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## **NON-COMPLIANCE WITH THE REQUIREMENTS OF AN ENFORCEMENT NOTICE REGARDING THE ERECTION OF AN UNAUTHORISED DWELLINGHOUSE AT 10 KIRKHILL TERRACE, GOREBRIDGE**

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 an enforcement notice served by the Council pursuant to Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended (by the Planning etc. (Scotland) Act 2006 and the Planning (Scotland) Act 2019), with regard the erection of a dwellinghouse at 10 Kirkhill Terrace, Gorebridge.**
- 1.2 The enforcement notice required the alteration of an erected dwellinghouse to accord with a grant of planning permission, ref: 21/00833/DPP (option 1), or the demolition of the unauthorised erected dwellinghouse and the removal of the dismantled materials from the site (option 2). None of these steps have been taken, either by the enforcement notice compliance date of 20 April 2023 (option 1) or 20 June 2023 (option 2) or to date (at the time of drafting this report). Non-compliance with an enforcement notice constitutes an offence.**
- 1.3 This report recommends that the Committee instruct the Planning, Sustainable Growth and Investment Manager to refer the case to the Crown Office and Procurator Fiscal Service for consideration to be given to prosecutorial action in relation to the parties who have breached the enforcement notice, pursuant to Section 136 of the Town and Country Planning (Scotland) Act 1997. The maximum penalty on successful prosecution is a fine of up to £50,000 per offence.**

### **2 BACKGROUND**

- 2.1 On 12 February 2018 planning permission was granted for the erection of a dwellinghouse at 10 Kirkhill Terrace, Gorebridge (ref: 18/00011/DPP). The proposal was to replace a previously demolished dwellinghouse located on the site. However, it became apparent during the construction process that the new building being erected did**

not accord with the grant of planning permission (18/00011/DPP) and as such was unauthorised.

- 2.2 A retrospective planning application (19/01025/DPP) for the erection of dwellinghouse, at 10 Kirkhill Terrace, Gorebridge was refused 27 January 2020 and a subsequent notice of review was dismissed by the Local Review Body (LRB) at its meeting of 27 October 2020. The planning application was refused, and subsequent review dismissed for the following reasons:

*As a result of its size, massing, floor area and architectural detailing the proposed dwellinghouse is not of sufficient good design, being neither of a traditional design nor of a high-quality contemporary design. The proposed dwellinghouse would not complement or enhance the character of the area, nor would the proposed materials. This is contrary to policies DEV2 and DEV6 of the adopted Midlothian Local Development Plan 2017. In addition, the lack of a high-quality design-led approach is contrary to the terms of the Scottish Planning Policy.*

- 2.3 Despite the refusal of planning permission and the LRB decision to dismiss the review the property owner has not taken action to remedy the breach of planning control and the unauthorised building remains in situ – furthermore additional works to the building were undertaken during the assessment of the 2019 application (the insertion of a large front dormer) resulting in a structure which does not even reflect the plans submitted as part of refused planning application 19/01025/DPP. As such planning contravention notices were served on the landowners - these notices were served pursuant to Section 136 of the Town and Country Planning (Scotland) Act 1997, as amended. The notices were issued as a preliminary step to serving an enforcement notice, pursuant to Section 127 of the same legislation and are a legal process to secure information from the recipients of the notice.

- 2.4 Subsequently, negotiations between the applicant, their agents and planning officers resulted in an amended planning application being submitted on 11 October 2021 (reference 21/00833/DPP) for the erection of dwellinghouse (amendment to design approved in terms of planning permission 18/00011/DPP). Planning permission was approved for the amended design on 16 December 2021. The approved plans reflect some parts of the dwellinghouse as built, however, large parts of the roof design of the as built dwellinghouse are at variance with the approved amended plans and significant alteration works are required to implement this permission, specifically, a large area of hipped roofing has been formed at both ends of the dwellinghouse located above the full extent of each integral garage. Those particular aspects remain unacceptable in planning terms and need removal.

- 2.5 In February 2022 the applicants were provided with a voluntary six-month period to remedy the breach of planning control. No steps were

taken to remedy the breach and on 18 November 2022 the Council served a planning enforcement notice pursuant to Section 127 of the Town and Country Planning (Scotland) Act 1997 on the landowner. The notice set out the steps required to remedy the breach of planning control and the compliance period for doing so. The steps required were:

- (1) Remove the unauthorised works referred to in Part 4(a) of this notice and re-form both areas such that they entirely match the integral flat roof garage details shown on both approved plans identified in Part 4(a) and attached to this notice (effectively implement planning permission 21/00833/DPP); or alternatively
- (2) Demolish the dwellinghouse subject of this notice and entirely remove all demolished materials from the land.

- 2.6 No valid appeal against the enforcement notice was submitted to the Scottish Ministers within the required prescribed period. Whilst an ostensible attempt was made by the applicants to lodge an appeal before the time limit for submitting an appeal, the Scottish Ministers ruled that it had been submitted out of time and therefore did not constitute a valid appeal. Section 134 of the 1997 Act provides the validity of an enforcement notice shall not be questioned in any proceedings whatsoever on any of the grounds specified by Section 130 (the different potential grounds for appealing an enforcement notice) except by an appeal under that section. No valid appeal was submitted therefore pursuant to Section 134 of the 1997 Act the enforcement notice is a valid notice.
- 2.7 The enforcement notice required the landowner to have either modified the building in order that it reflected the approved plans pursuant to 21/00833/DPP by 20 April 2023, or alternatively, have demolished the building by 20 June 2023 (given that it is an unauthorised building and does not have planning permissions). Following a site inspection in July 2023 it was identified that there had been no compliance with either of the notice requirements and as a consequence the landowners have been formally advised (by recorded delivery) of the consequences of non-compliance including reporting the matter to the Committee seeking authorisation to take prosecutorial action.
- 2.8 Planning permission 18/00011/DPP was not implemented and has lapsed. Planning permission 21/00833/DPP has not been implemented and will expire on 15 December 2024 if not lawfully commenced prior to this date - at this time no such commencement has taken place. It is worth reinforcing that as identified above the building that has been erected is wholly unauthorised and does not have planning permission. It is considered by officers that this case is at the particularly serious end of the spectrum in terms of breaches of planning control. The applicants had obtained planning permission for a house (18/00011/DPP) but then proceeded to build a wholly different building

which is unauthorised. Furthermore, it has been determined by both officers through the scheme of delegation and elected members through the Local Review Body to be unacceptable (the planning assessment of the development is not changed by the adoption of National Planning Framework 4). The Council has served a valid enforcement notice to remedy this matter, no valid appeal has been submitted and no attempt has been made by the landowner to comply with the enforcement notice.

- 2.9 Although not material to the planning or planning enforcement assessment of this case it is worth noting the building warrant position for completeness. A separate building warrant application for the erection of a dwellinghouse was submitted in 2018 to assess the structural integrity of the building – a warrant was issued in 2019, but not for the house as built (the landowner built a structure different that proposed in the warrant application). This application was assessed by the Council’s Building Standards Service against building regulations and technical guidance (not planning regulations and guidance). The building warrant process ensures that buildings are safe, sustainable and efficient. By contrast, the aforementioned planning applications for the erection of the dwellinghouse required to be assessed in terms of its visual impact, scale, design, materials, impact of neighbouring residential amenity and compliance with relevant planning policies. It is important to note that these are two separate regulatory regimes that operate under entirely different sets of legislation. It is therefore possible for a building warrant to be granted and express planning permission to be refused, or vice-versa. The responsibility for ensuring that building warrant plans are consistent with planning permission plans rests with an applicant(s) and their agent(s). In this particular case, an amendment to the originally granted building warrant has been submitted to try and match the proposed dwellinghouse design to that which is the subject of planning permission 21/00833/DPP, but at present this warrant application remains undetermined as the submission is technically incomplete. The building as constructed does not have a building warrant and cannot be occupied.

### **3 THE LEGISLATIVE POSITION**

- 3.1 It is not a criminal offence for development to take place without the requisite planning permission, but it is an offence to fail to comply with an enforcement notice. There is a 6 month period from the date of the offence occurring (that is the date by which the notice should have been complied with, not the date from which the breach of planning control occurred) in which a prosecution could be potentially brought.
- 3.2 In Scotland the Crown Office and Procurator Fiscal Service (COPFS) are responsible for making decisions about prosecutorial actions. In the majority of instances, criminal offences are referred to COPFS by Police Scotland. However, other bodies who are the responsible regulatory organisation for particular legislative areas will also refer

cases. This includes the Health and Safety Executive, the Scottish Environmental Protection Agency and local authorities in relation to planning and other matters.

- 3.3 It should be noted that failure to comply with an enforcement notice is not only an offence, but also a continuing offence should a prosecution be successfully brought, a conviction secured, and the enforcement notice requirements remain outstanding. For example, if non-compliance with the enforcement notice requirements continued for a further month after conviction that would be a further 31/30 offences occurring which would bring further potential implications for a defendant in terms of further potential convictions, criminal records and levels of fines.
- 3.4 The Town and Country Planning (Scotland) 1997 Act provides that *“In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence”*
- 3.5 The failure to comply with an enforcement notice is clearly regarded as a serious matter and understandably so by the Scottish Ministers because of its implications for the integrity of the planning system and indeed in relation to the upholding of the rule of law. The Planning (Scotland) Act 2019 which has now been enacted specifically provided for the increasing of fines for a number of enforcement related matters. In relation to enforcement notices the level of fine on successful prosecution has increased from a maximum of £20,000 to £50,000.

#### **4 OTHER CONSIDERATIONS**

- 4.1 The Scottish Government Policy on planning enforcement is contained in Circular 10/2009: Planning Enforcement. It includes the following guidance that is particularly relevant to the consideration of this case:

*“Planning authorities should bear in mind the statutory time limits for taking enforcement action and, in particular, the possibility that a referral to the Procurator Fiscal to determine whether to initiate a criminal prosecution may need to be made promptly in those cases where breaches have to be prosecuted within 6 months of the date on which the offence was committed. This is not the date of the alleged breach of planning control but the last date of failure to comply with the Notice requiring the breach to be remedied.”*

*“The integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any*

*apparent attempt by the planning authority to intervene before serious harm to amenity results from the breach.”*

## **5. CONCLUSION**

- 5.1 The responsibility of the outstanding breach of planning control lies with the landowners who decided to erect the unauthorised building without the benefit of planning permission. All of the unauthorised development which is the subject of the enforcement notice remains on site in breach of the enforcement notice requirements. The unauthorised development has been the subject of public complaint.
- 5.2 It is for COPFS to make the final decision with regard prosecutorial action against the non-compliance with an enforcement notice. In this case, unauthorised development has been carried out which does not have the benefit of planning permission. A planning application for the erection of dwellinghouse, as built, (retrospective) at 10 Kirkhill Terrace, Gorebridge was refused, and a subsequent notice of review was dismissed by the Council's LRB. The Council has lawfully served an enforcement notice in relation to unauthorised development. The notice has not been complied with within the period specified by the notice. It is an offence for an enforcement notice not to be complied with. Therefore, having regard to the guidance provided by Scottish Ministers in Circular 10/2009, the serious nature of the breach of planning control and the Council's responsibility to uphold confidence and integrity in the planning system and the rule of law, it is considered to be in the public interest for the Council to refer this case to COPFS.

## **6 RECOMMENDATION**

- 6.1 It is recommended that the Committee determine to instruct the Planning, Sustainable Growth and Investment Manager (or an alternatively appropriately appointed officer) to refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action pursuant to Section 136 of the Town and Country Planning (Scotland) Act 1997 as amended.

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

**Date:** 1 September 2023  
**Contact Person:** Matthew Atkins, Lead Officer Planning Obligations  
[matthew.atkins@midlothian.gov.uk](mailto:matthew.atkins@midlothian.gov.uk)

**Appendix A:** A copy of the enforcement notice issued 18 November 2022 with regard 10 Kirkhill Terrace, Gorebridge;  
**Appendix B:** Photographs of the unauthorised development at 10 Kirkhill Terrace, Gorebridge.

**IMPORTANT  
THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**Town and Country Planning (Scotland) Act 1997, as amended  
by the Planning (Scotland) Act 2019**

**ENFORCEMENT NOTICE**

**Issued by Midlothian Council**

**18 November 2022**

**Ms. D Allan  
10 Kirkhill Terrace  
Gorebridge  
Dalkeith  
EH23 4LL**

**1. THIS IS A FORMAL NOTICE** which is issued by 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 notice, having regard to the provisions of the development plan and to other material planning considerations. Schedule 1 at the end of the notice contains important information.

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

Land at 10 Kirkhill Terrace, Gorebridge, EH23 4LL, as shown edged in red on the location plan attached to this notice.

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

Unauthorised works carried as part of an erection of a dwellinghouse on the land referred to in Part 2 of this notice (above). The unauthorised works having been carried out within a period of four years prior to the date of service of this Enforcement Notice (18 November 2022).

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

#### 4. REASONS FOR ISSUING THIS NOTICE

- (a) Planning permission (PP) for the erection of a dwellinghouse on the land subject of this notice was granted by Midlothian Council on 12 February 2018 (Reg. No. 18/00011/DPP). In December 2019, it became apparent to the planning authority that a dwellinghouse being constructed on the same land was materially different in terms of design, mass and scale to the approved PP. An amended planning application to reflect those changes (Reg. No.19/01025/DPP) was refused on 27 January 2020 and dismissed on appeal by the Council's Local Review Body on 27 October 2020. A further planning application - Reg. No. 21/00833/DPP: 'Erection of dwellinghouse (amendment to design approved in terms of planning permission 18/00011/DPP)' was granted subject to conditions on 16 December 2021. However, large parts of the roof design of the as built dwellinghouse are at variance with the approved plans for the latter PP. Specifically, a large area of hipped roofing has been formed at both ends of the dwellinghouse - located above the full extent of each integral garage. The approved roof design at those parts of the dwellinghouse being flat roofed, as shown on the relevant approved plans attached to this notice. For the avoidance of any further doubt, said approved plans are labelled "PL(2-)005 1:100" and "PL(2-)006 1:100". Both plans are also listed on the face of the PP Decision Notice (also attached). Given all of these considerations the currently erected dwellinghouse is unauthorised in planning terms.
- (b) The unauthorised works referred to in Part 4 (a) of this notice (above) add visual emphasis to the scale and mass of the approved dwellinghouse. The hipped roof design above each garage does not complement or enhance the character of the area nor does it contribute positively to the street scene or integrate with the other dwellinghouses in the area. These unauthorised works are detrimental to the character and appearance of the area and are thereby contrary to Midlothian Local Plan 2017 Policy Dev 2 'Protecting Amenity Within the Built Up Area'. Dev 2 states that development will not be permitted where it is likely to detract materially from the existing character or amenity of the area. Given all of these considerations, the unauthorised works subject of this notice are unacceptable in planning terms.
- (c) The need to voluntarily remediate the unauthorised works subject of this notice - by 28 June 2022 - was raised with the planning agent on 28 February 2022. At the date of service of this notice (18 November 2022) no remedial action has been started and the unauthorised works remain in place in their entirety.
- (a) The unauthorised works form a fundamental part of the currently erected dwellinghouse. The continued presence of these works - without taking the required enforcement action to remediate that position - would undermine the integrity and credibility of the planning, system, its democratic processes and public trust in its outcomes

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

## 5. WHAT YOU ARE REQUIRED TO DO

- (1) Remove the unauthorised works referred to in Part 4(a) of this notice and re-form both areas such that they entirely match the integral flat roof garage details shown on both approved plans identified in Part 4(a) and attached to this notice, **or alternatively**
- (2) Demolish the dwellinghouse subject of this notice and entirely remove all demolished materials from the land.

## 6. TIME PERIOD FOR COMPLIANCE

Step 5 (a) - within 4 calendar months from when this notice takes effect, namely by 20 April 2023, **or if applicable**

Step 5 (b) - within 6 calendar months from when this notice takes effect, namely by 20 June 2023

## 7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 20 December 2022 unless an appeal is made against it beforehand.

Signed



Matthew Atkins

Lead Officer Planning Obligations  
Midlothian Council.

On behalf of:

Derek Oliver

Chief Officer - Place,  
Midlothian Council.

Date: 18 November 2022

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

## 8. **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 20 December 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.**

## 9. **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this enforcement notice, it will take effect on 20 December 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.

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

## **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 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 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.

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

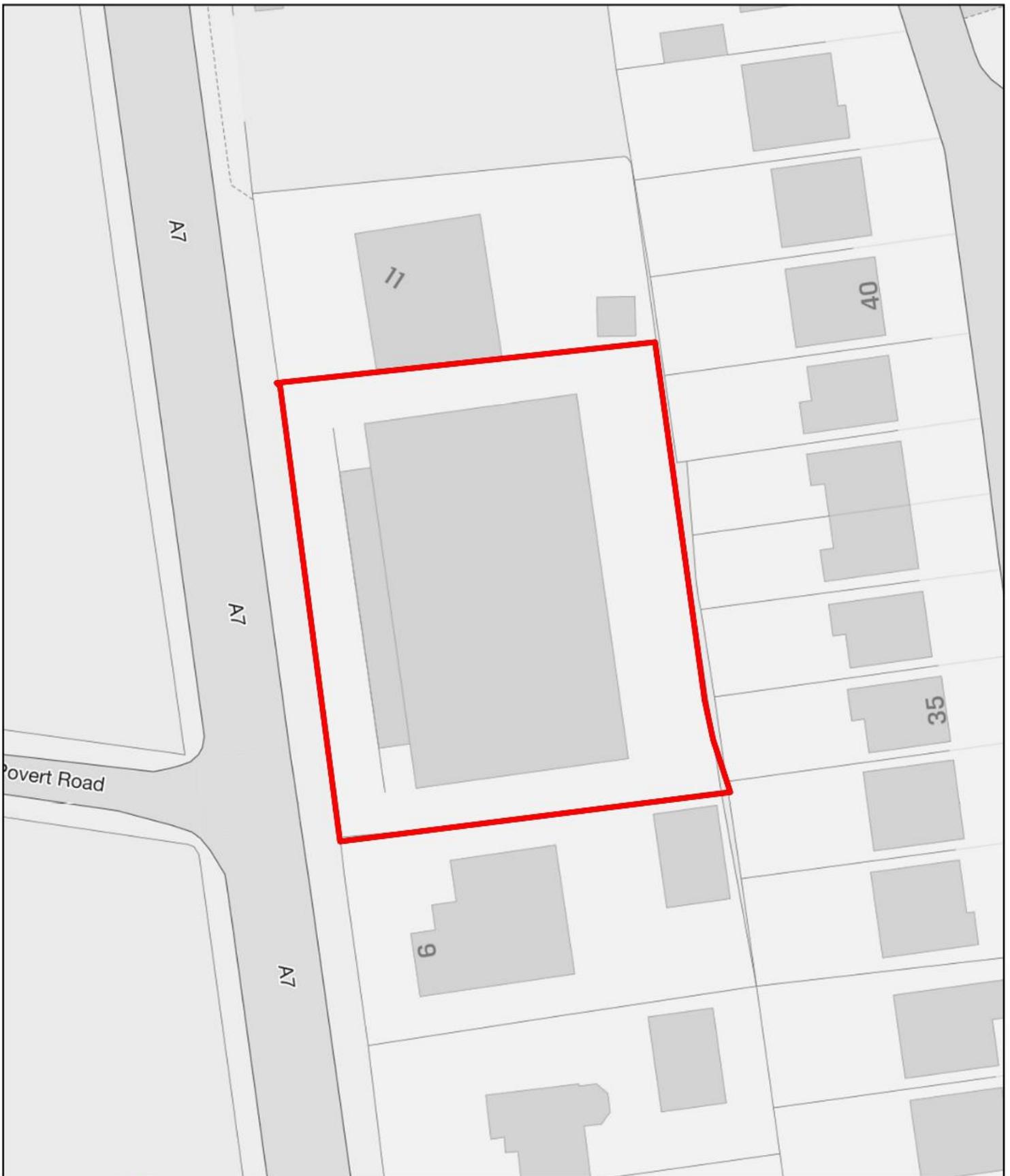
As an alternative to prosecution the Council may serve a Fixed Penalty Notice. This requires payment of a fine to be made within 30 days of its service, which will be retained by them. The level of fine is £2,000 for non-compliance with an enforcement notice. If payment is made within the first 15 days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



Midlothian

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

### Enforcement Notice

Land at 10 Kirhill Terrace, Gorebridge

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File Ref. : E/22/41

Midlothian Council Licence No. 100023416 (2019)

# Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 21/00833/DPP



Kenneth Reid Architects  
39 Braid Farm Road  
Edinburgh  
EH10 6LE

Midlothian Council, as Planning Authority, having considered the application by Ms D Allan, 10 Kirkhill Terrace, Gorebridge, EH23 4LL, which was registered on 20 October 2021, in pursuance of their powers under the above Acts, hereby grant permission to carry out the following proposed development:

## **Erection of dwellinghouse (amendment to design approved in terms of planning permission 18/00011/DPP) at Land At 10 Kirkhill Terrace, Gorebridge**

In accordance with the application and the following documents/drawings:

| <u>Document/Drawing</u>  | <u>Drawing No/Scale</u> | <u>Dated</u> |
|--------------------------|-------------------------|--------------|
| Location Plan, Site Plan | PL(2-)001 1:1250 1:500  | 20.10.2021   |
| Site Plan                | 1707_A_050 1:100        | 20.10.2021   |
| Proposed Floor Plan      | PL(2-)002A 1:100        | 05.11.2021   |
| Proposed Floor Plan      | PL(2-)003A 1:100        | 05.11.2021   |
| Proposed Elevations      | PL(2-)005 1:100         | 20.10.2021   |
| Proposed Elevations      | PL(2-)006 1:100         | 20.10.2021   |
| Proposed Cross Section   | PL(2-)004A 1:200 1:100  | 05.11.2021   |
| Proposed Cross Section   | PL(2-)007 1:100         | 05.11.2021   |

This permission is granted for the following reason:

*The proposed development would not detract from the character, amenity or appearance of the surrounding area or result in the loss of amenity to any surrounding properties and so complies STRAT2, DEV2 and DEV6 of the adopted Midlothian Local Development Plan 2017.*

Subject to the following conditions:

1. Within one month of the date of planning permission being issued, the following details shall be submitted to and approved in writing by the Planning Authority:
  - a) Details of the materials of the window frames and doors;
  - b) Details of the proposed external materials, including a plan showing where these are proposed on the house hereby approved;
  - c) Details of all proposed walls, fences, gates or other means of enclosure, including position, design, dimensions and materials; and
  - d) Details of all hardstanding materials.

**Reason:** *These details were not submitted with the original application; to ensure the proposal is in keeping with the character and amenity of the surrounding area.*

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (or any Order revoking and re-enacting that Order) no openings shall be installed on the north, south or east elevations of the dwellinghouse hereby approved, including the roof, other than those shown on approved drawing numbers PL(2-)005 and PL(2-)006 unless planning permission is granted by the Planning Authority.

***Reason:*** *In order to limit overlooking between the proposed house and the neighbouring properties; to ensure that any new openings do not result in the loss of privacy to either set of occupants.*

Dated 16 / 12 / 2021



.....  
Duncan Robertson  
Lead Officer – Local Developments,  
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN



The Coal  
Authority

**Any Planning Enquiries should be directed to:**

Planning and Local Authority Liaison  
Direct Telephone: 01623 637 119  
Email: [planningconsultation@coal.gov.uk](mailto:planningconsultation@coal.gov.uk)  
Website: [www.gov.uk/coalauthority](http://www.gov.uk/coalauthority)

**STANDING ADVICE**

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:  
[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

Standing Advice valid from 1st January 2021 until 31st December 2022

## PLEASE NOTE

This permission does not carry with it any necessary consent or approval to the proposed development which may be required under the Building (Scotland) Acts and Regulations or under any other Statutory Enactment.

If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town & Country Planning (Scotland) Act 1997 within 3 months from the date of this notice. The notice of review should be addressed to The Planning, Sustainable Growth and Investment Manager, Planning, Sustainable Growth and Investment Service, Midlothian Council, Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN. A notice of review form is available from the same address and will also be made available online at [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

### Duration of Planning Permission and/or Listed Building Consent

The permission hereby approved lapses on the expiration of a period of either:

- a) three years from the date of this decision notice, if the permission is for **detailed planning permission (DPP)** or **listed building consent (LBC)** as specified in Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by Planning etc (Scotland) Act 2006); or
- b) two years from the date of approval by the planning authority of the last application for matters specified in conditions to be approved if the permission is for **planning permission in principle (PPP)** as specified in Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended by Planning etc (Scotland) Act 2006). Applications for approval of matters specified in conditions shall be made to the planning authority within three years from the date of this permission.

Prior to any work taking place on site all pre commencement conditions attached to a grant of planning permission must be agreed in writing with the planning authority. Failure to do so could result in any development works taking place being unauthorised and undertaken at your own risk and expense.

### The Felling of Trees

Where full planning permission authorises the felling of trees on a development site, no further consent is required under the Forestry Act 1967 (as amended). However, developers should note that any tree felling not expressly authorised by full planning permission, and not exempted, requires a felling licence granted under the Forestry Act 1967 (as amended).

Developers should note that any felling carried out without either a licence or other valid permission is an offence. This can mean, on conviction, a fine of up to £2,500 (level 4 on the standard scale) or twice the value of the trees, whichever is higher with the conviction being recorded.

Contact your local Forestry Commission Scotland Office if you are not certain whether exemptions apply. You can get an application form for a felling licence from the Forestry Commission website [www.forestry.gov.uk](http://www.forestry.gov.uk) or any Forestry Commission Scotland Office.

### Prior to Commencement (Notice of Initiation of Development)

Prior to the development commencing the planning authority shall be notified in writing of the expected commencement of work date and once development on site has been completed the planning authority shall be notified of the completion of works date in writing. Failure to do so would be a breach of planning control under section 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006). A copy of the Notice of Initiation of Development is available on the Council's web site [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

## IMPORTANT NOTE REGARDING PUBLIC ACCESS TO INFORMATION

### Making an application

Please note that when you submit a planning application, the information will appear on the Planning Register and the completed forms and any associated documentation will also be published on the Council's website.

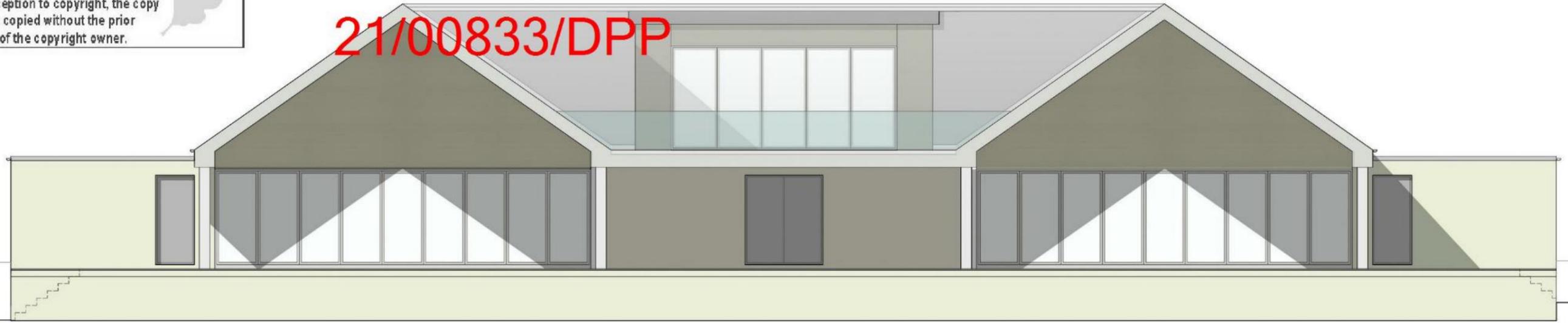
### Making comment on an application

Please note that any information, consultation response, objection or supporting letters submitted in relation to a planning application, will be published on the Council's website.

The planning authority will redact personal information in accordance with its redaction policy and use its discretion to redact any comments or information it considers to be derogatory or offensive. However, it is important to note that the publishing of comments and views expressed in letters and reports submitted by applicants, consultees and representors on the Council's website, does not mean that the planning authority agrees or endorses these views, or confirms any statements of fact to be correct.

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**APPROVED**  
**16.12.2021**  
**21/00833/DPP**



West

**ROOF**

- Slate Roof
- Galvanised gutters and downpipes
- Grey fascias
- Composite Boarding

**WALLS**

- Random Rubble stone dwarf wall (to match existing wall to road)
- Natural coursed sandstone walling with polished quoins, cills, inbands and outbands

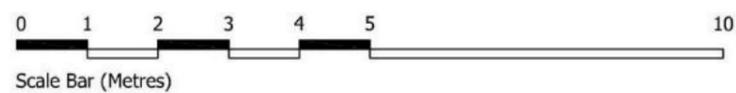
**WINDOWS, DOORS & FEATURES**

- Grey framed glazed window/doors
- Grey coloured panelled external doors
- Grey coloured garage doors
- Glazed balustrade



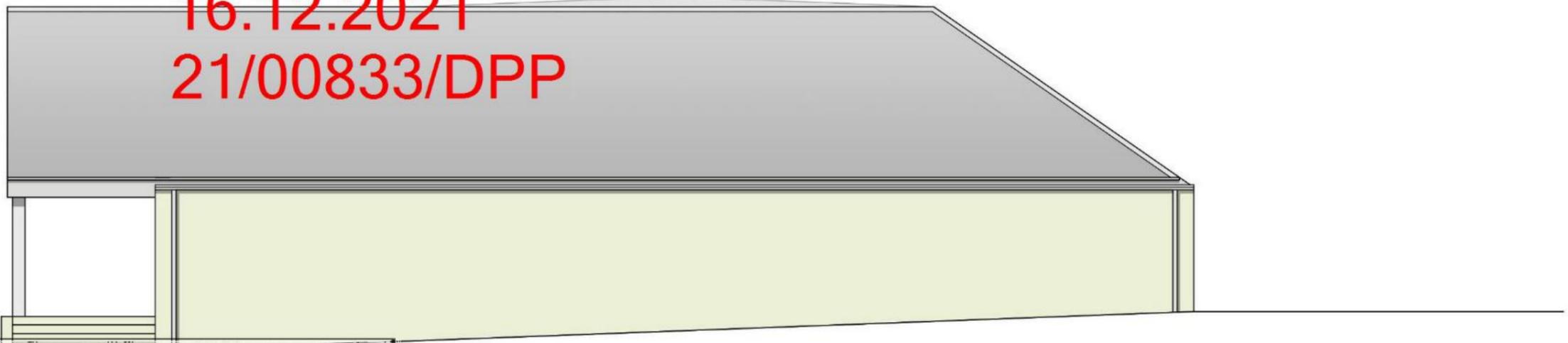
East

1:100



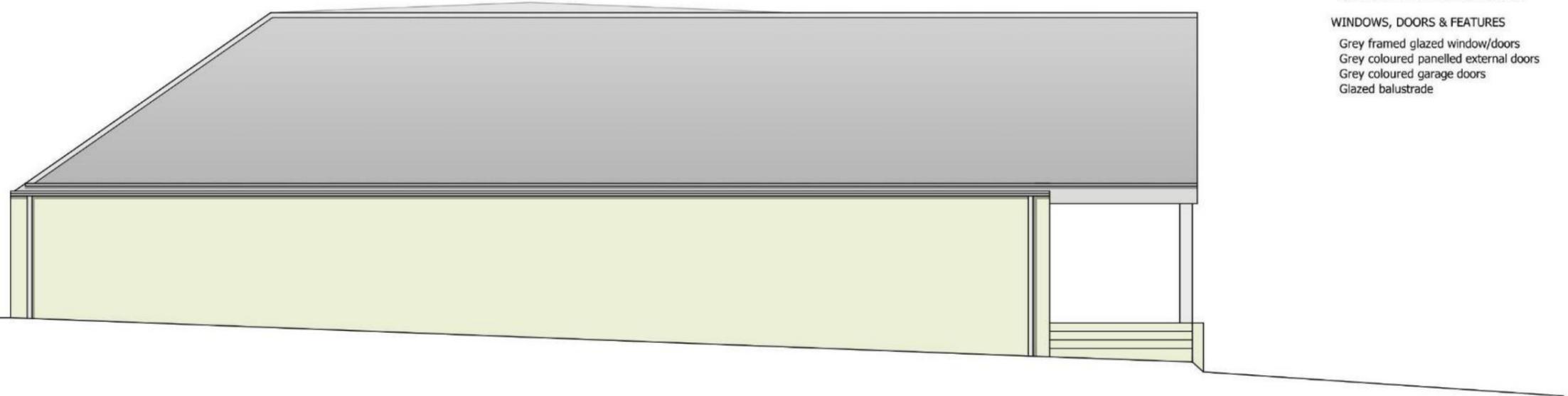
| REV.                                                                                      | DESCRIPTION | DATE | DRAWN | CHECKED | STAGE    | STATUS | PROJECT                           | DRAWING TITLE            | Consulted architects and interior designers                                                                                                               | DATE                 | SCALE                     | DRAWN | CHECKED       |
|-------------------------------------------------------------------------------------------|-------------|------|-------|---------|----------|--------|-----------------------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---------------------------|-------|---------------|
|                                                                                           |             |      |       |         | PLANNING | FORMAL | 10 KIRKHILL TERRACE<br>GOREBRIDGE | PROPOSED<br>ELEVATIONS 1 | The Design Place One<br>30 Wood Farm Road<br>Edinburgh EH10 6LE<br>T: 0131 462 8900<br>F: 0131 462 8361<br>acm@kennethreid.co.uk<br>www.kennethreid.co.uk | OCT 2021             | 1:100@A3                  | FC    | KR            |
|                                                                                           |             |      |       |         | CLIENT   |        |                                   |                          | <b>KRA</b><br>KENNETH REID<br>ARCHITECTS                                                                                                                  | CONTRACT NO.<br>1466 | DRAWING NO.<br>PL(2-)-005 |       | REVISION<br>- |
| © KENNETH REID ARCHITECTS - DO NOT SCALE DRAWING - ALL DIMENSIONS TO BE CONFIRMED ON SITE |             |      |       |         |          |        |                                   |                          |                                                                                                                                                           |                      |                           |       |               |

**APPROVED**  
**16.12.2021**  
**21/00833/DPP**



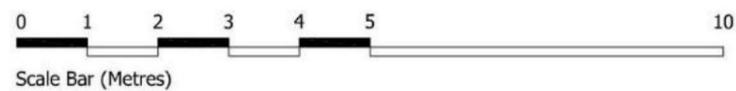
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- Grey framed glazed window/doors
  - Grey coloured panelled external doors
  - Grey coloured garage doors
  - Glazed balustrade



North

1:100



| REV. | DESCRIPTION | DATE | DRAWN | CHECKED | STAGE    | STATUS | PROJECT                        | DRAWING TITLE         | Consulted architects and interior designers                                                                                                               | DATE         | SCALE       | DRAWN    | CHECKED |
|------|-------------|------|-------|---------|----------|--------|--------------------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------|----------|---------|
|      |             |      |       |         | PLANNING | FORMAL | 10 KIRKHILL TERRACE GOREBRIDGE | PROPOSED ELEVATIONS 2 | The Design Place One<br>30 Reed Farm Road<br>Edinburgh EH10 6LE<br>T: 0131 462 8900<br>F: 0131 462 8361<br>acm@kennethreid.co.uk<br>www.kennethreid.co.uk | OCT 2021     | 1:100@A3    | FC       | KR      |
|      |             |      |       |         | CLIENT   |        |                                |                       | <b>KRI</b><br>KENNETH REID<br>ARCHITECTS                                                                                                                  | CONTRACT NO. | DRAWING NO. | REVISION |         |
|      |             |      |       |         | Ms ALLAN |        |                                |                       |                                                                                                                                                           | 1466         | PL(2-)-006  | -        |         |

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| <b>PART VI<br/>ENFORCEMENT</b>                  |            |     |                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------|------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Application</i>                              |            |     |                                                                                                                                                                                                                                                                                                                                                       |
| Expressions used in connection with enforcement | <b>123</b> | (1) | For the purposes of this Act -                                                                                                                                                                                                                                                                                                                        |
|                                                 |            | (a) | carrying out development without the required planning permission, or                                                                                                                                                                                                                                                                                 |
|                                                 |            | (b) | failing to comply with any condition or limitation subject to which planning permission has been granted, or                                                                                                                                                                                                                                          |
|                                                 |            | (c) | initiating development without giving notice in accordance with section 27A (1) of this Act, or                                                                                                                                                                                                                                                       |
|                                                 |            | (d) | carrying out development without displaying a notice in accordance with section 27C (1) of this Act                                                                                                                                                                                                                                                   |
|                                                 |            |     | constitutes a breach of planning control.                                                                                                                                                                                                                                                                                                             |
|                                                 |            | (2) | For the purposes of this Act -                                                                                                                                                                                                                                                                                                                        |
|                                                 |            | (a) | the issue of an enforcement notice, or                                                                                                                                                                                                                                                                                                                |
|                                                 |            | (b) | the service of a breach of condition notice,                                                                                                                                                                                                                                                                                                          |
|                                                 |            |     | under this Part constitutes taking enforcement action as does the issuing of a notice under section 33A                                                                                                                                                                                                                                               |
|                                                 |            | (3) | In this Part “planning permission” includes planning permission under Part III of the 1947 Act and Part III of the 1972 Act.                                                                                                                                                                                                                          |
| Time Limits                                     | <b>124</b> | (1) | Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed. |
|                                                 |            | (2) | Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.                                                                                                  |
|                                                 |            | (3) | In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.                                                                                                                                                                                |
|                                                 |            | (4) | Subsections (1) to (3) do not prevent -                                                                                                                                                                                                                                                                                                               |
|                                                 |            | (a) | the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect, or                                                                                                                                                                                           |
|                                                 |            | (b) | taking further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the planning authority have taken or purported to take enforcement action in respect of that breach.                                                                                             |
| <b>Enforcement Notices</b>                      |            |     |                                                                                                                                                                                                                                                                                                                                                       |
| Issue of enforcement notice                     | <b>127</b> | (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 | <b>128</b> | (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 alteration or removal of any buildings or works,                                                                                                                                                                                                                                                            |
|                               |            | (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 of 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 | <b>129</b> | (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              | <b>130</b> | (1)  | A person on whom an enforcement notice is served or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds -                       |
|                                                |            | (a)  | Repealed by 2006 Act.                                                                                                                                                                                                                                                                                               |
|                                                |            | (b)  | that the matters which, by virtue of section 128(1)(a) have been stated in the notice, have not occurred;                                                                                                                                                                                                           |
|                                                |            | (c)  | That the 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 -                                                                                                                                                                                                                                                                        |

|                                         |            |     |     |                                                                                                                                                                                                                                                            |
|-----------------------------------------|------------|-----|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                         |            |     | (a) | by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect, or                                                                                         |
|                                         |            |     | (b) | by sending such notice to him in a properly addressed and prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date ; or                                                               |
|                                         |            |     | (c) | by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date                                                                                   |
|                                         |            | (3) |     | A person who gives notice under subsection (2) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing -                                                                               |
|                                         |            |     | (a) | specifying the grounds on which he is appealing against the enforcement notice, and                                                                                                                                                                        |
|                                         |            |     | (b) | giving such further information as may be prescribed.                                                                                                                                                                                                      |
| Appeals:<br>supplementary<br>provisions | <b>131</b> | (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) |     | Repealed by 2006 Act                                                                                                                                                                                                                                       |
|                                         |            | (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 | <b>132</b> | (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. | <b>133</b> | (1)  | On the determination of an appeal under section 130, the Secretary of State may                                                                                                                                                                                                                                                                                                     |
|                                                                                    |            | (a)  | Repealed by 2006 Act                                                                                                                                                                                                                                                                                                                                                                |
|                                                                                    |            | (b)  | Repealed by 2006 Act                                                                                                                                                                                                                                                                                                                                                                |
|                                                                                    |            | (c)  | Repealed by 2006 Act                                                                                                                                                                                                                                                                                                                                                                |
|                                                                                    |            | (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 provision 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)  | Repealed by 2006 Act.                                                                                                                                                                                                                                                                                                                                                               |
|                                                                                    |            | (5)  | Repealed by 2006 Act.                                                                                                                                                                                                                                                                                                                                                               |
|                                                                                    |            | (6)  | Repealed by 2006 Act.                                                                                                                                                                                                                                                                                                                                                               |
|                                                                                    |            | (7)  | Repealed by 2006 Act.                                                                                                                                                                                                                                                                                                                                                               |
|                                                                                    |            | (8)  | Repealed by 2006 Act.                                                                                                                                                                                                                                                                                                                                                               |
|                                                                                    |            | (9)  | Repealed by 2006 Act.                                                                                                                                                                                                                                                                                                                                                               |
|                                                                                    |            | (10) | Repealed by 2006 Act.                                                                                                                                                                                                                                                                                                                                                               |
|                                                                                    |            | (11) | Repealed by 2006 Act.                                                                                                                                                                                                                                                                                                                                                               |
| Validity of enforcement notices                                                    | <b>134</b> |      | 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.                                                                                                                                                                                       |
| Execution and cost of works required by enforcement notice                         | <b>135</b> | (1)  | If any steps which are required by an enforcement notice to be taken have not been taken within the compliance period, the planning authority may -                                                                                                                                                                                                                                 |
|                                                                                    |            | (a)  | enter the land take those steps, and                                                                                                                                                                                                                                                                                                                                                |
|                                                                                    |            | (b)  | recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.                                                                                                                                                                                                                                                           |
|                                                                                    |            | (2)  | If that person did not appeal to the Secretary of State although entitled to do so, he shall not be entitled to dispute the validity of the action taken by the planning authority under subsection (1) in accordance with the enforcement notice.                                                                                                                                  |
|                                                                                    |            | (3)  | In computing the amount of the expenses which may be recovered by them under subsection (1), a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.                                                                                                                                                   |
|                                                                                    |            | (4)  | Where a copy of an enforcement notice has been served in respect of any breach of planning control -                                                                                                                                                                                                                                                                                |
|                                                                                    |            | (a)  | any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with the notice, and                                                                                                                                                                                                                                                                |
|                                                                                    |            | (b)  | any sums paid by the owner or lessee of any land under subsection (1) in respect of expenses incurred by the planning authority in taking steps required by such a notice to be taken,                                                                                                                                                                                              |
|                                                                                    |            |      | shall be recoverable from the person by whom the breach of planning control was committed.                                                                                                                                                                                                                                                                                          |

|                                                    |            |      |                                                                                                                                                                                                                                                                                                             |
|----------------------------------------------------|------------|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                    |            | (5)  | If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by an enforcement notice, the sheriff may by warrant authorise the owner to go on to the land and carry out that work.         |
|                                                    |            | (6)  | A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within three days of their removal.                                                                                                             |
|                                                    |            | (7)  | After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.                                                                                                                                                                              |
|                                                    |            | (8)  | Where a planning authority seek, under subsection (1), to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that -                                                                                                                                   |
|                                                    |            | (a)  | he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and                                                                                                                                                                               |
|                                                    |            | (b)  | he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,                                                                                                    |
|                                                    |            |      | his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.                                                                                                                                                                        |
|                                                    |            | (9)  | A planning authority who by reason of subsection (8) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.                                                                 |
|                                                    |            | (10) | Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.                                                                                      |
|                                                    |            | (11) | In this section and in sections 136, 136A, 140 and 141 any reference to the compliance period, in relation to an enforcement notice, is a reference to the period specified in the notice for compliance with it or such extended period as the planning authority may allow for compliance. .              |
|                                                    |            |      |                                                                                                                                                                                                                                                                                                             |
| Offence where enforcement notice not complied with | <b>136</b> | (1)  | Where, at any time after the end of the compliance period in respect of an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice. |
|                                                    |            | (2)  | Where the owner of the land is in breach of the notice he shall be guilty of an offence.                                                                                                                                                                                                                    |
|                                                    |            | (3)  | In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.                                                                                                        |
|                                                    |            | (4)  | A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.                                                          |
|                                                    |            | (5)  | A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.                                                                                                                                                             |
|                                                    |            | (6)  | An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.          |
|                                                    |            | (7)  | Where -                                                                                                                                                                                                                                                                                                     |
|                                                    |            | (a)  | a person charged with an offence under this section has not been served with a copy of the enforcement notice, and                                                                                                                                                                                          |
|                                                    |            | (b)  | the notice is not contained in the appropriate register kept under section 147,                                                                                                                                                                                                                             |

|                                                                                |             |                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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|                                                                                |             |                                                                        | it shall be a defence for him to show that he was not aware of the existence of the notice.                                                                                                                                                                                                                                                                                                                                                               |
|                                                                                |             | (8)                                                                    | A person guilty of an offence under this section shall be liable -                                                                                                                                                                                                                                                                                                                                                                                        |
|                                                                                |             | (a)                                                                    | on summary conviction, to a fine not exceeding £50,000, and                                                                                                                                                                                                                                                                                                                                                                                               |
|                                                                                |             | (b)                                                                    | on conviction on indictment, to a fine.                                                                                                                                                                                                                                                                                                                                                                                                                   |
|                                                                                |             | (9)                                                                    | In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.                                                                                                                                                                                        |
|                                                                                | <b>136a</b> | <b>Fixed penalty notice where enforcement notice not complied with</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                                                                                |             | (1)                                                                    | Where a planning authority have reason to believe that, by virtue of subsection (1) of section 136, a person is in breach of an enforcement notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.                                                                                                                                                         |
|                                                                                |             | (2)                                                                    | The fixed penalty notice is to specify—                                                                                                                                                                                                                                                                                                                                                                                                                   |
|                                                                                |             | (a)                                                                    | the step specified, under subsection (3) of section 128, in the enforcement notice which has not been taken, or                                                                                                                                                                                                                                                                                                                                           |
|                                                                                |             | (b)                                                                    | the activity so specified which has not ceased.                                                                                                                                                                                                                                                                                                                                                                                                           |
|                                                                                |             | (3)                                                                    | It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.                                                                                                                                                                                                                                                                                                                                             |
|                                                                                |             | (4)                                                                    | For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in the notice, any liability to conviction for an offence under section 136 as respects the breach of the enforcement notice. |
|                                                                                |             | (5)                                                                    | But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.                                                                                                                                                                                                                                                                                                                           |
|                                                                                |             | (6)                                                                    | The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.                                                                                                                                                                                                                                                 |
|                                                                                |             | (7)                                                                    | The conditions are that the fixed penalty notice—                                                                                                                                                                                                                                                                                                                                                                                                         |
|                                                                                |             | (a)                                                                    | is served within the period of 6 months which immediately follows the compliance period in relation to the enforcement notice, and                                                                                                                                                                                                                                                                                                                        |
|                                                                                |             | (b)                                                                    | is not served after the person has been charged with an offence under section 136 as respects the breach of the enforcement notice                                                                                                                                                                                                                                                                                                                        |
|                                                                                |             | (8)                                                                    | During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.                                                                                                                                                                                                                                                                                    |
|                                                                                |             | (9)                                                                    | If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.                                                                                                                                                                                                                                                       |
|                                                                                |             | (10)                                                                   | A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.                                                                                                                                                                                                                                                                                                                                                    |
|                                                                                |             | (11)                                                                   | In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.                                                                                                                                                                                                                                                                                    |
| Effect of planning permission etc on enforcement or breach of condition notice | <b>137</b>  | (1)                                                                    | Where, after the service of –                                                                                                                                                                                                                                                                                                                                                                                                                             |
|                                                                                |             | (a)                                                                    | a copy of an enforcement notice, or                                                                                                                                                                                                                                                                                                                                                                                                                       |
|                                                                                |             | (b)                                                                    | a breach of condition notice,                                                                                                                                                                                                                                                                                                                                                                                                                             |

|                                                                  |            |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------|------------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                  |            |     | planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.                                                                                                                                                                                                                                                                                      |
|                                                                  |            | (2) | Where, after a breach of condition notice has been served, any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.                                                                                                                                                                                                                             |
|                                                                  |            | (3) | The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.                                                                                                                                                                                       |
|                                                                  |            |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Enforcement notice to have effect against subsequent development | <b>138</b> | (1) | Compliance with an enforcement notice, whether in respect of –                                                                                                                                                                                                                                                                                                                                                                                                              |
|                                                                  |            | (a) | the removal or alteration of any building or works,                                                                                                                                                                                                                                                                                                                                                                                                                         |
|                                                                  |            | (b) | the discontinuance of any use of land, or                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|                                                                  |            | (c) | any other requirements contained in the notice,                                                                                                                                                                                                                                                                                                                                                                                                                             |
|                                                                  |            |     | shall not discharge the notice.                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|                                                                  |            | (2) | Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.                 |
|                                                                  |            | (3) | Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered. |
|                                                                  |            | (4) | A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding the statutory maximum.                                                                                                        |
|                                                                  |            | (5) | In determining the amount of the fine to be imposed under subsection (4), the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence.                                                                                                                                                                                            |
|                                                                  |            |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Power of Secretary of State to serve enforcement notice          | <b>139</b> | (1) | If it appears to the Secretary of State that it is expedient that an enforcement notice should be served in respect of any land, he may himself serve such a notice under section 127.                                                                                                                                                                                                                                                                                      |
|                                                                  |            | (2) | An enforcement notice served by the Secretary of State shall have the same effect as if it had been served by the planning authority.                                                                                                                                                                                                                                                                                                                                       |
|                                                                  |            | (3) | The Secretary of State shall not serve such a notice without consulting the planning authority.                                                                                                                                                                                                                                                                                                                                                                             |
|                                                                  |            | (4) | The provisions of this Act relating to enforcement notices apply, so far as relevant, to an enforcement notice served by the Secretary of State as they apply to an enforcement notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Secretary of State, and any other necessary modifications.                                                                                               |
|                                                                  |            |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

# Appendix B

