

**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY  
OR PROPERTY THAT YOU HAVE AN INTEREST IN**

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

**ENFORCEMENT NOTICE**

**REFERENCE NUMBER: 11/00249/ENOTH1**

To:

Mr Mathew Downs,  
Director Seavision (Scotland) Ltd  
Marina Offices  
Holy Loch Marina  
Rankin's Brae  
Sandbank  
PA3 8QB

Mr Andrew Knight  
Managing Director  
TSL (Contractors) Ltd  
Craignure  
Isle of Mull  
PA65 6AY



*Registered  
Mail  
19/12/11  
ml*

**ISSUED BY: ARGYLL AND BUTE COUNCIL, KILMORY, LOCHGILPHEAD**

1. **THIS IS A FORMAL NOTICE** which is issued by Argyll and Bute Council because it appears to them that there has been a breach of planning control, under Section 127 of the Town and Country Planning (Scotland) Act 1997, at the land described below. Argyll and Bute Council consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material considerations.

**2. THE LAND AFFECTED**

Land at Holy Loch Marina, Rankin's Brae, Sandbank, Dunoon, Argyll and Bute shown edged red on the attached plan.

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

In terms of Section 123(1)(a) of the above Act, the carrying out of development without the benefit of express planning permission, relative to:

Siting of a concrete batching plant and aggregate silos.

The location of this alleged unauthorised development is in the position shown on the attached plan marked with a 'X'.

#### 4. REASONS FOR ISSUING THIS NOTICE

The change of use of land for the siting of a concrete batching plant and aggregate silos is unauthorised and represents a breach of planning control. A planning application for retrospective approval (application reference 11/00158/PP) was refused by Argyll and Bute Council as Planning Authority following consideration by PPSL Committee dated 20 April 2011.

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

Discontinue use of the concrete batching plant  
Remove the batching plant from the affected land  
Dismantle and remove the aggregate silos from the affected land

**Time period for compliance: 21 days from the date the notice takes effect.**

#### 6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on **31 January 2012** unless an appeal is made to the Scottish Government before the date the notice takes effect.

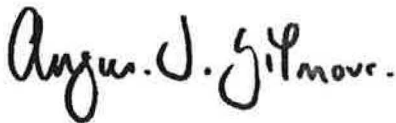
#### 7. YOUR RIGHT OF APPEAL

You can appeal against this notice, but your appeal must be received or posted in time to be received by the Scottish Government Directorate for Planning and Environmental Appeals **before 31 January 2012**. 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 notice, it will take effect on **31 January 2012** 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(s) specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

Dated: 19 December 2011



Head of Planning & Regulatory Services  
Kilmory  
Lochgilphead

On behalf of Argyll and Bute Council, Kilmory, Lochgilphead, PA31 8RT

<p style="text-align: center;"><b>SCHEDULE 1</b> <b>EXPLANATORY NOTE FOR THOSE IN RECEIPT OF</b> <b>AN ENFORCEMENT NOTICE</b></p>
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### **RELEVANT LEGISLATION**

A copy of (a summary of) Section 127/134 of the Town and Country Planning (Scotland) Act 1997 is attached. You will wish to note in particular the points referred below.

### **RIGHT OF APPEAL**

If you wish to appeal against this notice, you should write to the Scottish Government Directorate for Planning and Environmental Appeals, 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 Executive before **31 January 2012**. The DPEA has no power to consider an appeal lodged out of time.

The appeal, which must be made in writing, must be based on one or more of the grounds set out in Section 130 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 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.

### **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 Twenty Thousand Pounds or on conviction on indication to an unlimited fine**. Further more, if the use is continued after conviction the person may be convicted of a second or subsequent offence.

### **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 on 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.

## GENERAL NOTE

B.126.2

The purpose of a planning contravention notice is to act as a formal warning of the prospect of an enforcement or stop notice and to enable the authority to obtain more information. The service of the notice may therefore encourage negotiations between the authority and the person thought to be in breach, while at the same time furnishing the authority with the information required to proceed with enforcement action should agreement not be reached.

Negotiations are further encouraged by subs. (4), in terms of which the authority may offer a "time and place meeting" at which the recipient of the notice may make an offer and representations.

A planning authority may serve a planning contravention notice where it appears to it that there may have been a breach of planning control (subs. (1)). It may not do so where there is no suggestion of such breach (*R. v. Teignbridge District Council, ex p. Teignmouth Quay Co.* [1994] EGCS 203).

The notice must warn the recipient (subs. (5)):

- of the likely consequences of failure to respond, including that enforcement action might be taken; and
- of the effect of s.143(5), that is, that his right to compensation in the event of a stop notice being served will be affected by failure to provide the requested information.

There are also criminal sanctions for non-compliance with the notice: see s.126.

**Penalties for non-compliance with planning contravention notice**

**126.—**(1) If at any time after the end of the period of 21 days beginning with the day on which a planning contravention notice has been served on any person, he has not complied with any requirement of the notice, he shall be guilty of an offence. **B.127**

(2) An offence under subsection (1) 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.

(3) It shall be a defence for a person charged with an offence under subsection (1) to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) If any person—

- (a) makes any statement purporting to comply with a requirement of a planning contravention notice which he knows to be false or misleading in a material particular, or
- (b) recklessly makes such a statement which is false or misleading in a material particular,

he shall be guilty of an offence.

(6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## DEFINITIONS

B.127.1

"development": ss.26, 277(1).

"planning contravention notice": ss.125, 277(1).

## GENERAL NOTE

B.127.2

This section makes it a criminal offence to fail, without reasonable excuse, to comply with a planning contravention notice within 21 days, or to knowingly or recklessly make a false or misleading statement purporting to comply with a requirement of such a notice.

*Enforcement notices***Issue of enforcement notice**

**127.—**(1) The planning authority may issue a notice (in this Act referred to as an "enforcement notice") where it appears to them— **B.128**

- (a) that there has been a breach of planning control, and

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.

#### DEFINITIONS

- “breach of planning control”: ss.123, 277(1).
- “building”: s.277(1).
- “building or works”: s.277(1).
- “building operations”: ss.26, 277(1).
- “depositing of refuse or waste materials”: s.277(1).
- “development”: ss.26, 277(1).
- “development plan”: ss.24, 277(1).
- “enforcement notice”: ss.127, 277(1).
- “land”: s.277(1).
- “planning authority”: ss.1, 277(1).
- “replacement building”: subs. (6).

#### B.129.1

**B.129.2** GENERAL NOTE

This section provides for the contents of the enforcement notice as follows. Further details of the contents of an enforcement notice are prescribed in Enforcement of Control (No. 2) (Scotland) Regulations 1992 (S.I. 1992 No. 2086), regs. 3 and 4.

*Information relating to the breach.* The notice must contain the matters which appear to the planning authority to constitute the breach of planning control (subs. (1)(a)), and the paragraph of s.123(1) in which in their opinion the breach falls (subs. (1)(b)).

In order to prevent a notice being successfully challenged on an overly strict view of the amount of specification required of these matters, the obligation is to "state", not specify, and subs. (2) provides that it is sufficient for the notice to give sufficient details of such matters to enable the recipient to know what the matters are.

*Steps required.* The notice must specify the steps which the authority require to be taken, or activities which they require to be ceased (subs. (3)). The obligation to "specify" is higher than that to "state" under subs. (1). A notice lacking in specification is a nullity (e.g. *Metallic Protectives v. Secretary of State for the Environment* [1976] J.P.L. 166; *Tandridge District Council v. Verrachia* [1999] 3 W.L.R. 1090).

The steps must be wholly or partly in order to achieve the purposes set out in subs. (4). These purposes are to remedy the breach (subs. (4)(a)) or any injury caused by the breach (subs. (4)(b)). Examples are set out in subs. (5). "Under-enforcement" is permitted, and so long as the notice is complied with, planning permission is deemed to be granted (subs. (14)).

Further, where the notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may require construction of a replacement building (subs. (6)). The unauthorised demolition of a building may be the subject of an enforcement notice as demolition falls within the definition of "building or works" (s.277(1)). The authority must comply with the law regarding construction of buildings (subs. (7)(a)). There is provision for under-enforcement: the authority may under-enforce by permitting the replacement to differ from the demolished building (subs. (7)(b)), and so long as the replacement building is constructed in compliance with the notice, planning permission is deemed to be granted (subs. (14)).

*Effective date.* The notice takes effect from a date which must be specified in it or, if there is an appeal, on the withdrawal or termination of the appeal (subs. (8), s.131(3)).

There must also be specified in the notice a date for compliance, or different dates for compliance with different steps or activities (subs. (9), (10)).

**Variation and withdrawal of enforcement notice**

- B.130** 129.—(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.

**B.130.1** DEFINITIONS

"enforcement notice": ss.127, 277(1).

"planning authority": ss.1, 277(1).

**B.130.2** GENERAL NOTE

The planning authority has a discretion to withdraw, waive or relax an enforcement notice (subs. (1)), whether or not the notice has taken effect (subs. (2)). Accordingly, old notices no longer of relevance can be cleared off the enforcement register.



Notice of the exercise of such discretion must be given to the persons specified in subs.(3).  
The planning authority may in appropriate circumstances issue a fresh enforcement notice (subs.(4)).

### Appeal against enforcement notice

**130.**—(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 the Planning etc. (Scotland) Act 2006 (asp 17) Sch.1 para.1 (effective August 3, 2009: repeal has effect on August 3, 2009 as specified in SSI 2009/219 subject to transitional provisions and savings specified in SSI 2009/222 art.9 and art.15).]*
- <sup>2</sup>(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.

<sup>1</sup>(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.

### NOTES

<sup>1</sup> As amended by The Town and Country Planning (Electronic Communications) (Scotland) Order 2004 (2004/332), art.9.

<sup>2</sup> Words substituted by the Planning etc. (Scotland) Act 2006 (asp 17) Pt 10 s.54(6) (effective August 3, 2009: substitution has effect subject to transitional provisions and savings specified in SSI 2009/222 art.9 and art.15).

### DEFINITIONS

“breach of planning control”: ss.123, 277(1).

“enforcement notice”: ss.127, 277(1).

“planning permission”: ss.123(3), 277(1).

**B.131.1**

“open space”: s.277(1).  
 “planning authority”: ss.1, 277(1).  
 “prescribed”: s.277(1).

GENERAL NOTE

“Regulations”: see Enforcement of Control (No. 2) (Scotland) Regulations 1992 (SI 1992/2086).  
 Further provisions as to procedure are set out in Sch.4 (subs.(4)).  
 Provided the appellant or the authority follow procedures correctly (s.132(2)), they have a right to appear and be heard (subs.(2)).

B.132.2

**General provisions relating to determination of appeals**

**132.—(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. B.133

**(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.

DEFINITIONS

“enforcement notice”: ss.127, 277(1).

B.133.1

GENERAL NOTE

The Secretary of State has power to quash the enforcement notice (subs.(1)). He also has power to correct or vary it, so long as injustice is not caused to the appellant or planning authority (subs. (2)). The power to vary may be used, for example, to correct a defective notice (*Barn Properties v Secretary of State for Scotland*, 1996 S.L.T. 964 (Extra Division)) or where the steps specified in the notice go beyond what is necessary to remedy the breach of control (*Mansi v Elstree Rural District Council* (1964) 16 P. & C.R. 153; *South Ribble Borough Council v Secretary of State for the Environment* [1991] 1 P.L.R. 29).

He may dismiss or allow the appeal if the relevant parties fail to follow certain procedures (subs.(4)).

B.133.2

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

**133.—(1)** On the determination of an appeal under section 130, the Secretary of State may— B.134

- (a)–(c) [*Repealed by the Planning etc. (Scotland) Act 2006 (asp 17) Sch.1 para.1 (effective August 3, 2009: repeal has effect on August 3, 2009 as specified in SSI 2009/219 subject to transitional provisions and savings specified in SSI 2009/222 art.9 and art.15).*]  
 (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



**B.136.2 GENERAL NOTE**

This section allows the planning authority to ensure that the steps set out in the enforcement notice are complied with by itself entering the land and taking the steps (subs.(1)(a)), and recovering the expenses (subs.(1)(b)), including the authority's administration expenses (subs.(3)).

It is a criminal offence to wilfully obstruct such action (subs.(10)). Provision is made for the authority selling any materials removed and accounting to the owner for the proceeds (subs.(6) and (7)).

An owner of land who is being prevented by the occupier from carrying out work required by an enforcement notice may apply to the sheriff for authority to enter the land and carry out the work (subs.(5)).

The liability of trustees, agents, etc. to the authority is limited to the amount of the trust, etc. funds which they have or had in their hands (subs.(8)).

*Subs.(11)*

This subsection implements Recommendation 9 of the SLCR by providing for the compliance period in respect of each of ss.136, 140 and 141 to be the same.

**Offence where enforcement notice not complied with**

**B.137 136.—(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.

**B.137.1 DEFINITIONS**

"enforcement notice": ss.127, 277(1).

"land": s.277(1).

"owner": s.277(1).

- (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.

**B.137.3.1 NOTE**

<sup>1</sup>As inserted by the Planning etc. (Scotland) Act 2006 (asp 17) Pt 4 s.25(1) (effective December 12, 2008 for the purpose of enabling orders or regulations to be made; August 3, 2009 otherwise).

<sup>2</sup>The amount prescribed is £2,000, as specified by the Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009, SSI 2009 No.52 (effective August 3, 2009).

**B.137.3.2 DEFINITIONS**

"breach of condition notice": ss.145 and 277(1) of the 1997 Act.

"breach of planning control": ss.123 and 277(1) of the 1997 Act.

"enforcement notice": ss.127 and 277(1) of the 1997 Act.

"fixed penalty notice": s.145A(4) of the 1997 Act inserted by s.25 of the 2006 Act.

"planning authority": ss.1 and 277(1) of the 1997 Act.

**B.137.3.3 GENERAL NOTE**

Section 25 (1) of the 2006 Act inserts s.136A into the 1997 Act, providing for the issuing of fixed penalty notices. This provision has its origins in the Stage 1 Report of the Communities Committee. The committee recognised the problems that planning authorities face in dealing effectively with developers who consistently breach planning control and recommended the introduction of a system of fixed penalty notices (Communities Committee 5th Report, 2006, SP Paper 552, para.125).

A planning authority are given power to serve a fixed penalty notice where someone is in breach of the requirements of an enforcement notice. The fixed penalty notice is to specify the step(s) set out in the enforcement notice which have not been taken or the activity(ies) which has not ceased. A fixed penalty notice offers the recipient the opportunity of discharging any liability to conviction for an offence under s.136 of the 1997 Act by paying a penalty of a prescribed amount within 30 days. As an incentive for prompt payment, the amount is reduced by 25 per cent if paid within 15 days. Any payment received is retained by the planning authority. In the event of non-payment, a prosecution for an offence under s.136 may ensue. A fixed penalty notice must be served within the six months immediately following the date for compliance with the enforcement notice.

In prescribing an amount for the purposes of this section, the Scottish Ministers may make different provision for different cases or different classes of case. During the debate on Stage 3 of the Bill, the Deputy Minister for Communities, Johann Lamont, in response to concern that a fixed penalty would be treated by some as little more than a business overhead, stated that it was the Executive's intention to introduce a scale of fixed penalties that reflects a developer's previous track record in complying with planning control (Official Report, November 16, 2006, col.29363). The amount of the fixed penalty has been prescribed in the Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009 (SSI 2009/52) which took effect on August 3, 2009.

**Effect of planning permission etc. on enforcement or breach of condition notice**

- B.138** 137.—(1) Where, after the service of—
- (a) a copy of an enforcement notice, or

(b) a breach of condition notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

(2) Where, after a breach of condition notice has been served, any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.

(3) The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.

## DEFINITIONS

“breach of condition notice”: ss.145, 277(1).

“development”: ss.26, 277(1).

“enforcement notice”: ss.127, 277(1).

B.138.1

## GENERAL NOTE

The Secretary of State has power to grant planning permission in determining an appeal. If he does so, the notice ceases to have effect as far as inconsistent with the provision (subs. (1)). The notice remains otherwise in force (e.g. *Havering London Borough v Secretary of State for the Environment* [1983] J.P.L. 240).

Similar provision is made by subs. (2) in respect of the Secretary of State's power to discharge a condition.

Subsection (3) provides that subs. (1) and (2) do not have retrospective effect in respect of failure to comply with the notice.

B.138.2

**Enforcement notice to have effect against subsequent development**

**138.**—(1) Compliance with an enforcement notice, whether in respect of— **B.139**

(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 level 5 on the standard scale.

## DEFINITIONS

“building”: s.277(1).

“building or works”: s.277(1).

“development”: s.277(1) and s.26.

“enforcement notice”: s.277(1) and s.127.

“land”: s.277(1).

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