



IMPORTANT – THIS COMMUNICATION AFFECTS YOUR 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: ED2015/0024/ENF

ISSUED BY: East Dunbartonshire Council

ISSUED TO: Owner of the Land: Mr William Smith
"Kilmany"
The Clachan
Clachan of Campsie
Glasgow
G66 7AB

ISSUED TO: Owner of the Land: Mrs Alice Smith
"Kilmany"
The Clachan
Clachan of Campsie
Glasgow
G66 7AB

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 "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 and premises known as "Kilmany" located at The Clachan, Clachan of Campsie, Glasgow, G66 7AB, all as identified and delineated in red on the Location Plan, noted as such, and attached and annexed to this Notice.

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

The breach of planning control takes the form of the installation of a satellite dish on the Site as identified by the blue coloured "X" on the Location Plan, and described in **Schedule 1**, noted as such, attached and annexed to this Notice.

4. **REASONS FOR ISSUING THIS NOTICE**

- a) The installation of the satellite dish at the Site as described in this Notice constitutes development as defined by section 26 of the Act.
- b) As the Site is located within a Conservation Area, the installation of the satellite dish 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 by the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011.
- c) As the installation of the satellite dish 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 by the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011, planning permission by either the Council or the Scottish Ministers is required, and no such permission has been granted for the siting of the satellite dish at this particular location.
- d) An application for Planning Permission under reference TP/ED/14/0223 for the installation of the satellite dish to an outbuilding wall to the rear of the Site was granted by the Council as Planning Authority on 14 May 2014.

A copy of the Decision Notice for this application is contained within **Schedule 2**, noted as such, and attached and annexed to this Notice.

- e) An application for Planning Permission under reference TP/ED/14/0841 for the retention of the satellite dish at the Site was refused by the Council as Planning Authority on 9 January 2015. The reasons for refusal are:-
 1. The proposed retention of the satellite dish and supporting arm would by reason of its design and prominent siting on the historical boundary wall have an unacceptable impact on the Clachan of Campsie Conservation Area of which the site forms a part. Furthermore, the proposal would neither preserve nor enhance the character or appearance of the Conservation Area, and would be detrimental to the visual amenity of the Conservation Area. The proposal would be contrary to Policy HE7 - Conservation Areas, of the East Dunbartonshire Local Plan and Guidance Note Guidance Note 12 - Historic Environment.

A copy of the Decision Notice for this application is contained within **Schedule 3**, noted as such, and attached and annexed to this Notice.

A copy of the Report of Handling of this application is contained within **Schedule 4**, noted as such, and attached and annexed to this Notice.

No review of the decision to refuse planning permission was requested within the prescribed time limit.

- f) In the absence of a valid Planning Permission, installation of the satellite dish at the Site is unauthorised and in breach of planning control.
- g) The breach of planning control described herein has occurred within the last 4 years.

- h) Due to the prominent location of the property within the Clachan of Campsie Conservation Area, the unauthorised installation of the satellite dish is considered inappropriate and detrimental to the overall character of that area.

5. WHAT YOU ARE REQUIRED TO DO

You shall take the following steps:

- (1) With the exception of the location for the satellite dish within the Site which was granted planning permission under TP/ED/14/0223, remove the satellite dish together with all associated fixtures and fittings described herein from the Site.

Time Period for Compliance: 28 days from the date this Notice takes effect.

6. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect **28 June 2016**, unless an appeal is made to the Scottish Ministers before the date the Notice takes effect.

A copy of this Notice is also served on Mrs Alice Smith, "Kilmany", The Clachan, Clachan of Campsie, Glasgow, G66 7AB as a co-owner of the land to which it relates.

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.

Schedule 5, 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 6, 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 **28 June 2016** 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.

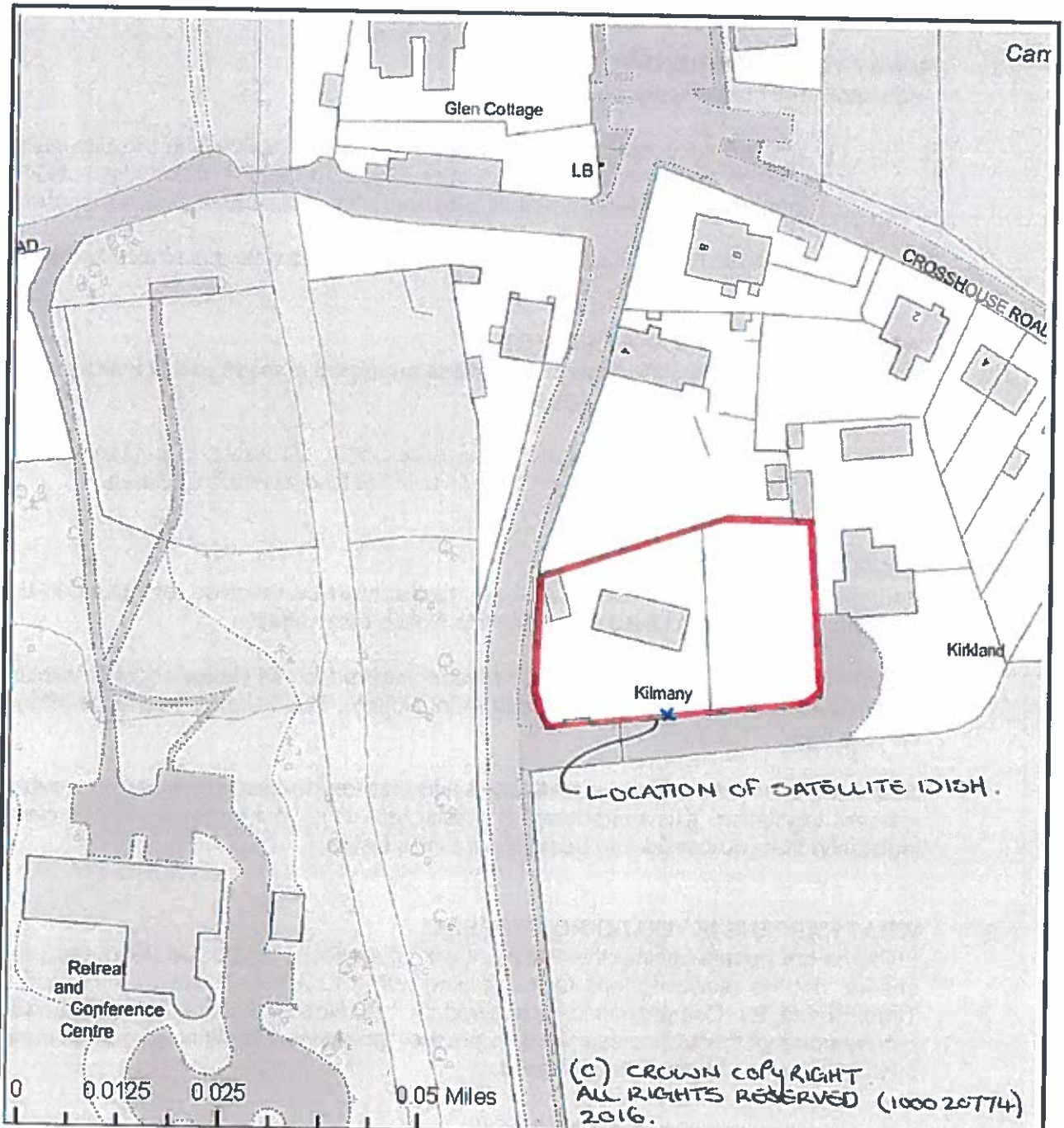
Dated: 23.5.16.

Signed: 

Thomas Glen
Director of Place and Neighbourhood

On behalf of: **East Dunbartonshire Council**
Southbank House
Strathkelvin Place
Kirkintilloch
Glasgow
G66 1XQ

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, regarding the installation of a satellite dish without planning permission as located and identified by the blue coloured "X" at the Site outlined in red on this Location Plan.

Dated: 23.5.16

Signed:

Thomas Glen, Director of Place and Neighbourhood, East Dunbartonshire Council, Southbank House, Strathkelvin Place, Kirkintilloch, Glasgow, G66 1XQ.

SCHEDULE 1

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

The installation of a satellite dish therein on the Site located and identified by the blue coloured "X" on the Location Plan.

The satellite dish is located within the front garden ground of the residential property known as "Kilmany", The Clachan, Clachan of Campsie, Glasgow, G66 7AB and comprises of a solid black coloured dish fixed above ground level via an "S" shaped tubular mounting arm and vertical support pole. The pole is secured via a generally horizontal tubular arm to the rear face (north facing) of the stone wall along the southernmost boundary of the property. The satellite dish is more particularly identified in the photographs below.



Views of the satellite dish from the garden ground of "Kilmany", The Clachan, Clachan of Campsie, Glasgow, G66 7AB.



View of the satellite dish from the access driveway to the neighbouring property at "Kirkland House", The Clachan, Clachan of Campsie, Glasgow, G66 7AB.

SCHEDULE 2

**COPY OF THE DECISION NOTICE ISSUED UNDER REFERENCE
TP/ED/14/0223 AS REFERRED TO IN THIS NOTICE**



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East Dunbartonshire Council

www.eastdunbarton.gov.uk

**FULL PLANNING PERMISSION CONSENT
NOTICE NO. TP/ED/14/0223**

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

Applicant:
Mr William Smith
Kilmany
The Clachan
Clachan Of Campsie
East Dunbartonshire
G66 7AB

Agent (if applicable):
Mr Dominic Notarangelo
Padrino Design
PO Box 2868
Bishopbriggs
G64 9AL

With reference to your application dated 26 March 2014 for consent to the following;

installation of a satellite dish to outbuilding wall to rear of site

Kilmany, The Clachan, Clachan Of Campsie, East Dunbartonshire, G66 7AB

The East Dunbartonshire Council in exercise of their powers under the Acts and Orders hereby grant planning permission for the said development in accordance with the plan(s) listed below and the particulars given in the application


1. Having taken account of all material considerations the proposal is considered to be acceptable in meeting the Development Plan. The proposal is compatible with its surrounds in terms of land use, design and scale and will not cause any unacceptable impact to surrounding properties or the wider Conservation Area.

Advisory Notes(s):

1. That the development hereby consented shall not start until a Notice of Initiation has been submitted to the Planning Authority.
2. On completion of the development, you are also required to submit written notification to this Council by completing and returning a Notice of Completion.
3. The development to which this permission relates must begin no later than 3 years from the date of this permission.

It should be understood that this permission does not carry with it any necessary consent or approval to the proposed development under other statutory enactments.

Dated 14 May 2014


Director of Governance & Regulation

SCHEDULE 3

COPY OF THE DECISION NOTICE ISSUED UNDER REFERENCE
TP/ED/14/0841 AS REFERRED TO IN THIS NOTICE



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**REFUSAL OF FULL PLANNING PERMISSION CONSENT
NOTICE NO. TP/ED/14/0841**

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

Applicant

Mr William Smith
Kilmany
The Clachan
Clachan of Campsie
East Dunbartonshire
G66 7AB

Agent (if applicable)

Padrino Design
PO Box 2868
Bishopbriggs
G64 9AL

With reference to your application dated 12 November 2014 for consent to the following;

retention of satellite dish to front garden area


Kilmany, The Clachan, Clachan of Campsie, East Dunbartonshire, G66 7AB

The East Dunbartonshire Council in exercise of their powers under the Acts and Orders hereby refuse full planning permission for the said development.

The reasons for the Council's decision are:-

1. The proposed retention of the satellite dish and supporting arm would by reason of its design and prominent siting on the historical boundary wall have an unacceptable impact on the Clachan of Campsie Conservation Area of which the site forms a part. Furthermore, the proposal would neither preserve nor enhance the character or appearance of the Conservation Area, and would be detrimental to the visual amenity of the Conservation Area. The proposal would be contrary to Policy HE7 - Conservation Areas, of the East Dunbartonshire Local Plan and Guidance Note Guidance Note 12 - Historic Environment.

Dated 9 January 2015


Director of Governance & Regulation
(SEE OVER)



**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
AS AMENDED**

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to the Local Review Body, East Dunbartonshire Council, 12 Strathkelvin Place, Kirkintilloch, G66 1TJ.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

SCHEDULE 4

COPY OF THE REPORT OF HANDLING ISSUED UNDER REFERENCE TP/ED/14/0841 AS REFERRED TO IN THIS NOTICE



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DEVELOPMENT QUALITY REPORT

Application Number: TP/ED/14/0841 Application Type: Full planning permission

| | |
|---|---|
| <p>Proposal retention of satellite dish to front garden area</p> | <p>Site Kilmany The Clachan Clachan Of Campsie East Dunbartonshire G66 7AB</p> |
| <p>Applicant Mr William Smith Kilmany The Clachan Clachan Of Campsie East Dunbartonshire G66 7AB</p> | <p>Agent Padrino Design PO Box 2868 Bishopbriggs G64 9AL</p> |
| <p>Date of Application 12 November 2014</p> | <p>Date of Validation 12 November 2014</p> |
| <p>Local Plan: East Dunbartonshire Local Plan 2: October 2011.</p> | <p>Community Council Campsie Community Council</p> |
| <p>Ward Campsie & Kirkintilloch North</p> | <p>Advert Section 65 - affecting CA</p> |
| <p>Recommendation: Refuse.</p> | <p>Target Determination Date 11 January 2015</p> |
| <p>Case Officer Alan Atkins 0141 578 8634</p> | <p>Decision Type Delegated Decision</p> |

DESCRIPTION

Retention of satellite dish to front garden area

SITE HISTORY

Planning Application: TP/ED/14/0223

Description: installation of a satellite dish to outbuilding wall to rear of site

Status: Granted.

Decision Date: 14/05/2014

Enforcement Case: ED2013/0140/ENF

Description: Enforcement Enquiry regarding the siting of a satellite dish on a boundary wall in a Conservation Area.

Status: Case closed

POLICY CONTEXT

DQ1- Assessing Proposed Uses

DQ2 - Design Quality;

DQ2B - House Extensions;

HE 3A Conservation Areas

GB1 - Presumption Against Development.

GB 2G- Alterations to Buildings.

Guidance Note 7 - Daylight and Intervisibility of Windows

Guidance Note 12 - Historic Environment

Guidance Note 13 - House Extensions and Garages;

Guidance Note 18 - Road Layout and Design and Parking Standards

REPRESENTATIONS

| | |
|--|---|
| Number of Neighbours Notified: | 2 |
| Total Number of Contributors: | 1 |
| Number of Letters of Objections: | 1 |
| Number of Letters of Support: | 0 |
| Number of Letters of Representation (Neutral): | 0 |

There has been one letter of representation received from a neighbouring property.

Comments:

1. The location of the satellite dish has an adverse impact on the amenity, and visual character of the Clachan of Campsie Conservation Area.
2. The proposal is contrary to Local Plan policy HE3A – Conservation Areas

DISCUSSION WITH APPLICANT

None requested

CONSULTATION

None requested

ASSESSMENT

"Kilmany " is a detached dwelling that lies within an established residential area with properties of similar types and sizes. The property is located within the Clachan of Campsie Conservation Area which is characterised by traditional stone built detached and semi-detached properties, many of which retain original features, and have ample private garden ground. The proposal is for the retention of a satellite dish on the southern perimeter wall of " Kilmany".

Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) states that all applications should be assessed in terms of the Development Plan unless material considerations indicate otherwise. In this case the Development Plan consists of the Glasgow & Clyde Valley Strategic Development Plan 2012 and East Dunbartonshire Local Plan 2 October 2011.

The application is not of strategic significance and therefore will be assessed against the provisions of the Local Plan.

The development quality policies require that developments should be compatible with the amenity and character of the area which it is located and extensions should not dominate the existing building by way of size, scale, proportions or design. This is further addressed in local plan guidance. In this regard:

The application is for the retention of a satellite dish on the southern perimeter wall of " Kilmany", Clachan of Campsie. The satellite dish is 0.6m in diameter, and is of a standard design and construction. Previous consent has been granted for the relocation of the dish to an outbuilding on the north east of the application site. However, due to land ownership issues, it has not been possible to re-locate the satellite dish to this location. In terms of the assessment of this application, the primary concern is to what extent does the satellite dish have an adverse impact on the residential and visual amenity of "Kilmany", and the character and visual appearance of the Clachan of Campsie Conservation Area. Local Plan Policy HE3A - Conservation Areas states that development within a Conservation Area, or affecting its setting shall preserve or enhance its character, and be consistent with any relevant Conservation Area Appraisal or management plan that has been prepared for the area. Furthermore, the design, materials, scale and siting of any development affecting a Conservation Area shall be appropriate to the character of the Conservation Area, and its setting.

In terms of the assessment of this application, it is useful to examine the history of the satellite dish. The dish was erected unlawfully in October 2013, and as a result of an investigation by the Council's enforcement officer, it was decided that the dish should be re - sited to a less conspicuous, and more suitable location within the curtilage of the property. In its present location, the satellite dish occupies a prominent position, and is sited on a metal support arm that peers over the top of the historical boundary wall. The wall on which the dish is currently sited is a traditional stone boundary wall that includes a 1621 date stone. Therefore, the siting of the dish on this wall is out of keeping with the historical context of the wall, and surrounding Conservation Area. The retention of the dish at this location has an adverse impact on the visual character and amenity of the Clachan of Campsie Conservation Area, and is , therefore, contrary to Local Plan policy HE3A: Conservation Areas, and Guidance Note 12: Historic Environment.

RESPONSE TO LETTER OF REPRESENTATION

1. Noted, and agreed.
2. Noted, and agreed.

Taking the above into consideration the proposal by reason of its prominent location on the historical boundary wall will have an adverse impact on the established character and appearance of the wider Conservation Area. It is therefore recommended that planning permission be refused.

RECOMMENDATION

REFUSE.

Reason(s):

The proposed retention of the satellite dish and supporting arm would by reason of its design and prominent siting on the historical boundary wall have an unacceptable impact on the Clachan of Campsie Conservation Area of which the site forms a part. Furthermore, the proposal would neither preserve nor enhance the character or appearance of the Conservation Area, and would be detrimental to the visual amenity of the Conservation Area. The proposal would be contrary to Policy HE7 - Conservation Areas, of the East Dunbartonshire Local Plan and Guidance Note Guidance Note 12 - Historic Environment.

Director of Governance & Regulation

SCHEDULE 5

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 6

EXTRACTS OF RELEVANT ENFORCEMENT LEGISLATION

Sections 123, 124, 127, 128, 129, 130, 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 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
 - (a) 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]*
 - (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.