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: 13/00093/ENOTH3

To: **MARGERY RAY OSBORNE**
Brandon Grove
119 West Princes Street
Helensburgh
G84 8EX

And

THOMAS HENRY LUIGI PATERSON
Cartref
Back Road
Clynder
G84 0QQ

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 adjacent to 12 Cumberland Avenue Helensburgh on land 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:

   Unauthorised partial change of use of the land for the storage of builders and other materials.

4. **REASONS FOR ISSUING THIS NOTICE**

The storage of builder's and other imported materials is a type of use inappropriate on a designated amenity open space. The retention of these materials also undermines the Council's objectives to seek to restore the amenity value of the site caused by the unauthorised felling of protected trees on land subject to a Tree Preservation Order and where a Tree Replanting Notice has been upheld by a Reporter at appeal (DPEA Reference TENA-130-2000). The retention of the materials would therefore be contrary to Policy LP ENV 1 of the adopted local plan and undermine the Councils objectives of restoring the appearance and associated amenity value of the land to the locality.

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

1. Remove all materials stored on the land as set out at Schedule 1 to this notice from the land as outlined in red on the attached plan.

Time period for compliance: **28 days from the date the notice takes effect**.

6. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on 24 April 2014 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 before **24 April 2014.** Schedule 2 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 24 April 2014 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: 26 March 2014

Angus J. Gilmour.

Head of Planning
Kilmory
Lochgilphead

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

SCHEDULE 1
MATERIALS TO BE REMOVED FROM THE SITE

Scaffolding and related Materials

1. Scaffolding poles
2. Scaffolding levelling feet
3. Scaffolding platform boards
4. Scaffolding kickboards
5. Timbers used to support

Fencing and related materials

6. Herras fencing panels
7. Herras fencing blocks
8. Herras fencing clips

Timber and Related Materials

9. Planks of cut timber
10. Trestles and stands
11. Plywood sheets
12. Pallets
13. Chipboard floorboards
14. Burnt wood and cut timber
15. All and any other finished/manufactured timber not originating on the site

Containers

16. Plastic drums
17. Metal drums
18. Skip and contents
19. Various plastic buckets and containers

Bricks, Blocks, Stone, Slate and Roof Tiles

20. Masonry blocks
21. Concrete blocks
22. Concrete paving slabs
23. Air bricks
24. Air brick ducts/sleeves
25. Slates
26. Roofing tiles
27. Engineered joists
28. Facing bricks
29. Engineering bricks

Other Materials

30. Ladders
31. Various diameters and lengths of plastic and other piping and hoses
32. Road traffic cones
33. Barrier tape
34. Tarpaulins
35. Plastic drinks bottles

36. Nylon rope
37. builders bags
38. Cement mixer stand
39. Lifting straps
40. Polythene sheeting
41. Wheelbarrow(s)
42. Soil Bund

and any other formed or finished materials or structures imported and stored on the site which do not originate from the site as indigenous materials.

SCHEDULE 2
EXPLANATORY NOTE FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE

RELEVENT 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 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 Government before 24 April 2014**.** The Scottish Government 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.

NOTE: The fee payable for an appeal against an enforcement notice is twice the fee that would normally be paid for a planning application for the same type of development, in accordance with the provisions of the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations.

PENALTIES FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

Section 136A of The Planning etc. (Scotland) Act 2006 provides the Planning Authority with power to issue a fixed penalty notice for breaching the terms of an enforcement notice. There is no right of appeal against a fixed penalty notice. The Town & Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2008 sets out that the penalty for breach of an enforcement notice is £2000. Payment of the penalty does not discharge the requirement to comply with the terms of the enforcement notice, while prosecution proceedings can be taken where a fixed penalty notice is unpaid.

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. Furthermore, 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.

Enforcement Sections of the Town & Country Planning (Scotland) Act 1997

Enforcement notices

Issue of enforcement notice.

127. - (1) The planning authority may issue a notice (in this Act referred Act 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.

Contents and effect of notice.

128. - (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.

Variation and withdrawal of enforcement notice.

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.

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) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

(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 either-

(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.

(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.

Appeals: supplementary provisions.

131. - (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) Subject to section 132(3), the Secretary of State shall, if either the appellant or the planning authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(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.

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.

(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.

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-

(a) grant planning permission in respect of any of the matters stated in the enforcement notice as constituting a breach of planning control or any of those matters so far as relating to part of the land to which the notice relates,

(b) discharge any condition or limitation subject to which planning permission was granted,

(c) grant planning permission for such other development on the land to which the enforcement notice relates as appears to him to be appropriate, and

(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) In considering whether to grant planning permission under subsection (1), the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.

(5) The planning permission which may be granted under subsection (1) is any planning permission which might be granted on an application under Part III.

(6) Where the Secretary of State discharges a condition or limitation under subsection (1), he may substitute for it any other condition or limitation.

(7) Where an appeal against an enforcement notice is brought under section 130, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control.

(8) Where-

(a) the statement under section 130(3) specifies the ground mentioned in subsection (1)(a) of that section,

(b) any fee is payable under regulations made by virtue of section 252 in respect of the application deemed to be made by virtue of the appeal, and

(c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

(9) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(10) In relation to a grant of planning permission or a determination under subsection (1) the Secretary of State's decision shall be final.

(11) For the purposes of section 36 the decision shall be

treated as having been given by the Secretary of State in dealing with an application for planning permission made to the planning authority.

Validity of enforcement notices.

134. 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

Scaffolding and related Materials

1. Scaffolding poles
2. Scaffolding levelling feet
3. Scaffolding platform boards
4. Scaffolding kickboards
5. Timbers used to support

Fencing and related materials

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7. Herras fencing blocks
8. Herras fencing clips

Timber and Related Materials

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Containers

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Bricks, Blocks, Stone, Slate and Roof Tiles

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26. Slates
27. Roofing tiles
28. Engineered i joists
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Other Materials

31. Ladders
32. Various diameters and lengths of plastic and other piping
33. Road traffic cones
34. Barrier tape
35. Tarpaulins
36. Plastic drinks bottles
37. Nylon rope
38. builders bags
39. Cement mixer stand
40. Lifting straps
41. Polythene sheeting
42. Wheelbarrow(s)
43. Hosepipes
44. Soil Bund

And any other formed or finished materials or structures imported and stored on the site which would not normally be found within an open space woodland setting .

REGISTERS OF SCOTLAND

Registers Direct - Land Register: View Title DMB84762

Search Summary

Date:	24/03/2014	**Time:**	17:06:17
Search No.:	2014-00909100	**User Reference:**	

Sasine Search Sheet:

A. PROPERTY SECTION

Title Number:	DMB84762	**Date of First Registration:**	17/11/2004
Date Title Sheet updated to:	24/06/2011	**Date Land Certificate updated to:**	24/06/2011
Hectarage Code:	0	**Interest:**	PROPRIETOR
Map Reference:	NS2883SW		

Description:
Subjects lying to the south of CUMBERLAND AVENUE, HELENSBURGH G84 8QG edged red on the Title Plan.

This is a Quick Copy which reflects the position at the date the Title Sheet was last updated.
It does not have the evidential status of an Office Copy.

B. PROPRIETORSHIP SECTION

Title Number: DMB84762

Entry Number	Date of Registration	Proprietor	Consideration	Date of Entry
1	24/06/2011	MARGERY RAY OSBORNE 5 Templeton Mews, 51 John Street, Helensburgh, G84 8XN and THOMAS HENRY LUIGI PATERSON Cartref, Back Road, Clynder, G84 0QQ equally between them.	£20000	23/06/2011

This is a Quick Copy which reflects the position at the date the Title Sheet was last updated.
It does not have the evidential status of an Office Copy.

C. CHARGES SECTION

Title Number:	DMB84762

There are no entries.

This is a Quick Copy which reflects the position at the date the Title Sheet was last updated.

It does not have the evidential status of an Office Copy.

D. BURDENS SECTION

Title Number:	DMB84762	**Number of Burdens:**	2

Entry Number	**Burden Preamble**
1	Disposition by Secretary of State for Defence to Margery Osborne and another and their executors and assignees, registered 17 Nov. 2004, of the subjects of which the subjects in this Title form part, contains inter alia the following burdens
2	Tree Preservation Order No. 16/04 (under Section 160, 161 AND 163 of the Town and Country Planning (Scotland) Act 1997) by Argyll and Bute Council effective on 28 Oct. 2004, registered 26 Apr. 2005, contains conditions affecting trees or groups of trees (including prohibitions against the cutting down, topping, lopping, wilful destruction &c thereof) situated on subjects of which the subjects in this Title form part.

Entry Number	**Burden Detail**
1	Disposition by Secretary of State for Defence to Margery Osborne and another and their executors and assignees, registered 17 Nov. 2004, of the subjects of which the subjects in this Title form part, contains inter alia the following burdens: My said disponees and their foresaids shall at all time coming maintain the grass verges bounding Cumberland Avenue, Helensburgh tinted brown on the Title Plan.

Entry Number	**Burden Detail**
2	Tree Preservation Order No. 16/04 (under Section 160, 161 AND 163 of the Town and Country Planning (Scotland) Act 1997) by Argyll and Bute Council effective on 28 Oct. 2004, registered 26 Apr. 2005, contains conditions affecting trees or groups of trees (including prohibitions against the cutting down, topping, lopping, wilful destruction &c thereof) situated on subjects of which the subjects in this Title form part.

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LAND REGISTER OF SCOTLAND	Officer's ID / Date	TITLE NUMBER
	4672 8/8/2011	**DMB84762**
N ORDNANCE SURVEY NATIONAL GRID REFERENCE		70m
NS2882NW NS2883SW		Survey Scale 1/1250

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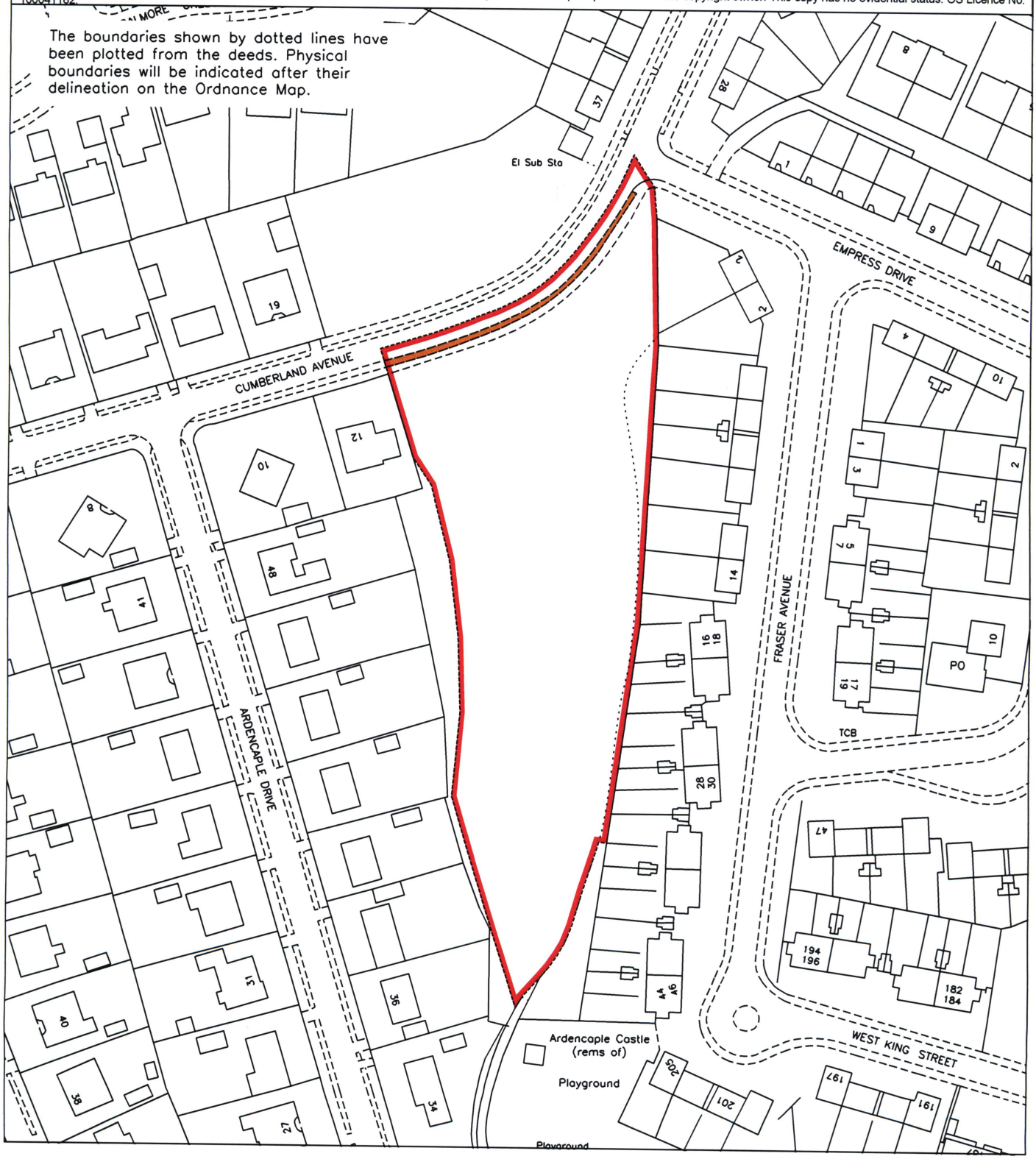
The boundaries shown by dotted lines have been plotted from the deeds. Physical boundaries will be indicated after their delineation on the Ordnance Map.



REGISTERS OF SCOTLAND

Registers Direct - Land Register: Application Title Number Search Results

Search Summary

User Id	monles	**User Reference**	
Date Time	24/03/2014 17:07:22	**Search No.**	2014-00909116
Search Criteria	COUNTY=ARG; NUMBER=ARG84762		

Until registration is complete any application is subject to withdrawal, cancellation or amendment.

No Search Results found

This is an electronic Watermarked Copy