



Date: 28/01/2019  
Ref: 18/00310/PLACON

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

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

## **BREACH OF CONDITION NOTICE**

**SERVED BY PERTH & KINROSS COUNCIL**

**RELATING TO:**

**The Dwellinghouse at Hawthorn Cottage, Gairney Bank, Kinross KY13 9JX**

**THIS NOTICE IS SERVED ON**

- **Eleanor Mary Neil, Hawthorn Cottage, Gairney Bank, Kinross KY13 9JX**
- **Ian Alexander Smith, Hawthorn Cottage, Gairney Bank, Kinross KY13 9JX**

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**1. THIS IS A FORMAL NOTICE** that is served by the Council under Section 145 of the above Act because it considers that a condition imposed on a grant of planning permission relating to the land described below has not been complied with. It considers that you should be required to comply with the condition specified in this notice.

### **2. THE LAND AFFECTED**

The site to which this notice relates (shown edged in red on the attached plans) is Hawthorn Cottage, Gairney Bank, Kinross KY13 9JX.

### **3. THE RELEVANT PLANNING PERMISSION**

The relevant planning permission to which this notice relates is the permission granted by Perth & Kinross Council on 10 November 2017 for an extension to the dwellinghouse (ref: 17/01666/FLL).

#### 4. THE BREACH OF CONDITION

Condition 1 of the relevant planning permission has been breached:

*The development hereby approved must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed by this decision notice.*

The approved drawings relating to the proposed extension are 17/01666/2, 17/01666/12, 17/01666/13, 17/01666/14 and 17/01666/15. The plans and documents relating to planning permission ref: 17/01666/FLL are available at [www.pkc.gov.uk](http://www.pkc.gov.uk), search for 'view and comment on planning applications'

The reasons why the development has not been built in accordance with the approved plans include:

- The approved plans show a gambrel roof; the extension as built has a dual-pitched roof
- The wall heads of the built extension are significantly higher than height shown on the approved plans

#### 5. WHAT YOU ARE REQUIRED TO DO

As the person responsible for the breach of condition specified in paragraph 4 of this Notice, you are required to comply with the stated condition by doing the following:

**Step 1:** Remove the roof of the extension

**Time for Compliance:** Within 3 months of this Notice taking effect

**Step 2:** Reduce the height of the wall heads of the extension in accordance with planning permission ref: 17/01666/FLL. The approved height of the wall heads is shown on the drawings numbered 17/01666/12 and 17/01666/15.

**Time for Compliance:** Within 6 months of this Notice taking effect

**Step 3:** Complete the extension in accordance with planning permission ref: 17/01666/FLL

**Time for Compliance:** Within 12 months of this Notice taking effect.

#### 6. WHEN THIS NOTICE TAKES EFFECT

**This notice takes effect immediately** it is served on you or you receive it by postal delivery.

Signed [REDACTED] ..... Dated: 28 / 01 / 2019  
(Council's Authorised Officer)

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

Email: [PlanningEnforcement@pkc.gov.uk](mailto:PlanningEnforcement@pkc.gov.uk)  
Phone: 01738 475300

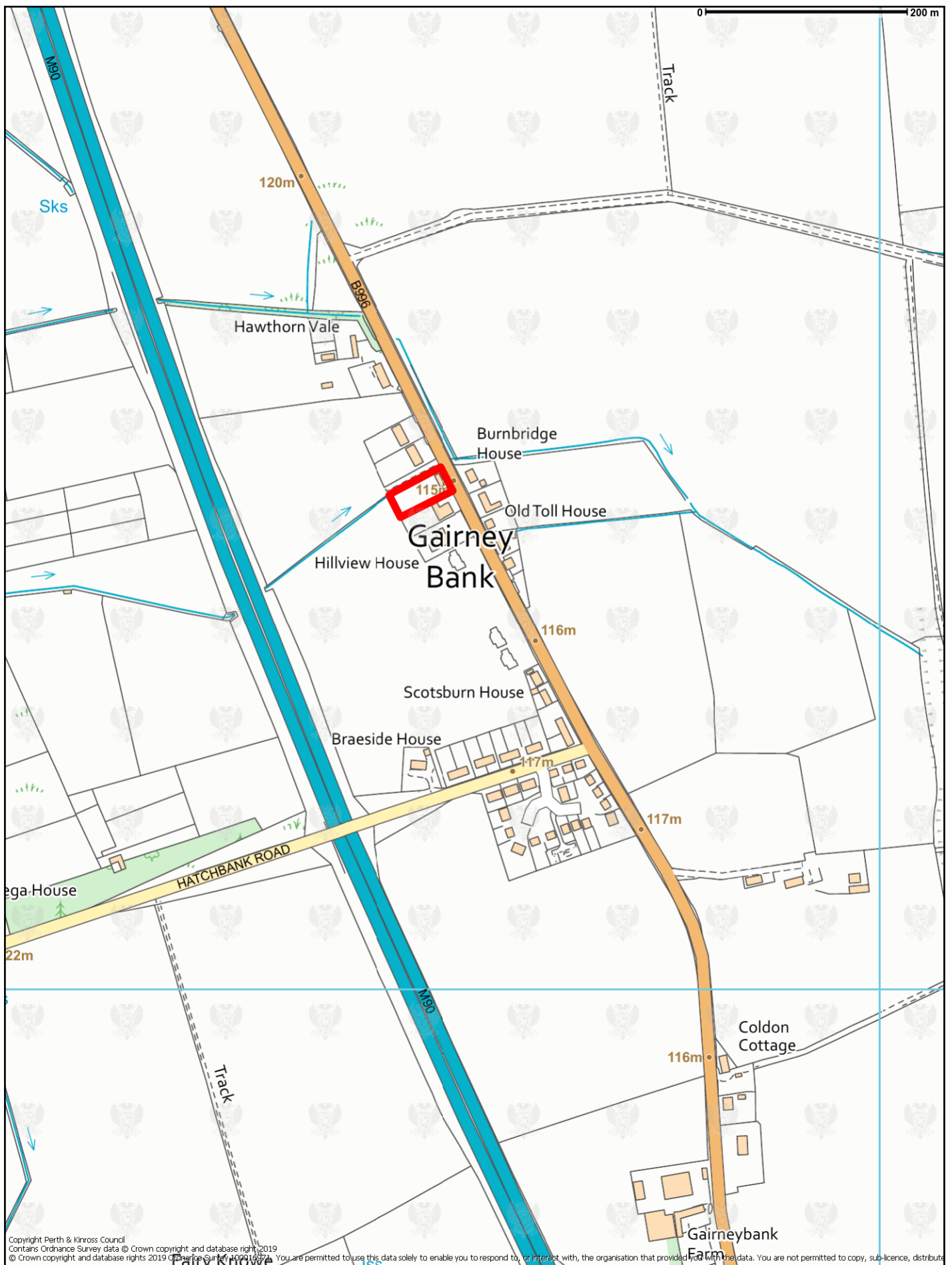
**WARNING: THERE IS NO RIGHT OF APPEAL AGAINST THIS NOTICE**

It is an offence to contravene any requirement stated in paragraph 5 of this notice after the end of the compliance period. The maximum penalty for such an offence is £1,000.

If you are in any doubt about what this Notice requires you to do you should get in touch immediately with

David Rennie  
Planning Enforcement Officer  
Planning & Development  
Perth & Kinross Council  
Pullar House  
35 Kinnoull Street  
Perth, PH1 5GD  
01738 475300  
[PlanningEnforcement@pkc.gov.uk](mailto:PlanningEnforcement@pkc.gov.uk)

If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or another professional adviser specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the Court of Session for judicial review. A lawyer will advise you on what this procedure involves.



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Scale 1:5000

**Plan Referred to in the Attached Notice**





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Scale 1:1250

**Plan Referred to in the Attached Notice**



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

## *Breach of condition notices*

### **145 Enforcement of conditions**

(1) This section applies where planning permission for carrying out any development has been granted subject to conditions.

(2) The planning authority may, if any of the conditions is not complied with, serve a notice (in this Act referred to as a “breach of condition notice”) on—

(a) any person who is carrying out or has carried out the development, or

(b) any person having control of the land,

requiring him to secure compliance with such of the conditions as are specified in the notice.

(3) References in this section to the person responsible are to the person on whom the breach of condition notice has been served.

(4) The conditions which may be specified in a notice served by virtue of subsection (2)(b) are any of the conditions regulating the use of the land.

(5) A breach of condition notice shall specify the steps which the authority consider ought to be taken, or the activities which the authority consider ought to cease, to secure compliance with the conditions specified in the notice.

(6) The authority may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve on him a further breach of condition notice in respect of the conditions specified in the earlier notice or any other conditions.

(7) The period allowed for compliance with the notice is—

(a) such period of not less than 28 days beginning with the date of service of the notice as may be specified in the notice, or

(b) that period as extended by a further notice served by the planning authority on the person responsible.

(8) If, at any time after the end of the period allowed for compliance with the notice—

(a) any of the conditions specified in the notice is not complied with, and

(b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,

the person responsible is in breach of the notice.

(9) If the person responsible is in breach of the notice he shall be guilty of an offence.

(10) An offence under subsection (9) 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 that subsection by reference to any period of time following the preceding conviction for such an offence.

(11) It shall be a defence for a person charged with an offence under subsection (9) to prove—

(a) that he took all reasonable measures to secure compliance with the conditions specified in the notice, or

(b) where the notice was served on him by virtue of subsection (2)(b), that he no longer had control of the land.

(12) A person who is guilty of an offence under subsection (9) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) In this section—

(a) “conditions” includes limitations; and

(b) references to carrying out any development include causing or permitting another to do so.

#### **145A Fixed penalty notice where breach of condition notice not complied with**

(1) Where a planning authority have reason to believe that, by virtue of subsection (8) of section 145, a person is in breach of a breach of condition 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 (5) of section 145, in the breach of condition 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 that notice, any liability to conviction for an offence under section 145(9) as respects the breach of the breach of condition 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 period allowed by section 145(7) for compliance with the breach of condition notice, and

(b) is not served after the person has been charged with an offence under section 145(9) as respects the breach of the breach of condition notice.

(8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 145(9) 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 145(9) 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.