



**IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY
OR A PROPERTY IN WHICH YOU HAVE AN INTEREST**

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

ENFORCEMENT NOTICE

SERVED BY PERTH & KINROSS COUNCIL

RELATING TO:

The Domestic Property at 88 Allison Crescent, Perth PH1 2UN

THIS NOTICE IS SERVED ON

- **Joanne Bowie, 88 Allison Crescent, Perth PH1 2UN**
- **Steven Gray, 88 Allison Crescent, Perth PH1 2UN**

1. THIS IS A FORMAL NOTICE that is served by Perth & Kinross Council ("the Council") because it appears that there has been a breach of planning control under Section 123(1)(a) of the Town and Country Planning (Scotland) Act 1997 at the land described below. Therefore, it is expedient to issue this notice, having regard to the provision of the development plan and to other material planning considerations.

2. THE LAND AFFECTED

The land to which this notice relates (shown edged in red on the attached plan) is the domestic property at 88 Allison Crescent, Perth PH1 2UN

3. THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission, the erection of fences (including a gate) exceeding 1 metre in height within, and on the boundary of, the front curtilage of the dwellinghouse.

4. REASONS FOR THIS NOTICE

- i. The erection of the fences constitutes development that, in the absence of planning permission, is unauthorised and a breach of planning control.
- ii. The fences are less than 4 years old.
- iii. Due to their height and location, the fences are not permitted development.
- iv. The erection of the fences results in a stark visual impact on the street scene and in a fully enclosed front garden, which is out of character with the area, where front gardens are open to the street. Additionally, vehicular sightlines are compromised by the fences, creating a danger to pedestrians and vehicles.
- v. Accordingly, the Council considers that the unauthorised development is contrary to Policies RD1, PM1A and PM1B of the Perth and Kinross Local Development Plan 2014.
- vi. The Council considers that enforcement action requiring the removal of the fences is justified and necessary, and in the public interest. As such, the Council considers it expedient to issue this Enforcement Notice as the mechanism for remedying the planning harm.
- vii. The serving of this enforcement notice is considered to be in accordance with Perth & Kinross Council's Planning Enforcement Charter (revised October 2016) and the Scottish Government's Planning Circular 10/2009: Planning Enforcement.

5. WHAT YOU ARE REQUIRED TO DO

STEP 1: With the exception of the fence along the north-western boundary of the property, remove the fences and gate that have been erected on land between the principal elevation of the dwellinghouse and the public road.

TIME FOR COMPLIANCE: Within 42 days of this Notice taking effect.

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on **01 March 2019** unless an appeal is made against it beforehand.

7. YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Scottish Government before **01 March 2019**.

Schedule 1 to this Notice gives information on your rights of appeal. Read it carefully.

8. WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Enforcement Notice, it will take effect on **01 March 2019** and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the Notice.

Failure to comply with an Enforcement Notice that has taken effect can result in prosecution and/or remedial action and/or the service of a fixed penalty notice by the Council.

Signed 
(Council's Authorised Officer)

Dated: 24./01./2019

On Behalf of: Development Management
Planning & Development
Perth & Kinross Council
Pullar House
35 Kinnoull Street
Perth, PH1 5GD

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Scale 1:1250

Plan Referred to in the Attached Notice



SCHEDULE 1

Explanatory Note for Those in Receipt of an Enforcement Notice

RELEVANT LEGISLATION

A copy of Sections 127 – 136A of the Town and Country Planning (Scotland) Act 1997 (as amended) is enclosed. You will wish to note in particular the points referred to below.

RIGHT OF APPEAL

If you wish to appeal against this notice, you should write to The Planning and Environmental Appeals Division, The Scottish Government, 4 The Courtyard, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR. The appeal must be received, or posted in time to be received, by the Scottish Government before **01 March 2019**. The Scottish Government has no power to consider an appeal lodged out of time.

The Appeal, which must be in writing, must be based on one or more of the grounds set out in Section 130(1) (subsections (b) to (g)) of the 1997 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 Government.

If you lodge an appeal, the Enforcement Notice is suspended and will not take effect unless the appeal is withdrawn or dismissed.

Further information can be found at <http://www.gov.scot/topics/planning/appeals>

PENALTIES FOR NON - COMPLIANCE WITH AN ENFORCEMENT NOTICE

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

FIXED PENALTY NOTICES

Where a planning authority has reason to believe that a person is in breach of an enforcement notice they may serve on him a fixed penalty notice as respects that breach.

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, take those steps and recover the cost from the owner or lessee of the land.

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.

RELEVANT SECTIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

Enforcement notices

127 Issue of enforcement notice

(1) The planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them—

- (a) that there has been a breach of planning control, and
- (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

(2) A copy of an enforcement notice shall be served—

- (a) on the owner and on the occupier of the land to which it relates, and
- (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

(3) The service of the notice shall take place—

- (a) not more than 28 days after its date 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.

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.

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.

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 (now first Minister) against the notice on any of the following grounds—

(N.B. Section 130 (1) (a) is repealed as per the Planning etc. (Scotland) Act 2006)

(b) that those matters 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 (now First Minister) 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 (now First Minister), 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.

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.

(N.B. Section 131 (2) is repealed as per the 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.

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.

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—

(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.

(N.B. Section 133 in subsection (1), paragraphs (a) to (c); and subsections (4) to (11); are repealed as per the Planning etc. (Scotland) Act 2006)

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.

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, 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.

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.

Fixed penalty notices

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.