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## **NON COMPLIANCE WITH SECTION 179 NOTICE (LAND ADVERSLEY AFFECTING AMENITY OF A NEIGHBOURHOOD) AT LAND 25M WEST OF LUGTON BRAE (THE FORMER LUGTON INN SITE), OLD DALKEITH ROAD, DALKEITH**

Report by Chief Officer Place

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### **1 REPORT SUMMARY AND RECOMMENDATION**

- 1.1 **This report relates to the non-compliance with the requirements of a notice served by the Council under Section 179 (land adversely affecting amenity of a neighbourhood) of the Town and Country Planning (Scotland) Act 1997 as amended, on land 25m west of Lugton Brae (the former Lugton Inn site), Old Dalkeith Road, Dalkeith. The Section 179 (S179) notice required the owner of the land to remove waste and debris and to remove, replace and re-instate both collapsed and damaged sections of heras fencing at the site. The notice was served on 31 March 2022 and has not been the subject of an appeal, nor has it been complied with.**
- 1.2 **This report recommends that the Committee provides authorisation to take 'Direct Action' to remedy the non-compliance with the S179 notice requirements. This is namely; to engage contractors to clear the deposited waste and debris and to reinstate the heras fencing and then charge the owner of the land the costs and expenses for doing so.**

### **2 BACKGROUND**

- 2.1 **If it appears to a planning authority that the amenity of any part of their district, or an adjoining district, is adversely affected by the condition of any land in their district they may serve on the owner, lessee and occupier of the land a notice under section 179 (land adversely affecting amenity of a neighbourhood) of the Town and Country Planning (Scotland) Act 1997 as amended. A S179 notice sets out the steps to be taken to abate the specified adverse effect and it also sets a time period for the required steps to be taken.**
- 2.2 **The land subject to the issued S179 notice (the subject of this report) is vacant, the former Lugton Inn buildings that previously occupied the site were demolished a number of years ago. The site occupies a**

prominent location on one of the principal vehicular and pedestrian entry points into Dalkeith (Old Dalkeith Road) and is located within the Dalkeith House and Park Conservation Area. Furthermore, there are residential properties at Lugton Brae and Old Dalkeith Road directly overlooking the site. There are attractive grassed and woodland areas opposite the frontage of the land and woodland to the west.

- 2.3 The land contains a variety of items of waste and general debris. These items include waste-wood, tyres, litter, lumps of tarmac, damaged heras fencing sections, a defunct 'For Sale' sign and scrap metal (see images in Appendix B). These items are particularly prevalent alongside its eastern boundary and at the front of the land. Given all of these considerations, the planning authority considered that the presence of the various items of waste and general debris on the land has an adverse effect on the amenity of the surrounding area.
- 2.4 Over a sustained period of time officers from the Council have sought to engage with the landowner to secure the remediation of the adverse state of this land by informal means. However, by early 2022 it was evident that the landowner was not going to voluntarily take the steps necessary for the condition of the land to be remedied. Therefore on 31 March 2022 a notice pursuant to S179 of the Act was served on the landowner. The notice came into effect on 30 April 2022 and required compliance in accordance with the identified works as set out below by 31 May 2022. A copy of the S179 notice is attached as Appendix A. The steps required to be taken by the landowner are as follows:
- (1) *Remove all items of waste and general debris from the surface of the land. These items include all waste-wood, tyres, litter, lumps of tarmac, a defunct 'For Sale' sign and scrap.*
  - (2) *Remove, replace and re-instate both collapsed/damaged sections of heras fencing located at the eastern boundary of the land.*
- 2.5 It has almost been six months since compliance with the notice was required, however no steps have been taken by the landowner/s to comply with the notice. It is worth noting that non-compliance with an S179 notice is not an offence that can be reported to the Procurator Fiscal. There is also a right of appeal to the Scottish Ministers against the service of a S179 notice, however in this instance the landowner chose not to exercise their right of appeal.
- 2.6 Without any additional action taken by the Council, it is considered that the condition of the land, which is injurious to the amenity of the area, will not be remediated.

### **3 DIRECT ACTION**

- 3.1 In the event of failure to comply with a S179 notice, Midlothian Council has powers to authorise direct action ("Direct Action") under Section 135 of the Town and Country Planning (Scotland) Act 1997. The

Council may also recover the expenses in taking that action. In this case that would involve engaging contractors to carry out the works set out in the notice (see paragraph 2.4 of this report).

- 3.2 Based on an 'in house' costing exercise the works to carry out the outstanding requirements of the S179 notice would be an estimated £3,000. Council officers would be required to provide at least 28 days advance notification of intention to the landowner/s to carry out the identified works.
- 3.3 Council officers would seek to recover the financial costs of taking Direct Action from the landowner. These expenses would include: the expenses reasonably incurred in taking the action; any administrative costs reasonably incurred in recovering these expenses and interest charges arising from the date when the works are invoiced and the date when the total amount is paid by the landowner.
- 3.4 There is a risk that the Council would not be reimbursed for the costs involved in taking Direct Action. Should these amounts remain outstanding a 'Notice of Liability' could be registered with the Land Register of Scotland against the title of the land. That would prevent the property / land being sold at any point in the future, without any outstanding monies being paid. That liability would remain with the current owner.

## **CONCLUSION**

- 4.1 It is considered that the only likely means of securing compliance with the S179 notice in this particular case is if the Council takes Direct Action. Not taking action could lead to the appearance of the site deteriorating further to the continued detriment to local amenity. Furthermore, not taking action would also undermine the integrity and credibility of the planning system and public trust in its outcomes.

## **5 RECOMMENDATION**

- 5.1 It is recommended that the Committee:
  - a) Note the contents of this report; and
  - b) Instruct Council officers to take Direct Action to remedy the outstanding S179 notice requirements and recover the associated costs (an estimated £3,000).

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 11 November 2022  
**Contact Person:** Matthew Atkins, Lead Officer Planning Obligations  
matthew.atkins@midlothian.gov.uk

**IMPORTANT  
THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**Town & Country Planning (Scotland) Act 1997, as amended by  
the Planning Etc. (Scotland) Act 2006**

**LAND ADVERSELY AFFECTING AMENITY**

Notice under Section 179

**Issued by Midlothian Council**

*This notice affects land shown edged red on the attached plan at the following address:-*

**Land 25M West of  
Lugton Brae  
Old Dalkeith Road  
DALKEITH**

*This notice is served on:*



**1. REASONS FOR ISSUING THIS NOTICE**

- (1) The surface of the land contains a variety of items of waste and general debris. These items include waste-wood, tyres, litter, lumps of tarmac, damaged heras fencing sections, a defunct 'For Sale' sign and scrap. They are particularly prevalent alongside its eastern boundary and at the front of the land. The land is located within a prominent location. One of the main vehicular and pedestrian access routes to and from Dalkeith pass its frontage. A separate road and footpath adjoins the eastern site boundary and serves the residential properties to its north and east. The land is located within the Dalkeith House and Park Conservation area. There are attractive grassed and woodland areas opposite the frontage of the land and woodland to its west. Given all of these considerations, the planning authority considers that the presence on the various items of waste and general debris on the surface of the land has an adverse affect on the amenity of the surrounding area.

**(IMPORTANT – CONTINUES ON NEXT PAGE)**

- (2) The unacceptable condition of the land has been subject of ongoing public complaint.
- (3) Attempts by the planning authority to secure the voluntary removal of the items referred to in part 1(1) of this Notice (previous page) have failed.

## **2. WHAT YOU ARE REQUIRED TO DO**

- (1) Remove all items of waste and general debris from the surface of the land. These items include all waste-wood, tyres, litter, lumps of tarmac, a defunct 'For Sale' sign and scrap.
- (2) Remove, replace and re-instate both collapsed / damaged sections of heras fencing located at the eastern boundary of the land.

## **3. THE STEPS REFERRED TO IN PARAGRAPH 2 SHALL BE TAKEN**

These steps shall be complied with by 31 May 2022

## **4. WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on 30 April 2022 unless an appeal is made against it beforehand.

## **5. YOUR RIGHT OF APPEAL**

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Scottish Ministers before 30 April 2022. Any other person who has an interest in the land to which this notice relates may also appeal to the Scottish Ministers by the above date.

**Schedule 1 of this notice gives information on your Right of Appeal.**

**6. WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this notice, it will take effect on 30 April 2022 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 this notice after it has taken effect could result in remedial action by the Council.

Signed

A handwritten signature in black ink, appearing to read 'M. A.', is positioned below the 'Signed' text.

Matthew Atkins

Lead Officer Planning Obligations  
Midlothian Council.

On behalf of:

Derek Oliver

Chief Officer - Place,  
Midlothian Council.

Date: 31 March 2022

**(IMPORTANT – CONTINUES ON NEXT PAGE)**

## **SCHEDULE 1**

### **EXPLANATORY NOTE FOR THOSE IN RECEIPT OF A SECTION 179 NOTICE**

#### **RELEVANT LEGISLATION**

A copy of Sections 179-181 of the Town & Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 is attached. You will wish to note in particular the points referred to below.

#### **RIGHT OF APPEAL**

If you wish to appeal against this EN, you should write to Planning and Environmental Appeals Division, Ground Floor, Hadrian House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR. The appeal must be received, or posted in time to be received by the Scottish Ministers before the date on which this notice takes effect.

The Scottish Ministers have 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 180(1) of the Town & Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006. You should state the facts on which you propose to rely in support of each of the grounds of appeal. The grounds of appeal and the statement of facts must be submitted with your appeal or within fourteen days of your being required to do so by the Scottish Ministers.

#### **DIRECT ACTION FOR NON-COMPLIANCE WITH A SECTION 179 NOTICE**

If the steps required by a Notice served under Section 179 notice are not taken within the specified period, the Council may enter on the land, take those steps and recover the cost as a civil debt from the person who is then the owner, or the lessee of the land, any expenses reasonably incurred.

**(IMPORTANT – CONTINUES ON NEXT PAGE)**

## CHAPTER II

### LAND ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD

#### Land adversely affecting other land

- 179** (1) If it appears to a planning authority that the amenity of any part of their district, or an adjoining district, is adversely affected by the condition of any land in their district they may serve on the owner, lessee and occupier of the land a notice under this section requiring such steps for abating the adverse effect as may be specified in the notice to be taken within such period as may be so specified.
- Notice requiring proper maintenance of land
- (2) Service under subsection (1) shall be effected by the service of a copy of the notice.
- (3) Subject to section 180, a notice under this section shall take effect on such date as may be specified in the notice, being a date not less than 28 days after the latest service thereof under subsection (1).
- (4) The planning authority may withdraw a notice under this section (without prejudice to their power to serve another) at any time before it takes effect; and if they so withdraw it, they shall forthwith give notice of the withdrawal to every person on whom the notice was served.
- (5) No notice may be served under subsection (1) with reference to any building which is -
- (a) a building which is the subject of a scheme or order under the enactments for the time being in force with respect to ancient monuments, or
  - (b) a building for the time being included in a list of monuments published by the Secretary of State under any such enactment.
- (6) The provisions of section 135 shall, subject to any necessary modifications, apply in respect of a notice under this section as they apply in respect of an enforcement notice under section 127.
- 180** (1) A person on whom a notice under section 179 is served, or any other person having an interest in the land to which the notice relates, 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 neither the amenity of any part of the planning authority's district nor that of any adjoining district has been adversely affected;
  - (b) that the steps required by the notice to be taken exceed what is necessary to remedy any such adverse effect;

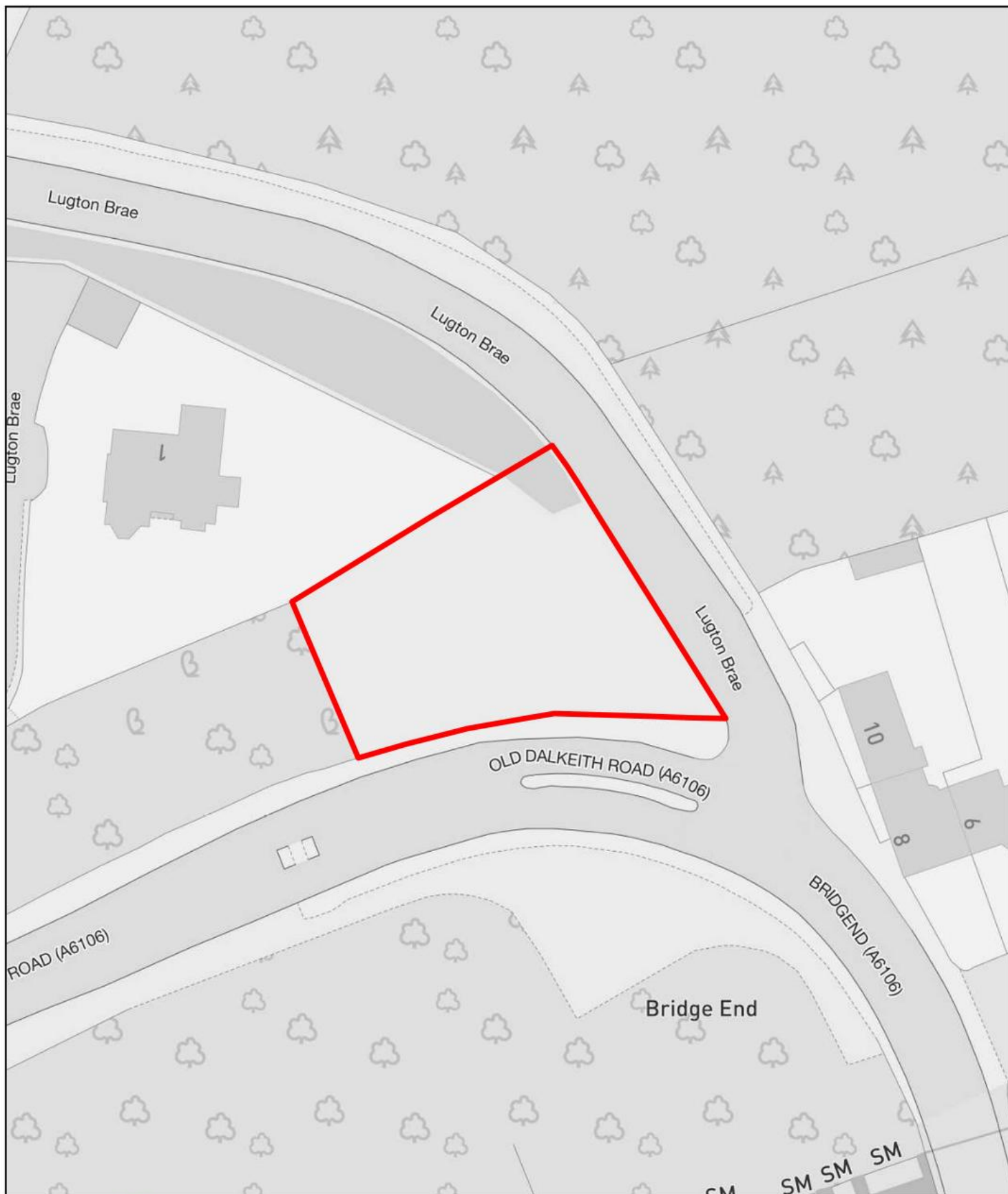
#### PART V II CHAPTER II

Appeal against notice  
under section 179



- (c) that the specified period for compliance with the notice falls short of what should reasonably be allowed;
    - (d) that the condition of the land is attributable to, and such as results in the ordinary course of events from, a continuing lawful use of the land or from continuing lawful operations carried out thereon; or
    - (e) that the notice was served other than in accordance with section 179.
  - (2) An appeal under this section shall be made by notice in writing to the Secretary of State.
  - (3) The provisions of sections 130(3), 131(1) and 132(3) shall apply to appeals under this section as they apply to appeals under those sections.
  - (4) On an appeal under this section the Secretary of State -
    - (a) may correct any informality, defect or technical error in the notice if he is satisfied that it is not material, and
    - (b) may disregard the failure of the planning authority to serve the notice upon a person upon whom it should have been served, if it appears to him that neither that person nor the appellant has been substantially prejudiced by that failure.
  - (5) Where an appeal is brought under this section, the notice under section 179 shall be of no effect pending the final determination, or the withdrawal, of the appeal.
  - (6) In determining an appeal under this section the Secretary of State shall give such directions as seem to him appropriate; and these may include directions for quashing the notice or for varying its terms in favour of the appellant.
  - (7) Schedule 4 applies to appeals under this section.
- 181** (1) Every planning authority shall keep a register of notices under section 179 which have been served in relation to land in their district -
- (a) in such manner, and
- (b) containing such information.
- as may be prescribed; and there may also be prescribed circumstances in which an entry in the register shall be deleted.
- (2) Every register kept under subsection (1) shall be available for inspection by the public at all reasonable hours.

Register of notices  
under section 179



**Planning Service  
Place Directorate**  
Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith  
EH22 3AA

**S179 Notice**  
**Land 25M West of Junction With Lugton Brae, Old Dalkeith Road, Dalkeith**

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