

Copy of Notice served by Sheriff Officers on 30 September 2015 at 1:35 p.m.
copy of Notice sent 1st class Post - Recorded Delivery to Scotbrigg Ltd. on 24 September 2015.

21.12.15 - REQUIREMENTS OF NOTICE FULLY COMPLIED WITH *[initials]*



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East Dunbartonshire Council

www.eastdunbarton.gov.uk

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: ED2015/0046/ENF

ISSUED BY: East Dunbartonshire Council

SERVED TO: Occupier of the Land: Tedesco Tiling and Terrazzo Contractors Limited
288 Kirkintilloch Road
Bishopbriggs
Glasgow
G64 2PT

SERVED TO: Owner of the Land: Scotbrigg Limited
Burness LLP
120 Bothwell Street
Glasgow
G2 7JL

- 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 "Tedesco Tiling and Terrazzo" located at 288 Kirkintilloch Road, Bishopbriggs, G64 2PT, 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:-

- a) the erection of a timber fence incorporating gates on the Site as located and identified by the blue coloured broken line between points marked "A" and "B" on the Location Plan, and described in **Schedule 1**, noted as such, and attached and annexed to this Notice; and
- b) the placing on the Site of a metal skip container for the depositing of waste materials as located and identified by the area coloured red on the Location Plan, and described in **Schedule 1**, noted as such, and attached and annexed to this Notice.

4. REASONS FOR ISSUING THIS NOTICE

- a) The erection of the timber fence and the placing of the skip container on the Site as described in this Notice constitute development as defined by section 26 of the Act.
- b) The erection of the timber fence and the placing of the skip container on 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.
- c) As the erection of the timber fence and the placing of the skip container on 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.
- d) An application for Planning Permission under reference TP/ED/14/0717 for the retention of the fence and the skip on the Site was refused by the Council as Planning Authority on 17 February 2015. The reasons for refusal were:-
 1. The proposed skip is considered harmful to residential amenity due to its proximity to the boundary with a residential neighbour and the likelihood of excessive noise and dust being generated in the loading and unloading of the skip. The proposal is therefore considered contrary to Policy DQ1 - Assessing Proposed Uses of the Adopted Local Plan which states "Development should enhance and certainly not reduce the amenity and character of the surrounding area, in particular residential amenity will be strongly protected."
 2. It has not been demonstrated that the parking standards required by Guidance Note 18 - Road Layout and Design and Parking Standards can continue to be met following the development of the skip and storage container. The proposals are therefore contrary to Policy TRANS2 - Road Design Guidance and Parking Standards which states "All proposals must meet the Council's design and parking standards."

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

A copy of the Report of Handling of this application is contained within **Schedule 3**, 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.

- e) In the absence of valid Planning Permission, the erection of the timber fence and the placing of the skip container on the Site are unauthorised and in breach of planning control.
- f) The breaches of planning control described herein have occurred within the last 4 years.

5. WHAT YOU ARE REQUIRED TO DO

You shall take the following steps:

- (1) Cease using the Site in order to place a skip container thereon.

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

- (2) Remove the skip container described herein from the Site.

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

- (3) Restore the Site to the condition it was in before the skip container was placed on the Site.

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

- (4) Remove the timber fence and gate described herein and any associated fixtures and fittings from the Site.

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

- (5) Restore the Site to the condition it was in before the erection of the timber fence and gate on 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 on **1 November 2015**, 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.

Schedule 4, 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 5, 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 **1 November 2015** 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.

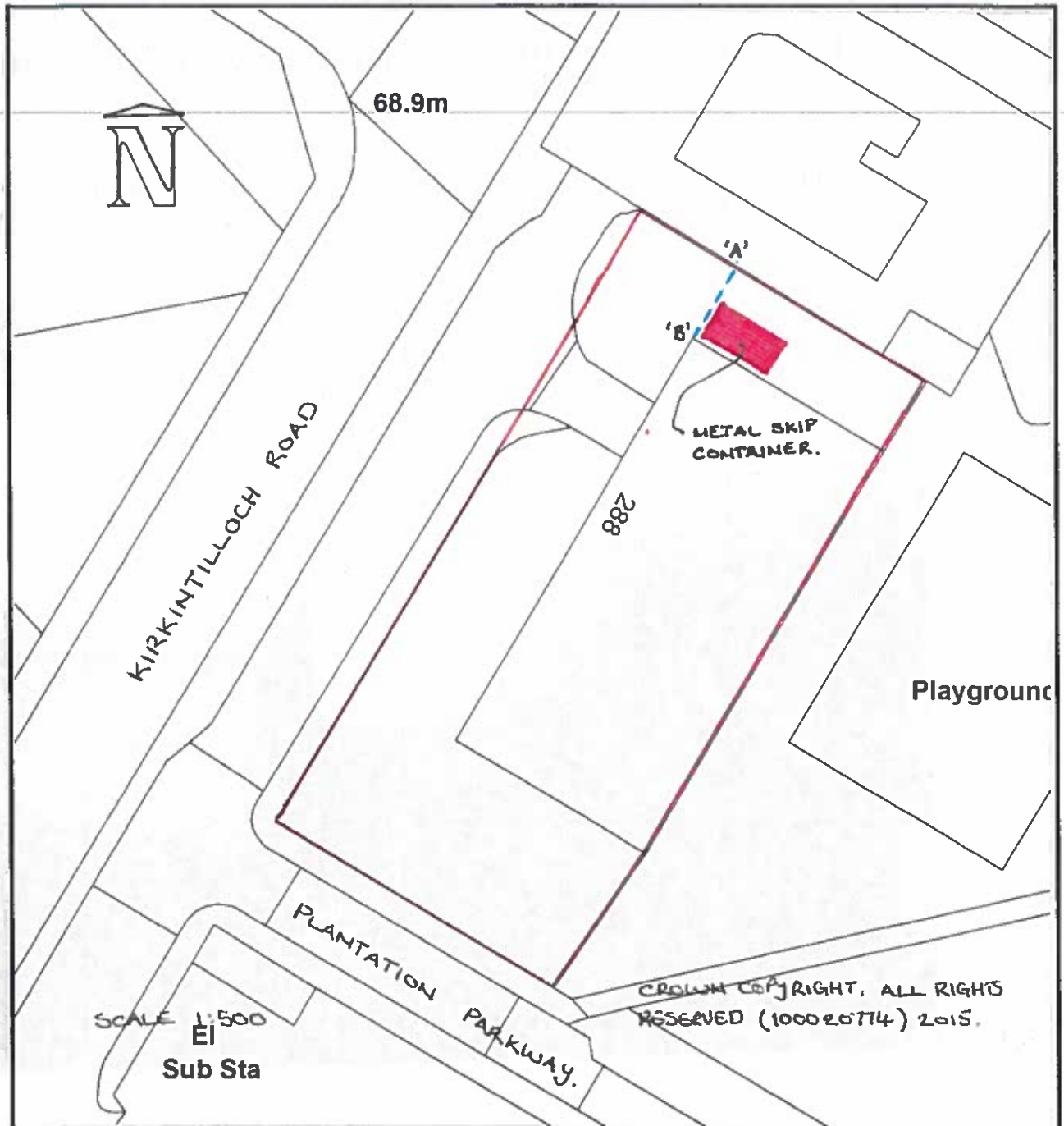
Dated: 23 September 2015

Signed: 

Thomas Glen
Director of Development and Regeneration

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 erection of a timber fence on the Site as located and identified by the blue coloured broken line between points marked "A" and "B" on this Location Plan, and the placing on the Site of a skip container as located and identified by the area coloured red on this Location Plan.

Dated: 23 September 2015.

Signed: 

Thomas Glen, Director of Development and Regeneration, 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 erection of a timber fence and gate therein on the Site and with the fence located and identified by the blue coloured broken line between points marked "A" and "B" on the Location Plan

The timber fence is in the form of vertical wooden planks between which there are narrow gaps. The fence has hinges near where it adjoins the gable end of the premises at the location marked "A" on the Location Plan, and with the hinges forming part of a gate. The fence and gate has the effect of enclosing an area of ground adjacent to the north east gable end of the premises. The fence and gate is more particularly identified in the photograph below.



The placing of a skip container on the Site and with the container located and identified by the area coloured red on the Location Plan

The skip container is in the form of a metal container and with the container being of a size that would require lifting gear in order to transport it by a vehicle designed for that purpose. The container has been placed on the ground and is located within the area of ground adjacent to the north east gable end of the premises and which is enclosed by the timber fence and gate described herein.

SCHEDULE 2

**COPY OF THE DECISION NOTICE ISSUED UNDER REFERENCE
TP/ED/14/0717 AS REFERRED TO IN THIS NOTICE**



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**REFUSAL OF FULL PLANNING PERMISSION CONSENT
NOTICE NO. TP/ED/14/0717**

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

Applicant

Agent (if applicable)

Mr Ignatius Tedesco
Tedesco Tilling _ Terazzo
288 Kirkintilloch Road
Bishopbriggs
G64 2PT

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

retention of storage container and rubbish skip and screen fence

288 Kirkintilloch Road, Bishopbriggs, East Dunbartonshire,

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 skip is considered harmful to residential amenity due to its proximity to the boundary with a residential neighbour and the likelihood of excessive noise and dust being generated in the loading and unloading of the skip. The proposal is therefore considered contrary to Policy DQ1 - Assessing Proposed Uses of the Adopted Local Plan which states "Development should enhance and certainly not reduce the amenity and character of the surrounding area, in particular residential amenity will be strongly protected."
2. It has not been demonstrated that the parking standards required by Guidance Note 18 - Road Layout and Design and Parking Standards can continue to be met following the development of the skip and storage container. The proposals are therefore contrary to Policy TRANS2 - Road Design Guidance and Parking Standards which states "All proposals must meet the Council's design and parking standards."

Dated 17 February 2015

**Director of Development & Regeneration
(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.

ENFORCEMENT NOTICE UNDER REFERENCE ED2015/0046/ENF**SCHEDULE 3****COPY OF THE REPORT OF HANDLING ISSUED UNDER
REFERENCE TP/ED/14/0717 AS REFERRED TO IN THIS NOTICE**

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DEVELOPMENT QUALITY REPORT

Application Number: TP/ED/14/0717 Application Type: Full planning permission

| | |
|---|--|
| Proposal Retention of storage container and rubbish skip and screen fence | Site 288 Kirkintilloch Road Bishopbriggs East Dunbartonshire |
| Applicant Mr Ignatius Tedesco Tedesco Tilling _ Terazzo 288 Kirkintilloch Road Bishopbriggs G64 2PT | Agent |
| Date of Application 26 September 2014 | Date of Validation 27 October 2014 |
| Local Plan East Dunbartonshire Local Plan 2 (October 2011) | Community Council Bishopbriggs Community Council |
| Ward Bishopbriggs North & Torrance | Advert |
| Recommendation Refuse | Target Determination Date 26 December 2014 |
| Case Officer Max Wilson 0141 578 8637 | Decision Type Delegated Decision |

DESCRIPTION

Retention of storage container and rubbish skip and screen fence

SITE HISTORY

Planning Application: TP/ED/13/0301

Description: Change of use from Car Showroom (Sui Generis) to Storage and Distribution (Class 6) with ancillary retail element

Status: Granted

Decision Date: 19/06/2013

Planning Application: TP/ED/14/0718

Description: 3 advance signs, 4 flag poles and 1 fascia advertisement

Status: Refused

Decision Date: 19/12/2014

POLICY CONTEXT

The application site lies within an area covered by the East Dunbartonshire Local Plan 2 - October 2011 and is covered by the following policies:

DQ1- Assessing Proposed Uses

DQ2 - Design Quality;

TRANS2 - Road Design Guidance and Parking Standards

The following Council approved Guidance Notes are material policy considerations in the assessment of the application.

Guidance Note 18 - Road Layout and Design and Parking Standards

REPRESENTATIONS

| | |
|--|---|
| Number of Neighbours Notified: | 2 |
| Total Number of Contributors: | 4 |
| Number of Letters of Objections: | 5 |
| Number of Letters of Support: | 0 |
| Number of Letters of Representation (Neutral): | 0 |

Representations have been received from neighbouring properties on Kirkintilloch Road, Pinelands and Plantation Parkway. A representation has also been received from Bishopbriggs Community Council. The terms of these representations can be summarised as follows:

1. The rubbish skip would be harmful to the amenity of the area due to issues with noise, vibration, dust, debris, vermin and scale.
2. The container is positioned on land designated as parking bays.
3. The unloading of the skip is a danger to the public and in particular children as they are placed on the public road. It is also a fire hazard.
4. Workers standing on top of the skip invade the privacy of the adjoining property.
5. The applicant has previously ignored planning conditions so a further conditional grant would not be appropriate.
6. The use of the property has changed from that originally approved with the addition of the skip and storage container and storage of pallets and other materials at the front of the property.

DISCUSSION WITH APPLICANT

The applicant was asked to provide a revised parking layout which accommodated the skip and storage container. This has not been provided.

CONSULTATION

EDC Roads (Traffic)

As the skip and storage container occupy land previously shown as parking bays the proposal is likely to result in an increase in on-street parking. Based on this refusal is recommended.

ASSESSMENT

288 Kirkintilloch Road is a commercial unit occupied by a tile showroom and store. The application seeks retrospective consent for a storage container on the south west side of the building, a skip on the north east side of the building and a screen fence between the property and 290 Kirkintilloch Road.

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.

Design and Streetscape

The storage container is the most visible element of the development as it is located to the south western gable which is visible from Kirkintilloch Road. The container has been painted white to match the building so has little visual impact on the area. The skip is located between the building and the neighbouring property at 290 Kirkintilloch Road. A screen fence and gates has been erected around the skip meaning it cannot be easily seen from public viewpoints and will also have little visual impact.

Residential Amenity

Policy DQ1 - Assessing Proposed Uses states that new development should enhance and certainly not reduce the amenity and character of the surrounding area with residential amenity given particular protection. The application proposes the retention of a storage container, skip and screen fence which are associated with the existing business use. The storage container is located to the south west of the property and does not directly impact on any residential property.

The skip is located to the north east of the site adjacent to the boundary with 290 Kirkintilloch Road. The physical characteristics of the skip are unlikely to have a significant impact on the residential amenity of the neighbouring property as it is reasonably well screened by the fence and planting and is not of a sufficient height to block significant amounts of daylight. However the way a skip is used by a business such as this does have the potential to cause a disruption to residential amenity. Goods being loaded into the skip and unloaded when full have the potential to generate noise and dust which given the proximity to the residential boundary raises concerns. The proposed skip therefore is considered contrary to Policy DQ1 due to the potential harm to residential amenity caused by noise and dust and its proximity to a residential property. The screen fence which has been erected along the boundary is not considered sufficient to mitigate against these issues.

Access and Parking

Policy TRANS2 - Road Design Guidance and Parking Standards requires development proposals to ensure the safety of all road users and to meet the Council's parking standards set out in Guidance Note 18 - Road Layout and Design and Parking Standards. The use as a tile storage and distribution centre was approved by application TP/ED/13/0301. This application included a parking layout showing a total of 17 spaces, 6 of which are located along the south east gable of the building. These spaces were never marked out on site however the location of the storage container against this gable would occupy these spaces rendering them unusable for vehicles. Two disabled spaces were shown at the north western end of the site, one of which overlaps with the current location of the skip. The applicant has been asked for a revised parking layout which demonstrates that the site can continue to provide suitable parking provision and retain the storage container and skip. This has not been provided to date meaning that the storage container and skip reduce the available parking within the site and are therefore likely to increase on street parking in the vicinity to the detriment of road safety. The Council's Roads Service have been consulted on the proposals and have raised an objection due to the reduction in on site parking. They also observed that vehicles visiting the site have begun parking in the public road. The proposals are therefore considered contrary to Policy TRANS2.

Representations

In response to the letters of representation:

1. It is agreed that the skip aspect of the proposal is likely to create disturbance to neighbouring residential properties in terms of noise and dust.
2. It is agreed that the containers occupy areas previously shown as parking.
3. Health and safety is not a material planning consideration.

4. Someone standing on top of the skip would have views of the neighbouring garden area, however these would be fleeting in nature.
5. The applicant's previous breaches of planning controls are not a material consideration in the determination of this application.
6. The introduction of a skip and storage container does not in itself change the use of the site as these would be typical features of a storage and distribution use. The practices mentioned in the objections such as storage of pallets and use of forklifts on the public road may be poor operational practice but also do not constitute a change of use.

Conclusion

The proposals reduce the parking provision at an existing premises and have a negative impact on residential amenity. The application is therefore contrary to Policy DQ1 - Assessing Proposed Uses and Policy TRANS2 - Road Design Guidance and Parking Standards. The proposals are therefore recommended for refusal and as the application is retrospective enforcement action will also be required.

RECOMMENDATION

Refuse and enforce for the following reasons:

Reasons:

1. The proposed skip is considered harmful to residential amenity due to its proximity to the boundary with a residential neighbour and the likelihood of excessive noise and dust being generated in the loading and unloading of the skip. The proposal is therefore considered contrary to Policy DQ1 - Assessing Proposed Uses of the Adopted Local Plan which states "Development should enhance and certainly not reduce the amenity and character of the surrounding area, in particular residential amenity will be strongly protected."

2. It has not been demonstrated that the parking standards required by Guidance Note 18 - Road Layout and Design and Parking Standards can continue to be met following the development of the skip and storage container. The proposals are therefore contrary to Policy TRANS2 - Road Design Guidance and Parking Standards which states "All proposals must meet the Council's design and parking standards."

Director of Development & Regeneration

SCHEDULE 4

**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 5

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
 - (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.

