appeal that is not submitted on time.

The appeal, and which must be made in writing, must be based on one or more of the grounds described in section 130(1) of the Act. You should state the facts in support of each of the grounds of appeal you intend to rely upon. The statement of facts and the grounds of appeal must be submitted with your appeal.

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

Consequences of not complying with this Notice

If the steps required by this Notice are not taken within the Time Period for Compliance, the owner of the land shall be guilty of an offence in terms of section 136 of the Act. Further, if any person who has control of the land to which this Notice relates carries on any activity which this Notice requires to cease, then that person shall be guilty of an offence. A person guilty of an offence shall be liable on summary conviction to a fine not exceeding £20,000, or to an unlimited fine on conviction on indictment. Furthermore, a person may be convicted of a second or subsequent offence.

Fixed Penalty Notices

Alternatively, and in terms of section 136A of the Act, the Council may serve a fixed penalty notice offering the opportunity to discharge any liability to conviction for an offence under section 136 of the Act. The payment required under the terms of such a notice is £2,000 if paid within 30 days from the day following the date of service of the notice (and 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 either to comply with each step required to be taken or to cease carrying on any activity to which this Notice relates. Consequently, several fixed penalty notices can be issued.

Measures that can be taken by the Council following failure to comply with this Notice

If the steps required by this Notice are not taken within the Time Period for Compliance, the Council can, under section 135 of the Act, enter the land and take those steps. The Council can also recover all reasonable costs incurred, including administration costs. It is an offence for any person to wilfully obstruct a person acting in the exercise of the aforementioned measures that can be taken by the Council.

If a fixed penalty is paid, the Council retains the authority to take measures to remedy the breach of planning control by entering the land and recovering any associated costs.

Further Offences

Compliance with the terms of this Notice does not discharge the Notice. It continues to have effect and any repetition of the breach of planning control may incur further penalties or result in further measures being taken by the Council.

SCHEDULE 3

EXTRACTS OF RELEVANT ENFORCEMENT LEGISLATION

Sections 123, 124, 127, 128, 129, 130, 135, 136 and 136A of the Act.

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 the 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) [...] repealed on 3 August 2009
 - (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 135. Execution and cost of works required by enforcement notice.

- (1) If any steps which are required by an enforcement notice to be taken have not been taken within the compliance period, the planning authority may—
- (a) enter the land and take those steps, and
 - (b) recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
- (2) If that person did not appeal to the Secretary of State although entitled to do so, he shall not be entitled to dispute the validity of the action taken by the planning authority under subsection (1) in accordance with the enforcement notice.
- (3) In computing the amount of the expenses which may be recovered by them under subsection (1), a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.

- (4) Where a copy of an enforcement notice has been served in respect of any breach of planning control—
- (a) any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with the notice, and
 - (b) any sums paid by the owner or lessee of any land under subsection (1) in respect of expenses incurred by the planning authority in taking steps required by such a notice to be taken,

shall be recoverable from the person by whom the breach of planning control was committed.

- (5) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by an enforcement notice, the sheriff may by warrant authorise the owner to go on to the land and carry out that work.
- (6) A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal.
- (7) After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.
- (8) Where a planning authority seek, under subsection (1), to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that—
- (a) he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and
 - (b) he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,

his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.

- (9) A planning authority who by reason of subsection (8) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.
- (10) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) In this section and in sections 136, 136A, 140 and 141 any reference to the compliance period, in relation to an enforcement notice, is a reference to the period specified in the notice for compliance with it or such extended period as the planning authority may allow for compliance with it.

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.

