



Decision by John H Martin, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-130-2030
- Site address: Land south of Castleton House, Castleton, By Lochgilphead, PA31 8RU
- Appeal by Town Centre Estates Ltd against the enforcement notice dated 4 May 2017 served by Argyll and Bute Council
- The alleged breach of planning control: Engineering works/operations to form: (i) vehicular access (A on attached Plan 2); (ii) an access track (B on attached plan) and; (iii) a platform (C on attached plan)
- Date of site visit by Reporter: 24 July 2017

Date of appeal decision: 8 August 2017

Decision

1. I uphold the enforcement notice dated 4 May 2017, but allow the appeal to the extent that I vary the terms of the notice by: (a) deleting the words “to a minimum height of 2.5 metres” in paragraph 5(i) of the notice, and replacing them with the words “to a minimum height of 1.0 metre” and; (b) deleting paragraphs 5(ii) and 5(iii) in their entirety. Subject to any application to the Court of Session, the enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.

Reasoning

2. The appeal against the enforcement notice was made on the following grounds as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997 that: (b) the matters stated in the notice to involve a breach of planning control have not occurred; (c) the matters stated in the notice (if they occurred) do not constitute a breach of planning control; (d) at the date the notice was issued, no enforcement action could be taken in relation to the matters stated in the notice to involve a breach of planning control and; (f) the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or injury to amenity caused by that breach.

3. The appeal site is an area of scrubland with young deciduous trees along the western edge of Loch Fyne, defined by the track down to the former Boathouse to the



north-east and an established track to the north-west serving Shore Cottage and Pier Cottage. This track is flanked by a rock outcrop on its south-eastern side, through which the alleged access has been taken although Mr Brock, for the appellants, pointed out at the site inspection that there had always been a path down to the cottage, known as Fisherman's Cottage, at that point. From an OS Extract submitted by Miss Catherine McArthur, it seems that there was once a cottage on the site, possibly that occupied by Miss McArthur's great-aunt Miss MacTavish and/or by Mr MacCallum a crofter and fisherman, as claimed by the appellants, but this has since been demolished so no residential use remains. In the appellant's final response, it is clear that the previous application for a new dwellinghouse (13/01582/PP) on that site was to replace that cottage.

4. However, I am less convinced that the 1905 photo of one of the cottages, also submitted by Miss McArthur, is of that cottage because it appears very similar to Shore Cottage in the council's photographs (001 & 003 - Before) and also in its relationship to Heather Island. Even so, the council's undated aerial photograph (No.5 on p.6), also submitted by the appellants in their final submissions, clearly shows what appear to be foundations of a building in the same location served by an access off the Boat House track, but does not show any existing track along the route of the unauthorised track. However, the evidence of Mr Dugald Campbell that a "*path*" led down to the former cottage from "*an entrance to a cliff face overlooking the bay*" supports the appellants' view.

5. In any event, the council's photographs of the new track (002 & 004 - After) clearly indicate its prominent route through the wooded hillside above the foreshore which led to the council's reason for issuing the notice, because the works create a visual impact detrimental to the character and appearance on the Countryside Zone, contrary to policy 9 of the adopted Argyll and Bute Local Development Plan.

6. The appellant's work to reinforce the shoreline against erosion in 2013, which involved the placing of large boulders along the loch edge, has been accepted by the council as not being unauthorised and has therefore not been included in this enforcement notice. Even so, on the aerial photograph, with the existing Boathouse track and apparent access to Fisherman's Cottage close to the shoreline, the need for the improved track for this purpose is not clear. In addition, although the council's photograph (003 – After) shows the clearance of the timber above the site, as the appellants state that no trees were felled to improve the track, its relationship to any forestry activities appears to be minimal.

The appeal on ground (b)

7. To succeed on this ground it has to be shown that the alleged works have not taken place. During the site inspection, it was apparent that the access (A) (Notice Plan 2) off the established track to Shore Cottage has been formed through the rock outcrop, as has the curved access track (B) within the site and the turning head at the end, described in the notice as a "*platform*" (C), which the appellants claim existed previously despite it not appearing on any of the submitted old maps or photographs. The track has been formed in rolled crushed stone to a full vehicle width with levels made up on the down side to form an embankment, while the platform has been crudely formed and levelled using similar materials, although weeds and other plant life breaking through the stone surface have minimised its visual impact to a degree. As a result, there can be no doubt that the alleged works have occurred so the appeal on ground (b) must fail.

The appeal on ground (c)

8. The appellants' claim that, as they were not the owners of the land when the works were carried out, the enforcement notice should have been directed at the previous owners, Mayfair Properties Limited, who were originally served with a Planning Contravention Notice (PCN) dated 7 October 2016 for the same works. However, where unauthorised works have been carried out on land that is subsequently sold, the new owner would inherit those works, and there is nothing to prevent the council from serving an enforcement notice on the owner or occupier of the land at the date the notice is served, provided the council considers it expedient to do so in the public interest. In this case, it was found to be detrimental to the character and appearance of the Countryside Development Zone which it would be in the public interest to protect. In any event, the appellants did not appeal on ground (e) that the enforcement notice was incorrectly served.

9. The appellants also claim that the works carried out benefit from permitted development rights under Class 22(b) - Forestry Buildings and Operations in Part 7 to the Town and Country Planning (General Permitted Development)(Scotland) Order 1992(GPDO) because they involved the improvement of an existing forestry track across the site. Similarly, the previous owners claim, in their response to the PCN, that the track could be considered to fall under Class 27 in Part 9 of the GPDO as an improvement to a private road or way. As I have found in paragraph 6, I am not convinced of the existence of a forestry track across the site, other than possibly to serve the appellants' proposed intention to plant further trees on the site, so I don't find any case for permitted development rights under Class 22(b) of the GPDO.

10. Notwithstanding the existing path down to the cottage recalled by Mr Campbell, it does not appear on any of the submitted OS maps nor can it be seen on the council's photographs (001 & 003-Before) or on the aerial photograph (No.5 p.6), where the other established tracks are clearly visible. In their final submission, the appellants include a marked up aerial photograph showing where the cottage and paths were located, and their routes were shown to me on site. This suggests that, at best, Mr Campbell's "path" could only have been a pedestrian path to the former cottage, similar to the overgrown path to the well that I was shown at the site inspection. While that path could have been maintained and improved under Class 27 of the GPDO, despite the appellants' claim that it was only widened by 0.5 metres, it would not appear to have been a "private road or way" of sufficient substance to allow a new vehicular track to benefit from that permitted development right. I therefore conclude that, in the absence of any permitted development rights to justify their retention, the alleged access, track and platform are unauthorised and, thereby, constitute a breach of planning control. The appeal on ground (c) also fails.

The appeal on ground (d)

11. Under section 124(1) of the Town and Country Planning (Scotland) Act 1997, no enforcement action may be taken against unauthorised engineering operations after the end of a period of 4 years beginning with the date on which they were substantially completed. The appellant has submitted evidence of an invoice for the hire of excavators and rock breakers for work undertaken "for Cottage 2" on July 2006, and an advertisement in The Oban Times concerning the coast protection work dated 5 November 2009, which both appear to predate the alleged operations and to refer to other locations outwith the

notice plan area. In their response to the PCN dated 28 October 2016, the former owner's solicitors, Morton Fraser, state that the works to widen the track had taken place in April/May 2013 primarily to enable large machinery down to the lower level to undertake reinforcement works to the shoreline while, from the submitted receipt and newspaper advertisement, these appear to have been carried out some years before. Although I appreciate that this type of work is on-going, the submitted evidence does not appear to relate to the unauthorised operations.

12. However, I am surprised that the former owners constructed an expensive and permanent access track and turning head, some distance back from the edge of the loch, when there was a well established track down to the Boathouse, off which there appears to have been an access to the former Fisherman's Cottage site much closer to the shore, as shown on the council's aerial photograph (No.5 p.6).

13. Even so, under section 124(1) of the Act, the test is whether or not the engineering operations were "substantially complete" over 4 years prior to the date that the enforcement notice was issued, which requires an assessment of fact and degree. Although the submitted receipt for the hire of equipment suggests that work was undertaken "for Cottage 2" in 2006, this does not directly relate to the appeal access, track and platform that, according to paragraph 2.3.1.2 of the previous owners' response to the PCN, were carried out in April/May 2013 on or about 4 years prior to the enforcement notice date.

14. The submitted photographs dated 1 November 2013 show a track of rolled, crushed stone much as is evident on site today but without the weed growth which suggests it had recently been laid. If this was truly intended only to serve the purpose of reinforcing the shoreline, it would probably have been a temporary track simply to serve that short term need, but it appears to be a more permanent access designed with a turning head in close proximity to the site of the proposed new dwelling. While there is no evidence to indicate that this was its intended purpose, it simply comprises a crushed stone base with no kerbs, drainage or finishes so, as the enforcement notice was served on or about the same time as the works were carried out, it would suggest that the operations were terminated when enforcement action was taken. I am therefore led to the conclusion that the access, track and "platform" are too substantial to be regarded as temporary works and that, in their present condition, cannot be regarded as having been substantially completed on or before 4 May 2017 when the notice was served. For those reasons the appeal on ground (d) also fails.

The appeal on ground (f)

15. To succeed on this ground, the appellants have to show that the steps required to be taken by the enforcement notice exceed what is necessary to remedy any breach of planning control or any injury to amenity. As I have already found in paragraph 8, the construction of an access and wide track through the wooded hillside above the shoreline is detrimental to the character and appearance of the Countryside Development Zone and, thereby, causes injury to the amenity of the area. In paragraph 10, I also found that the unauthorised operations constitute a breach of planning control. Although the appellants claim that the requirements of the notice substantially exceed what is necessary to remedy the breach or the injury to amenity, the steps set out in paragraph 5 of the notice do not expect the new track and platform to be removed, which could have been required and

therefore amounts to under enforcement. Instead, the steps require the access to be blocked off with a stone barrier 2.5 metres high to prevent vehicles accessing the track and for the track, embankment and platform surfaces to be spread with 150mm of topsoil to enable them to naturally regenerate.

16. However, I consider that the erection of a 2.5 metre high stone barrier exceeds what is necessary to prevent vehicles accessing the track particularly as, by exceeding 2.0 metres in height, it would probably require planning permission in its own right. On the other hand, a 1.0 metre high stone barrier should provide enough discouragement to drivers to prevent them trying to use the access. While weeds and other plant life have already taken root in the crushed stone surface, I acknowledge that the laying of topsoil could encourage faster regrowth to enable the natural character of the hillside to recover more quickly. Nevertheless, the scrubland character of the site is already re-establishing itself around and over the unauthorised track and “platform” so, with the access closed by a stone barrier and the track unused, this natural growth should soon disguise the unauthorised operations sufficiently for the character and appearance of the Countryside Development Zone to be restored. As a result, I find that the laying of topsoil would simply slow down the natural regeneration of the scrubland and is therefore not necessary.

17. For the above reasons, I conclude that the steps required exceed what is necessary to remedy the breach and injury to amenity, and I will vary the terms of the notice accordingly. To that extent only, the appeal on ground (f) succeeds.

Other matters

18. In their letter with the former owners’ response to the PCN, their solicitors refer to the judicial review sought against the delegated decision to refuse planning permission for a new dwelling (13/01582/PP) dated 15 April 2016. They consider that it was inappropriate for the council to proceed with a planning contravention notice while a judicial review in the Court of Session was on-going. However, although I understand from the appellants’ final submissions that the judicial review found in their favour, it is not before me in this appeal, particularly as it concerns an application for a new dwelling on a different part of the site and not the unauthorised operations referred to in the enforcement notice.

Conclusions

19. My overall conclusions are that: on ground (b), the matters stated in the notice to involve a breach of planning control have occurred; on ground (c), the matters stated in the notice do constitute a breach of planning control; on ground (d), as the unauthorised operations were not substantially completed on the date the notice was served, enforcement action could be taken in relation to the matters stated to involve a breach of planning control and; on ground (f), the requirement to erect a 2.5 metres high stone barrier across the access exceeds what is necessary to prevent vehicles from accessing the track, and that there is no need to spread topsoil to encourage regeneration that is already under way. Subject to those variations in its terms, I shall uphold the notice.

John H Martin

Reporter

**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: 16/00069/ENOTH2

To: Company Secretary
Town Centre Estates Limited
Third Floor
130 Wood Street
London
EC2V 6DL

Steven Mark Whant and Suzanne Myers
The Barns
Chivery Hall Farm
Chivery
Buckinghamshire
HP23 6LD

Steven Mark Whant and Suzanne Myers
Castleton House
Castleton
Argyll
PA31 8RU

ISSUED BY: ARGYLL AND BUTE COUNCIL, KILMORY, LOCHGILPHEAD

1. **THIS IS A FORMAL NOTICE** which is issued by Argyll and Bute Council, as Planning Authority, 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 ('the Act') , at the Land Affected hereinafter defined. 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

That plot or area of ground **to the south of Castleton House, Castleton, Lochgilphead, Argyll** shown edged red on the attached plan 1 (hereinafter referred to as 'The Land Affected')

3. THE BREACH OF PLANNING CONTROL ALLEGED

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

Engineering works and/or other operations to;

- i. form a vehicular access (identified A on attached Plan 2)
- ii. form an access track (identified B on attached Plan 2)
- iii. form a platform (identified C on attached Plan 2)

in, over, and/or under the Land Affected

4. REASONS FOR ISSUING THIS NOTICE

Operations have been undertaken to form a vehicular access, form an access track, and form a platform in, over, and/or under the Land Affected. It is considered by the Council that the operations are of a type that would usually be undertaken by or under the supervision of an engineer or which would have required engineering skills irrespective of whether an engineer was actually involved. The operations undertaken are of a positive, constructive and identifiable character which result in the physical alteration of the Land Affected. The operations undertaken are therefore considered by the Council to be engineering operations and/or other operations constituting 'development' as defined by Section 26(1) of the Act. The development has been carried out without the required planning permission and constituted a breach of planning control.

In terms of the adopted Argyll and Bute Local Development Plan (2015), the Land Affected site lies within the 'Countryside' development management zone delineated by the 'Argyll and Bute Local Development Plan' (2015) and is subject to the effect of policy LDP DM1 of the Development Plan. Policy LDP DM1 provides that encouragement shall be given to sustainable forms of development within the Countryside Zone up to small scale on appropriate infill, rounding off and redevelopment sites and changes of use of existing buildings. The proposal does not satisfy any of the categories of development listed as defined in the glossary to the plan. It does not therefore benefit from the encouragement given by LDP DM1. The development does not comply with the adopted settlement strategy as given expression by the delineation of the development management zones in the plan.

Policy LDP 9 seeks developers to produce and execute a high standard of appropriate design and ensure that development is sited and positioned so as to pay regard to the context in which it is located. It is considered by the Council that the unauthorised development is not integrated with its setting and creates a visual impact which is detrimental to the character and appearance of the Countryside development management zone. It is therefore contrary to Policy LDP 9.

It is considered by Argyll and Bute Council that the development undertaken in breach of planning control has been undertaken in anticipation of prospective development of the Land Affected as a housing site, for which planning permission has subsequently been sought, refused and dismissed on appeal.

In the absence of the suitability of the land for development purposes, the unauthorised works are unnecessary. The opening up of the Land Affected to vehicles changes the very nature and character of the Land Affected to the detriment of the Countryside setting. As the works impact adversely upon the amenity of the area appropriate remediation works are required in order to remedy that adverse impact.

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.

5. WHAT YOU ARE REQUIRED TO DO

You are required to;

- i. Form a stone barrier across the vehicular access at the location marked A on the attached Plan 2 to a minimum height of 2.5 metres so as to prevent vehicles from accessing the access track.
- ii. Cover the entire surface of the access track (marked B on the attached Plan 2), to including the exposed embankment, with top soil of a minimum depth of 150mm to allow the track and exposed embankment to naturally regenerate.
- iii. Cover the entire surface of the platform area (marked C on the attached Plan 2) formed from the excavated rock with top soil of a minimum depth of 150mm to allow the platform to naturally regenerate

Time period for compliance: **6 months from the date this notice takes effect.**

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on **6th June 2017** subject to section 131(3) of the Act which provides that where an appeal is made to the Scottish Government before the date this notice takes effect that this notice shall be of no effect pending the final determination or the withdrawal of the appeal

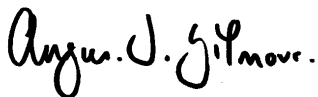
7. YOUR RIGHT OF APPEAL

You can appeal against this notice, but your appeal must be received or posted in time to be received by the Scottish Government before **6th June 2017** 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 **6th June 2017** 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: 4th May 2017



Head of Planning and Regulatory Services
Kilmory
Lochgilphead

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

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

RELEVANT LEGISLATION

RELEVANT LEGISLATION

A summary of Sections 127 to 134 of the Town and Country Planning (Scotland) Act 1997 (as amended) are 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 **6th June 2017**. 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.

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 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 NOTICE

Section 136A of the 2006 Act amended the 1997 Act to introduce a new planning enforcement power enabling planning authorities to issue a fixed penalty notice (FPN) as an alternative to prosecution where a person fails to comply with the terms of an enforcement notice.

Failure to comply with this notice may result in a fixed penalty notice being issued, with a fine of £2000 in respect of a breach of an enforcement notice. Please note that while payment of this fine prevents future prosecution this does not remove your responsibility to comply with the terms of this notice and may, as a result, instigate the undertaking of further planning enforcement proceedings.

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

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-

- (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-

- (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.

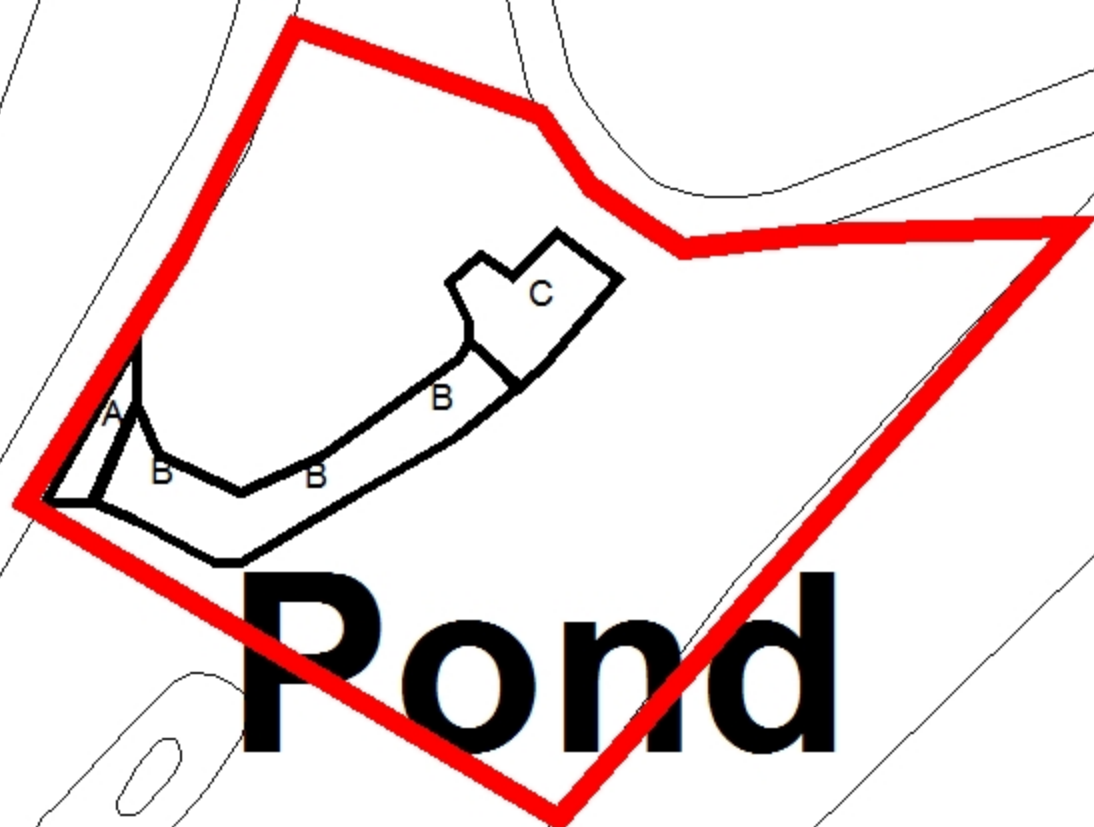
(10) In relation to a grant of planning permission or a determination under subsection (1) the Secretary of State's decision shall be final.

(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

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**Location Plan Relative to Enforcement Ref.
16/00069/ENOTH2 - Unauthorised engineering works to
form access, track and platform - PLAN B**

Date: 26.04.17

Drawn By: KMK

Scale: 1:650



