



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

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

**ENFORCEMENT NOTICE**

**REFERENCE NUMBER: ED2024/0056/ENF**

**ISSUED BY: East Dunbartonshire Council**

**ISSUED TO: Owner of the Land:           John Stark  
                                                          3 Hillfoot Avenue  
                                                          Bearsden  
                                                          East Dunbartonshire  
                                                          G61 3QA**

**ISSUED TO: Occupier of the Land:       John Stark  
                                                          3 Hillfoot Avenue  
                                                          Bearsden  
                                                          East Dunbartonshire  
                                                          G61 3QA**

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

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

- 2. THE LAND AFFECTED BY THIS NOTICE**

The site (hereinafter referred to as “the Site”) to which this Notice relates forms an area of land and premises at 3 Hillfoot Avenue Bearsden East Dunbartonshire East Dunbartonshire, G613QA 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

Without the required planning permission the carrying out of development comprising of the unauthorised carrying out of operational development, namely the construction and retention of a timber decking structure, without the benefit of planning permission, 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

It appears to the Council that:

The unauthorised decking by reason of its height and positioning results in overlooking of and loss of privacy to the adjacent residential property, causing material harm to residential amenity and conflict with the development plan making it expedient to take enforcement action.

- (a) The erection of the decking at the site as described in this Notice constitutes operational development as defined by section 26 of the Town and Country Planning (Scotland) Act 1997 and has been carried out without planning permission
- (b) The erection of the decking 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).
- (c) As the erection of the decking 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.
- (d) Full planning permission was refused by the Council as planning authority on 15 August 2023 under reference TP/ED/23/0135 for raised decking at the rear (retrospective) at 3 Hillfoot Avenue Bearsden East Dunbartonshire G61 3QA

The reason for the Council’s decision is:

- 1. The decking by reason of its height and positioning creates overlooking to the adjacent property which results in a reduction in privacy. The proposal is therefore contrary to the principles of Policies 1 and 10 of the LDP2 and the associated Supplementary Guidance Design and Placemaking. For the same reason it is also contrary to Policy 16 of NPF4.
- (e) No review of the case under section 43A of the Town and Country Planning (Scotland) 1997 within a period of three months of the date of the refusal of planning permission was sought
- (f) In the absence of a valid Planning Permission, the erection of the decking 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) The reluctance of the owner/occupier of the Site to remove the unauthorised decking and reinstate the area of land to its condition before this breach took place following requests from the Council as planning authority to do so as a means to voluntarily resolve the aforementioned breaches of planning control.

## 5. WHAT YOU ARE REQUIRED TO DO

You shall take the following steps:

- Step 1.** Remove the unauthorised decking as located at the area coloured red 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 **8 weeks** from the date the notice takes effect

- Step 2.** Reinstate the area of land to its condition before this breach took place, or restore the land to a level and condition consistent with its lawful use as a private garden

**Time Period for Compliance:** Within **8 weeks** from the date the notice takes effect.

## 6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on **15 March 2026**, unless an appeal is made to the Scottish Ministers before the date this 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 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 and, if you wish, seek legal or other professional advice on your right of appeal.

## 8. WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this notice, it will take effect on **15 March 2026** and you must then ensure that the required steps for complying with it, for which you are held responsible, are taken within the time periods, as specified in the notice. Failure to comply with the requirements of this Notice can result in prosecution and/or remedial action by the Council.

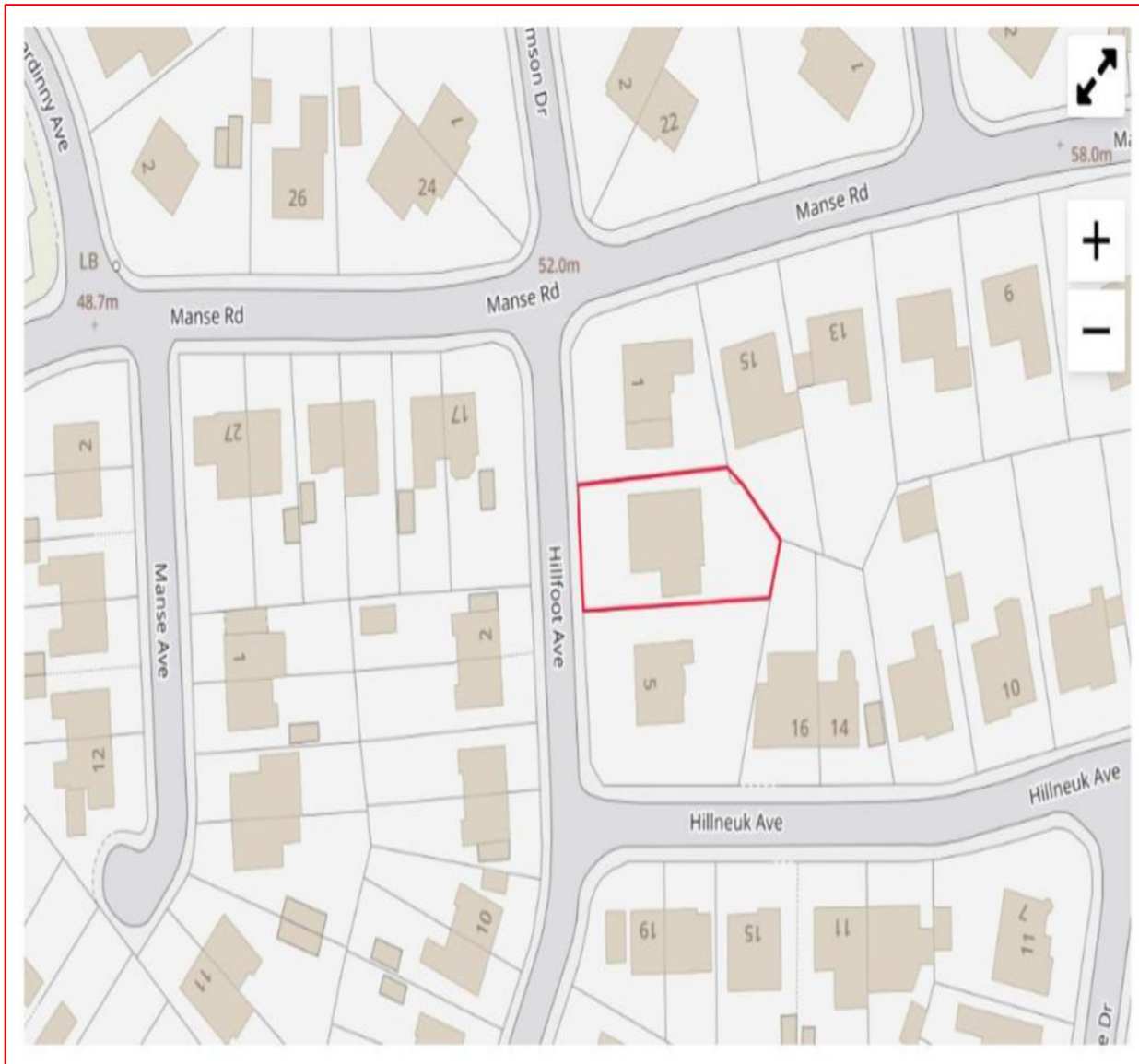
Signed: *Heather Holland* (Council's Authorised Officer)

Dated: 10 February 2026

Heather Holland  
**Executive Officer – Land Planning & Development**

On behalf of: **East Dunbartonshire Council**  
Place, Neighbourhood and Corporate Assets  
Southbank House  
Strathkelvin Place  
Kirkintilloch  
G66 1XQ

# LOCATION PLAN



This is the Location Plan referred to in the foregoing **Enforcement Notice** in accordance with the terms of Section 127 of the Town and Country Planning (Scotland) Act 1997 (as amended) relating to the land and premises as shown outlined in red at **3 Hillfoot Avenue Bearsden East Dunbartonshire G61 3QA**

Signed: *Heather Holland*

Dated: 10 February 2026

Heather Holland, **Executive Officer – Land Planning & Development**, on behalf of **East Dunbartonshire Council**, Place, Neighbourhood and Corporate Assets, Southbank House, Strathkelvin Place, Kirkintilloch, G66 1XQ.

## **SCHEDULE 1**

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

The unauthorised erection and retention of a raised timber decking structure within the rear garden of dwelling house at 3 Hillfoot Avenue Bearsden East Dunbartonshire G61 3QA carried out without planning permission.

## **SCHEDULE 2**

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

#### **Relevant Legislation**

Sections 123, 124, 127 - 136A and 138 of the Town and Country Planning (Scotland) Act 1997 (as amended) and regulations 14, 15 and 16 of the Town and Country Planning (Appeals) (Scotland) Regulations 2013.

#### **Right of Appeal**

If you wish to appeal against this Enforcement Notice, you should write to the Planning and Environmental Appeals Division, Hadrian House, Callendar Business Park, Falkirk, FK1 1XR. Alternatively, you may submit your appeal by e-mail to [dpea@gov.scot](mailto:dpea@gov.scot). Appeal forms and guidance notes for a planning enforcement notice appeal can be found online at <https://www.gov.scot/publications/planning-enforcement-notice-appeals-form-guidance/>. The appeal must be received, or posted in time for receipt, by the Planning and Environmental Appeals Division before the date on which this Notice takes effect. The Planning and Environmental Appeals Division acts on behalf of Scottish Ministers and has no power to consider an appeal that is not submitted on time.

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

In addition, the Appeals Regulations also require that, at the same time as you send your appeal to the Planning and Environmental Appeals Division, you must also send to the Council as planning authority a copy of the notice of appeal, your statement of appeal and a copy of all documents and other information relating to your appeal which you intend to rely on in support of your appeal.

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

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

In terms of section 136 of the Act, where an enforcement notice requires the discontinuance of a use of land or compliance, in respect of a use of land or the carrying out of operations, with any conditions or limitations, then any person who, without the grant of planning permission uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, is guilty of an offence and liable on summary conviction to **a fine not exceeding £50,000, or on conviction on indictment to an unlimited fine**. Furthermore, if the use is continued after conviction the person may be convicted of a second or subsequent offence.

#### **Fixed Penalty Notices**

Alternatively, in terms of section 136A of the Act, the Council may serve a fixed penalty notice offering you the opportunity to discharge any liability for conviction. The payment required under the terms of such a notice would be £2,000 if paid within 30 days from the day following the date of

service of the notice (reduced to £1,500 if paid within 15 days). There is no right of appeal against a fixed penalty notice.

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

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

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

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

**Further Offences**

Compliance with the terms of an enforcement notice does not discharge the notice. It will continue in effect and any repetition of the breach of control may incur further penalties or may result in direct action by the Council.

## **SCHEDULE 3**

### **EXTRACTS OF RELEVANT LEGISLATION FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE**

#### **Relevant Legislation**

1. A copy of sections 123, 124, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 136A and 138 of the Town and Country Planning (Scotland) Act 1997 (as amended) is below, together with;
2. A copy of regulations 14, 15 and 16 of the Town and Country Planning (Appeals) (Scotland) Regulations 2013.

#### **1. Town and Country Planning (Scotland) Act 1997 (as amended)**

##### **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) repealed by Planning etc. (Scotland) Act 2006
- (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; or
  - (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 131. Appeals: supplementary provisions.**

- (1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 130 and, in particular, but without prejudice to the generality of the foregoing provisions of this subsection, in so prescribing may—
- (a) specify the matters on which information is to be given in a statement under section 130 (3);
  - (b) require the planning authority to submit, within such time as may be specified, a statement indicating the submissions which they propose to put forward on the appeal;
  - (c) specify the matters to be included in such a statement;
  - (d) require the authority or the appellant to give such notice of an appeal as may be specified to such persons as may be specified;
  - (e) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be specified, a copy of the enforcement notice and a list of the persons served with copies of it.

(2) Repealed by Planning etc. (Scotland) Act 2006

- (3) Where an appeal is brought under section 130 the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (4) Schedule 4 applies to appeals under section 130, including appeals under that section as applied by regulations under any other provisions of this Act.

**Section 132. General provisions relating to determination of appeals.**

- (1) On the determination of an appeal under section 130, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice.
- (2) On such an appeal the Secretary of State may—
  - (a) correct any defect, error or misdescription in the enforcement notice, or
  - (b) vary the terms of the enforcement notice,if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority.
- (3) The Secretary of State may-
  - (a) dismiss an appeal if the appellant fails to comply with section 130(3) within the prescribed time, and
  - (b) allow an appeal and quash the enforcement notice if the planning authority fail to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of section 131(1).
- (4) Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required by section 127(2) to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

**Section 133. Grant or modification of planning permission on appeal against enforcement notice.**

- (1) On the determination of an appeal under section 130, the Secretary of State may—
  - (a) Repealed by Planning etc. (Scotland) Act 2006
  - (b) Repealed by Planning etc. (Scotland) Act 2006
  - (c) Repealed by Planning etc. (Scotland) Act 2006
  - (d) determine whether on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which the permission was granted was lawful and, if so, issue a certificate under section 150.
- (2) The provisions of sections 150 to 153 mentioned in subsection (3) shall apply for the purposes of subsection (1)(d) as they apply for the purposes of section 150, but as if—
  - (a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made, and

(b) references to the planning authority were references to the Secretary of State.

- (3) Those provisions are sections 150(5) to (7), 152(4) (so far as it relates to the form of the certificate), (6) and (7) and 153.
- (4) Repealed by Planning etc. (Scotland) Act 2006
- (5) Repealed by Planning etc. (Scotland) Act 2006
- (6) Repealed by Planning etc. (Scotland) Act 2006
- (7) Repealed by Planning etc. (Scotland) Act 2006
- (8) Repealed by Planning etc. (Scotland) Act 2006
- (9) Repealed by Planning etc. (Scotland) Act 2006
- (10) Repealed by Planning etc. (Scotland) Act 2006
- (11) Repealed by Planning etc. (Scotland) Act 2006

**Section 134. Validity of enforcement notices.**

The validity of an enforcement notice shall not be questioned in any proceedings whatsoever on any of the grounds specified in section 130(1)(b) to (e) except by appeal under that section.

**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 £50,000, 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.

**Section 138. Enforcement notice to have effect against subsequent development.**

- (1) Compliance with an enforcement notice, whether in respect of—
- (a) the removal or alteration of any building or works,
  - (b) the discontinuance of any use of land, or
  - (c) any other requirements contained in the notice,
- shall not discharge the notice.
- (2) Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.
- (3) Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered.
- (4) A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding the statutory maximum.
- (5) In determining the amount of the fine to be imposed under subsection (4), the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence.

**2. The Town and Country Planning (Appeals) (Scotland) Regulations 2013**

Part 4 of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 provides (under regulations 14-16) some detailed procedural requirements for appeals against enforcement notices (**section 130** of the Town and Country Planning (Scotland) Act 1997).

A copy of regulations 14, 15 and 16 of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 is below.

**Regulation 14. Statement of appeal**

- (1) The appellant must at the same time as giving notice of appeal to the Scottish Ministers under section 130(2), 169(2) or 180(2) of the Act or section 35(2) of the Listed Buildings Act, as the case may be, submit a statement (“statement of appeal”) on a form obtained from the Scottish Ministers.
- (2) The statement of appeal, in addition to specifying the grounds of appeal as required by section 130(3)(a) (and as applied by section 180(3)) or 169(3) of the Act or section 35(4)(a) of the Listed Buildings Act, as the case may be, is to give the information specified in paragraph (3).
- (3) The information is—
  - (a) all matters which the appellant intends to raise in the appeal;
  - (b) the name and address of the appellant;
  - (c) a copy of the notice against which the appeal is made;
  - (d) the name and address of the representative of the appellant (if any) and whether any notice or other correspondence which is required by these Regulations to be sent to the appellant should be sent to the representative instead of the appellant; and
  - (e) a note of the matters which the appellant considers require determination and by what, if any, procedure (or combination of procedures) mentioned in regulation 9(4) the appellant considers the appeal should be determined.
- (4) The statement of appeal is to be accompanied by copies of all documents, materials and evidence which the appellant intends to rely on in the appeal.
- (5) In addition to matters set out in the statement of appeal and the documents accompanying the statement of appeal, the appellant may raise matters only in accordance with and to the extent permitted by regulations 11 and 15, the Hearing Session Rules and the Inquiry Session Rules.
- (6) The following provisions apply in relation to appeals under sections 130, 169 and 180 of the Act and an appeal under section 35 of the Listed Buildings Act—
  - (a) this Part and Parts 1, 3, 9 (other than regulation 29) and 10; and
  - (b) the Hearing Session Rules and the Inquiry Session Rules.
- (7) These Regulations apply to an appeal under section 130 as applied by regulation 25 of the 1984 Regulations as they apply to an appeal under section 130 of the Act as if references to an enforcement notice were references to an enforcement notice served under regulation 24 of the 1984 Regulations.

**Regulation 15. Intimation of appeal to planning authority and planning authority’s response**

- (1) The appellant must at the same time as giving the notice of appeal to the Scottish Ministers send to the planning authority a copy of—

- (a) the notice of appeal;
  - (b) the statement of appeal; and
  - (c) all documents, materials and evidence which the appellant intends to rely on in the appeal and which accompanied the statement of appeal in accordance with regulation 14(4).
- (2) The planning authority must, not later than 21 days beginning with the date of receipt of notification of an appeal under paragraph (1), send to the Scottish Ministers and the appellant—
- (a) a statement (“the planning authority’s response”) incorporating a response to each ground of appeal and stating the matters which the planning authority consider require determination and by what, if any, procedure (or combination of procedures) mentioned in regulation 9(4) the planning authority wish the appeal to be conducted; and
  - (b) copies of documents which were before the planning authority and which were taken into account in reaching its decision to issue the notice which is the subject of the appeal.
- (3) The appellant may, within 14 days beginning with the date of receipt of the planning authority’s response, send to the Scottish Ministers and the planning authority comments on any matters raised in the planning authority’s response.
- (4) The planning authority must until such time as the appeal is determined make copies of—
- (a) the notice of appeal;
  - (b) the statement of appeal;
  - (c) the planning authority’s response and any comments made under paragraph (3); and
  - (d) documents which accompanied the statement of appeal or which were sent with the planning authority’s response,
- available for inspection at an office of the planning authority and to afford any interested party who so requests an opportunity to inspect and, where practicable, to take copies of any such documents (or any part thereof).

**Regulation 16. Notification to other parties**

- (1) The planning authority must not later than 14 days following notification of the appeal under regulation 14 give notice of the appeal to each person (other than the appellant) on whom the enforcement notice, listed building enforcement notice or the notice under section 168 or 179 of the Act, as the case may be, was served.
- (2) Notice under paragraph (1) is to—
- (a) state the name of the appellant and the address of the land to which the appeal relates;
  - (b) describe the steps required by the notice to which the appeal relates;
  - (c) state that representations may be made to the Scottish Ministers and provide information as to how and by when such representations may be made;

- (d) state where a copy of the notice of appeal, the statement of appeal and the planning authority's response may be inspected.
- (3) The period allowed for making representations is to be no less than 14 days from the date on which notice is given under paragraph (1).