



---

## **ENFORCEMENT NOTICE APPEAL DECISION WITH REGARD THE ERECTION OF AN OUTBUILDING AT 2 CONIFER ROAD, MAYFIELD.**

Report by Chief Officer Place

---

### **1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to advise the Committee of an enforcement notice appeal decision with regard the erection of an outbuilding in the side garden of 2 Conifer Road, Mayfield.

### **2 BACKGROUND**

- 2.1 A retrospective planning application for the erection of an outbuilding at 2 Conifer Road, Mayfield was refused 29 September 2020. The outbuilding comprises a timber clad structure, with timber framed windows and a felt flat roof. It measures 5m wide, 3.6m deep and 3m high. It is set back 2.6m from the pavement at the side of the property and 1.1m, at its closest point, from the boundary with the neighbour to the rear. The building includes accommodation at ground floor and what appears as a raised platform bed area with a window at the higher level – it is used for domestic purposes.
- 2.2 Despite the refusal of planning permission and a letter to the occupant dated 26 August 2021 requesting the removal of the outbuilding by 11 October 2021, the outbuilding remained in place. An enforcement notice was issued on the occupier and the owner (Melville Housing Association) on 13 September 2022, with a take effect date of 13 October 2022 and a five month compliance period. A copy of the enforcement notice is attached to this report as Appendix B. The enforcement notice required the owner and occupier of the property to:
- (1) Remove the outbuilding which was the subject of planning application reference 20/00429/DPP
  - (2) Remove all dismantled materials permanently from the land subject of this Notice.
- 2.3 The occupier appealed the enforcement notice - a Scottish Government Reporter appointed to determine the appeal dismissed it and upheld the enforcement notice. A copy of the appeal decision is attached to this report as Appendix A. As a consequence of the appeal

the compliance period is extended to 12 June 2023 (five months after the appeal decision).

### **3 THE DECISION**

- 3.1 In reaching the decision the Reporter confirmed that the enforcement notice meets all the statutory requirements set out in section 128 (1) to (11) of the Town and Country Planning (Scotland) Act 1997 as amended and is therefore sound.
- 3.2 The cover letter which accompanied the enforcement notice contained a typographical error in one of the two mentions of the compliance date (stated once correctly as 13 March 2023 and once incorrectly as 13 March 2022). The Reporter confirmed that the cover letter forms part of the explanatory notice required by section 128 (12) of the 1997 Act, and that the typographical error does not, in this instance, make the enforcement notice invalid.
- 3.3 The Reporter was satisfied that the steps required by the notice could be undertaken within the five months stipulated in the notice, and therefore dismissed the appeal which was made on the grounds that the compliance period was unreasonable.

### **4 RECOMMENDATION**

- 4.1 It is recommended that the Committee notes the enforcement notice appeal decision with regard to the erection of an outbuilding in the side garden of 2 Conifer Road, Mayfield.

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

**Date:** 20 February 2023  
**Contact Person:** Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager  
peter.arnsdorf@midlothian.gov.uk

Planning and Environmental Appeals Division

Hadrian House, Callendar Business Park, Falkirk, FK1 1XR

E: [dpea@gov.scot](mailto:dpea@gov.scot)

T: 0300 244 6668



Scottish Government  
Riaghaltas na h-Alba  
[gov.scot](http://gov.scot)

## Appeal Decision Notice

---

Decision by Fortune Gumbo, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-290-2011
- Site address: 2 Conifer Road, Mayfield, Dalkeith, EH22 5DE
- Appeal by Peter Adams against the enforcement notice dated 13 September 2022 served by Midlothian Council
- The alleged breach of planning control: the erection of an outbuilding in the side garden of 2 Conifer Road, Mayfield, Dalkeith, EH22 5DE
- Date of site visit by Reporter: 9 December 2022

Date of appeal decision: 12 January 2023

---

### Decision

I dismiss the appeal and direct that the enforcement notice dated 13 September 2022 be upheld subject to the variation of the terms of the notice by deleting the words "..., namely by 13 March 2023" in paragraph 6 of the enforcement notice.

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

1. The appeal against the enforcement notice was made only on ground (g) as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997. Ground (g) provides that any period specified in the notice falls short of what should reasonably be allowed.

2. To succeed on this ground the appellant has to demonstrate that any period specified in the notice falls short of what should reasonably be allowed. The enforcement notice requires compliance within five months of the effective date of the notice. The appellant has not suggested an alternative compliance period which they consider should reasonably be allowed.

3. The only basis of the appeal draws from the cover letter (reference 19/00099/UNDEV of 13 September 2022 from the council) accompanying the enforcement notice. On this letter there are two compliance dates. The first is in the penultimate paragraph of the letter and it reads, "The attached Enforcement Notice requires that the outbuilding, which was subject to planning application reference 20/00429/DPP, to be removed by 13 March 2023...". The second date is in the final paragraph of the letter, and it reads, "The Enforcement Notice will take effect on 13 October 2022 and must be complied with by 13 March 2022 unless an appeal to Scottish Ministers...". As the notice was issued on 13

September 2022, this date predates the issue of the enforcement notice. It is this second date which is being challenged.

4. There is no suggestion from the appellant that the enforcement notice is a nullity, and having reviewed it, it meets all the statutory requirements set out in sections 128 (1) to (11) of the 1997 Act and is therefore sound.

5. The cover letter is required by section 128 (12) of the 1997 Act which states that 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 rights of appeal under section 130. I consider the cover letter to be or form part of an explanatory note. There is no right of appeal against the contents of the explanatory note.

6. The March 2022 date on the cover letter contains a typographical error (2022 instead of 2023). I do not consider that the typographical error in this sentence makes the enforcement notice overall ambiguous. The reason for this assertion is that when the sentence is read in conjunction with the first compliance date on the letter and paragraph 6 of the notice both state that compliance must be achieved within five calendar months from when the notice takes effect, namely by 13 March 2023.

7. I have no power to correct the typographical error in the cover letter. However, I find that the typographical error does not, in this instance, make the enforcement notice invalid.

8. There is nothing before me from either party that suggests that the compliance period set out in the enforcement notice is unreasonably short. My site inspection did not reveal any obvious impediments to compliance. I am satisfied that the steps required by the notice could be undertaken within the five months stipulated in the notice. The appeal on ground (g) fails.

### **Other matter**

9. I have varied the terms of the notice by deleting the words “namely by 13 March 2023” in paragraph 6. The reason for this deletion is that the compliance period of the notice runs from the final determination of the appeal which includes any legal challenges. Consequently, the words that I have deleted are now unnecessary as a consequence of the determination of the appeal.

### **Conclusion**

10. I have considered all of the other matters raised, but there are none which would lead me to alter my conclusion that the enforcement notice should be upheld.

*Fortune Gumbo*

Reporter

**IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY**

*Town & Country Planning (Scotland) Act 1997, as amended by the  
Planning (Scotland) Act 2019 (“the Act”)*

**ENFORCEMENT NOTICE**

Issued by Midlothian Council

**13 September 2022**

**Mr Peter Adams  
2 Conifer Road  
Mayfield  
Dalkeith  
EH22 5DE**

**ISSUED BY: Midlothian Council (“the Council”) as planning  
authority for the purposes of Section 127 of the Act**

**1. THIS IS A FORMAL NOTICE** which is issued by Midlothian Council (“the Council”) because it appears that there has been a breach of planning control, under the terms of section 123(1) (a) of the above Act, (as amended), at the land described below. The Council considers it expedient to issue this Enforcement Notice (“EN”), having regard to the provisions of the development plan and to other material planning considerations. Note that Schedule 1 of this EN contains important information.

**2. THE LAND TO WHICH THE NOTICE RELATES**

2 Conifer Road, Mayfield, Dalkeith, EH22 5DE, shown edged in red on the location plan attached to this EN.

**3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF  
PLANNING CONTROL**

Without planning permission the erection of an outbuilding in the side garden of 2 Conifer Road, Mayfield, Dalkeith, EH22 5DE.

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

#### **4. REASONS FOR ISSUING THIS NOTICE**

It appears to the Council that the above breach of planning control has occurred within the last four years.

- (a) Under Class 3A of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, an outbuilding is not permitted where any part of the development is forward of a wall forming part of the principal elevation or side elevation where that elevation fronts a road.
- (b) The constructed building has been erected in the side garden of the north side of the house and is forward of the side elevation that fronts a road. The building was erected without planning permission. The occupier was informed of the need to submit an application in November 2019. A valid application was registered on 12 August 2020. On 29 September 2020, planning permission for the outbuilding was refused.
- (c) The surrounding area is predominantly characterised by houses set behind front gardens/driveways (some including retaining walls at the front) enclosed by low fences and walls. The front and side garden of 2 Conifer Road is very open to public view. The outbuilding is positioned forward of the side elevation of the house and approximately 1.5 metres forward of the front elevation of the property to the rear and is only 2.6 metres from the pavement. The building is partly screened as a result of the higher ground level of the property to the rear but is still very prominent in the street scene as viewed from both Conifer Road and the corner with Andrew Dodd's Avenue. As a result of a combination of its position set forward of the adjacent buildings, its proximity to the pavement, its somewhat unconventional design and its size the outbuilding appears as an incongruous feature in the street scene detrimental to the character of the area.
- (d) The proposal is contrary to Policy DEV 2 of the adopted Midlothian Local Development Plan 2017 which seeks to protect the character and amenity of the built up area.
- (e) The unauthorised development and its environmental effects have been the subject of public complaint.

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

- (1) Remove the outbuilding which was the subject of planning application reference 20/00429/DPP.
- (2) Remove all dismantled materials permanently from the land subject of this Notice.

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

**6. TIME PERIOD FOR COMPLIANCE**

Within 5 calendar months from when this Notice takes effect, namely by 13 March 2023.

**7. WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on 13 October 2022 unless an appeal is made against it beforehand.

Signed

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

Matthew Atkins  
Lead Officer – Planning Obligations  
Planning, Sustainable Growth and Investment Service  
Place Directorate  
Midlothian Council

Date: 13 September 2022

## **7 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 13 October 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 same date.

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

## **8 WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this enforcement notice, it will take effect on 13 October 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 specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution or the service of a Fixed Penalty Notice on the relevant person(s) who have not complied with its requirements. Failure to comply with an enforcement notice which has taken effect may also result in the Council taking direct action to correct the breach.



## **SCHEDULE 1**

### **EXPLANATORY NOTE FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE**

#### **RELEVANT LEGISLATION**

A copy of Sections 123, 124, 127-139 of the Town & Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2019 is attached. You may wish to note in particular the points referred to below.

#### **RIGHT OF APPEAL**

If you wish to appeal against this notice, you should write to The Directorate for Planning and Environmental Appeals, Ground Floor, Hadrian House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR or contact the DPEA via their website <https://www.dpea.scotland.gov.uk/>. 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 130 of the Town & Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2019. If you decide to appeal 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.

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 limitation, then any person who, without the grant of planning permission uses the land or causes or permits it to be used, or carries out these 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 £50,000 or on conviction on indictment to an unlimited fine. If the use or operations are continued after conviction, the person may be convicted of a second or subsequent offence. In determining the amount of any fine for any convicted person, in either circumstance, the court shall in particular have regard to any financial benefit that has accrued - or appears likely to accrue – to any person who has committed the offence. That consideration will similarly apply to the level of fine imposed by the court on any convicted person who complies with an enforcement notice requiring the removal or alteration of a building(s) or works, in cases where the building(s) or works are subsequently re-instated or restored at any time after the compliance date.

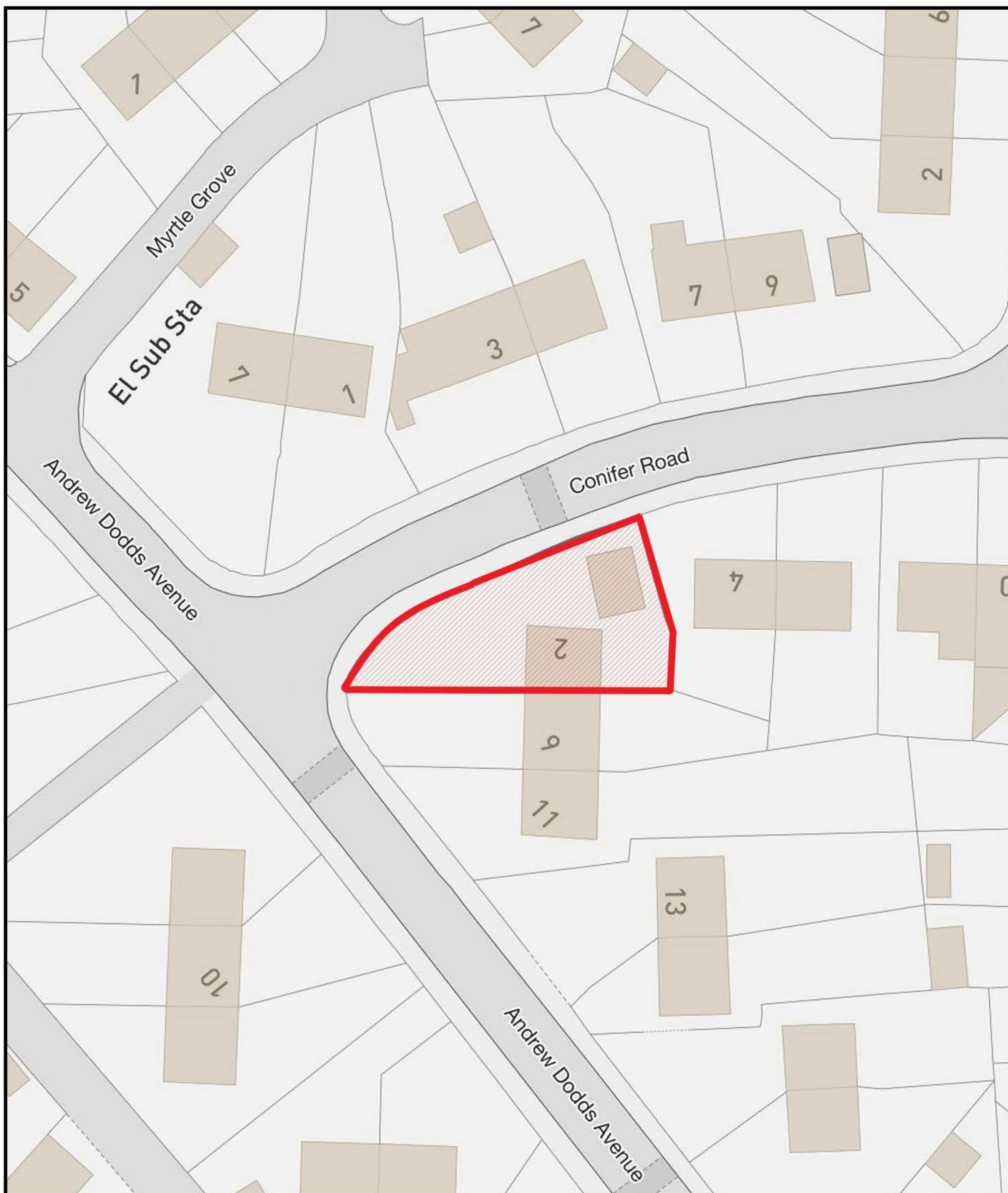
As an alternative to prosecution the Council may serve a Fixed Penalty Notice. This requires payment of a fine to be made within 30 days of its service, which will be retained by them. The level of fine is £2,000 for non-compliance with an enforcement notice. If payment is made within the first 15 days following service of a Fixed Penalty Notice the amount to be paid to the Council is reduced to £1,500.

### **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 also enter on the land, take those steps and recover the costs involved, from the owner or lessee of the land.

### **FURTHER OFFENCES**

Compliance with the terms of an enforcement notice does not discharge that 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.



**Education, Economy  
& Communities**  
Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith  
EH22 3AA

## Enforcement Notice

### 2 Conifer Road, Mayfield, Dalkeith, EH22 5DE

Reproduced from the Ordnance Survey map with the permission of the controller of Her Majesty's Stationary Office. Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings

**Midlothian Council Licence No. 100023416 (2018)**

File No.E/22/31

Scale: 1:500

**f1**