

EAST AYRSHIRE COUNCIL

ENFORCEMENT NOTICE APPEAL STATEMENT

IN RESPONSE TO

APPEAL ON BEHALF OF [REDACTED]

AGAINST THE SERVICE OF AN ENFORCEMENT NOTICE

BY EAST AYRSHIRE COUNCIL

DATED 13 JUNE 2018 AT DARNCONNER SOUTH, U713 COMMONLOCH FROM U730

GLENSHAMROCK TO C22 COAL ROAD, AUCHINLECK, CUMNOCK, KA18 3JN

EAC Ref: EN/17/0165/UNTIDY

DPEA Ref: ENA-190-2013

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1. Introduction

1.1. Mr [REDACTED] (“the Appellant”) is the owner of the substantive part of the appeal site. The extent of Mr [REDACTED]’s ownership is shown on East Ayrshire Council Production **EAC10**.

1.2. Whilst the appeal site is located primarily within the former Darnconner Opencast Coal Mine Site which is located approximately 2.5 kilometres east of the settlement of Auchinleck, it also incorporates some former agricultural land. The appeal site extends to on or about 12 hectares in area and is made up of land owned by 3 parties, namely the Appellant, [REDACTED] and Viridor Waste Management Limited as shown on the plan produced as **EAC10**.

1.3. On 13 June 2018, an Enforcement Notice under reference number EN/17/0165/UNTIDY was served in relation to the appeal site on the following parties:

The Appellant

Mr [REDACTED], Forde Training Ltd, Darnconner OCCS, Common Farm, Auchinleck, KA18 3JN

Mr [REDACTED], Forde Training Ltd, 9 Cwrt Berllan, Prestatyn, Denbighshire, LL19 8YB

Forde Training Limited (Company No. SC591691), Darnconner OCCS, Common Farm, Auchinleck, KA18 3JN

Mr [REDACTED] Common Farm, Auchinleck, KA18 3JN

And

Viridor Waste Management Limited (Company No. 575069), Registered Office, Peninsula House, Rydon Lane, Exeter, Devon, EX2 7HR.

1.4. The written description of the land affected by the Enforcement Notice (“the EN”) was set out within Section 2 of that Notice and identified as “*Darnconner South*,

U713 Commonloch from U730 Glenshamrock to C22 Coal Road, Auchinleck, Cumnock, East Ayrshire, KA18 3JN (“the appeal site”). In addition, to this written description of the appeal site, a plan was attached to the EN identifying the area covered by the notice. A copy of the EN and attached plan are produced by East Ayrshire Council (“the Council”) as Productions **EAC01** and **EAC02**.

- 1.5. The EN was served on the Appellant, having regard to the nature and extent of the change of use, and unauthorised and unregulated works, because of his ownership of land within the appeal site as shown on the plan forming **EAC02**.
- 1.6. The Council is aware that the EN has also been appealed to the Planning and Environmental Appeals Division (“DPEA”) by [REDACTED] and has been given DPEA Ref: ENA-190-2012. However, for the purposes of the present appeal, the Council would intend to refer to matters relating to the EN that are relevant to a proper consideration of the appeal lodged by the Appellant, and would only intend to refer to matters involving [REDACTED] or other parties served with a copy of the EN, where it is necessary and appropriate to do so.
- 1.7. Further, where a particular fact, assertion or comment is not referred to within this Statement of Case, it should not be taken to be an admission of that particular matter.

2. Background

- 2.1 On 21 March 2018, the Council first received a complaint that palisade fencing and gates had been erected at the entrance to the appeal site. The Council contacted the person that they believed was the owner of the land at that location regarding this complaint by e-mail on 21 March 2018 and were advised by him on that date that he had disposed of his interests in the site. The Council were provided with the new owner details at that time, namely those of the Appellant.
- 2.2 On 21 March 2018 a letter was issued to the Appellant by the Council regarding the unauthorised gates and palisade fence at the site.
- 2.3 On 10 April 2018 the Appellant made contact with the Council to discuss matters, including the proposed use of the land within his ownership. It was agreed at that time, that further discussion would require to take place regarding those matters. In the meantime, it was understood by the Council that no further works would take place within the site that he owned.
- 2.4 No further contact was received by the Council from the Appellant at that time.
- 2.5 On 30 April 2018, the Council received a further complaint that land contouring was going on within that site and that signs relating to the Forde Training Company Limited had been erected on the new gates.
- 2.6 Also on 30 April 2018 two Officers from the Council's Planning Service visited the site, photographed the site and prepared site notes following the visit. These are produced as **EAC03** and **EAC04** respectively. During the visit, telephone conversations took place with the Appellant, initially to gain access to the site, as the gates were locked and subsequently to discuss the ongoing works. One operative and one machine were on site at this time. It was noted that the operative had been tasked with moving soil across the site and forming two settlement ponds. The nature and extent of works being undertaken on the site at that time, together with the construction of the palisade fence and gates was considered by the Council to constitute development that would require the submission of a planning application. During this visit it was also noted that works had been undertaken both North and South of the Auchinleck Burn (which is located on the northern part of the appeal site).

- 2.7 On 2 May 2018 following this site visit, a meeting took place with the Appellants representative, [REDACTED]. [REDACTED] sought to promote potential uses for the site. During the meeting, the Appellant's representative was advised that no further work should be undertaken on the site and that the Appellant should consider making contact with relevant statutory consultees so that the Appellant could consider the most appropriate use for the site. Thereafter, once a specific, and appropriate, use had been identified by the Appellant, his representative was advised that he should then contact relevant officers within the Council's Planning Service to discuss whether such a use would be appropriate in planning and regulatory terms, and whether it would require a planning application to be made by the Appellant. Until that process had been concluded, the Council noted and understood that no further work would take place on site. On that basis, the Council acknowledged that whilst the palisade fencing and gate, and portable building had been erected and located respectively on land forming part of the appeal site, and was considered to be a breach of planning control by them, it would not take enforcement action at that time to have them removed. However, the Council clearly stated that should works continue on site, the Council reserved the right to take further enforcement action against the Appellant not only in relation to the fencing, gate and portable building but also in relation to other works that the Council considered to be in breach of planning control at that time. An email was sent to the Appellant's representative following this email referring to the discussion that had taken place and is produced as **EAC14**.
- 2.8 On 3 May 2018 due to the nature and extent of works that had been witnessed during the site visit on 30 April 2018 in close proximity to the Auchinleck Burn, the Council contacted the Scottish Environment Protection Agency (SEPA) local office given their statutory remit to monitor and protect watercourses. .
- 2.9 On 7 May 2018 the Council received a further complaint relating to the site. However, this complaint differed from the earlier complaints and related to excavation of areas within the site and the unlawful dumping of waste. This complaint is referred to as **EAC05**.
- 2.10 On 10 May 2018 the Council met with SEPA to discuss the most appropriate way to deal with the complaints that it had received having regard to their respective statutory powers and duties.

- 2.11 On 17 May 2018 Council officers therefore visited the site and witnessed unauthorised waste disposal taking place. Photographs of the operations were taken and it was noted by the Council officers who were present, and who had previously visited the site on 30 April that significant earth moving operations (including the excavation of pits and their subsequent infill with unauthorised material and soil) had taken place since that visit across a wider area of land than previously witnessed. At this time, it was considered that this land was within the ownership of the Appellant [REDACTED] and Viridor Waste Management. Two articulated lorries were also encountered on site. One back actor excavator, one telehandler, one bulldozer and one road roller were also on site along with two operatives and a gatekeeper. Site Notes of this visit are produced as **EAC06** and photographs from this visit produced as **EAC07**.
- 2.12 Also on 17 May 2018 as a result of this site visit, the Council determined that materials were being imported onto the site (including waste for landfill) in the absence of planning permission for the site to be used as a landfill operation. In addition, the Council determined that the importation of material had the potential to contaminate or pollute the site and adjacent watercourse, the Auchinleck Burn, given there was no evidence of what type of material was being imported. Accordingly, it posted a Temporary Stop Notice at the entrance of the site later that day. A copy of that Notice is produced as **EAC08**.
- 2.13 From the service of the Temporary Stop Notice on 17 May 2018, until it ceased to have effect on 13 June 2018, the Council undertook further investigation to determine the owner(s) of the site (through a title search) given the extent of works evidenced on the site on 17 May 2018, and the involvement of parties in the unauthorised change of use and development works.
- 2.14 The examination of titles at this location identified that the unauthorised change of use and development works were taking place over an area that appeared to involve three landowners, including the Appellant. The Council were also aware that SEPA had served a DO NOT DISTURB Notice in accordance with Section 108 of the Environment Act 1995 on 17 May 2018 to cover the areas that they believed waste had been buried or imported. It is noted however that this Notice served by SEPA did not prevent any further waste being imported to the wider site.

- 2.15 On 13 June 2018 however, the Council noted that SEPA had not yet had the opportunity to carry out investigations within the site to identify the nature or extent of the buried or imported waste. Accordingly, the Council considered that it was expedient to serve an EN on that date. This position took reasonable account of what had transpired to date and the time that had already elapsed since the breach of planning control was first raised with the Council; the likelihood of any submission which would address the issues on site; the fact that the Notice served by SEPA did not prevent any further waste or materials being imported onto the wider appeal site; and the environmental risks that would endure until matters were satisfactorily resolved. Consequently, an EN was served by the Council on the Appellant and others together with a Stop Notice **EAC09**. A copy of the EN is attached and referred to for its terms.
- 2.16 The Stop Notice served is still in effect at the site and will remain so until such times as the current appeal(s) are determined.

3. Response to Grounds of Appeal

3.1 Having set out the background to this EN Appeal, the Council would respond to the Appellants grounds of appeal in the following terms.

First Ground of Appeal – Section 130(1) (b) of the 1997 Act

–‘that the matters which, by virtue of section 128(1) (a) have been stated in the notice, have not occurred’

3.2 The Appellant has failed to provide any evidence within his statement that the breaches identified within the Notice have not taken place. The argument which appears to be promoted within the statement is that the breach had already occurred prior to the appellant’s purchase of the site. The substantive landowners knowledge, or otherwise, of any alleged breach at the appeal site is immaterial to the current appeal under this ground. It is noted that there is nothing within the terms of S127 or S128 of the 1997 Act which requires the inclusion of dates on which the breach occurred to be included within any Notice served. Further, the Council will produce evidence detailing the condition of the land during a visit to the site on 30 April 2018 in the form of photographs **EAC03** and site notes **EAC04**. The condition of the site and activity taking place can be compared with that detailed within **EAC06** and **EAC07** which records the visit undertaken on 17 May 2018. It will be evident to the Reporter from these Productions that significant changes had taken place in the intervening period and the breaches identified within the Notice served had occurred immediately prior to the service of same. At that time, the Appellant was owner of a substantial part of the appeal site. As Planning Authority, East Ayrshire Council, have a statutory requirement to serve any Notice on parties specified within S127 (2) of the 1997 Act, this provision is set out below.

3.3 Section 127(2) of the Town and Country Planning (Scotland) Act 1997, as amended (“the 1997 Act”), states that;

*“(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.”

- 3.4 As an owner of part of the planning unit identified in the EN, the Council were statutorily obliged to serve a copy of the Notice on the Appellant. This is not discretionary and failure to do so could have rendered the notice invalid. In this case, the owner of the relevant area of land was not one single individual person or legal entity. It included the Appellant and two others. Further, there is no requirement within section 127 or section 128 of the 1997 Act that requires any specification about individual ownerships within the identified unit. Instead, it is reasonable and appropriate to ensure that the EN refers to, amongst others, all owners comprising that larger unit (in this case that land where a change of use is underway and works which constitute development are unauthorised and unregulated).
- 3.5 It is noted and understood that of the disturbed land within the appeal site, which extends to some 1.07Ha the appellant's land is on or about 0.65Ha of this total. This equates to approximately 60% of the disturbed area.
- 3.6 It is therefore respectfully requested that the Reporter dismisses the Appellants Appeal under the terms of Section 130(1) (b) of the 1997 Act.

Second Ground of Appeal – Section 130(1)(c) of the 1997 Act

‘that those matters (if they occurred) do not constitute a breach of planning control’

- 3.7 There is nothing within the Appellants statement which expands on this ground of appeal, indeed it is evident from the Appellants Production “Copy E-mail from [REDACTED] Planning Enforcement Officer to [REDACTED] dated 2 May 2018” that the Appellant and his agent at that time, Mr Fatcher, were aware that the Council had concerns over the development which was ongoing at the site at that point in time and considered this a breach of planning control. [REDACTED] response to this e-mail is also produced by East Ayrshire Council as **EAC13** and this response details the steps the Appellant was taking to regularise matters on site, which the Council contends is an acceptance that a planning breach had occurred. It is therefore

inconceivable that the Appellant would consider that an intensification of the earth moving activities on site and the importation of waste to the site would not constitute development requiring statutory consent. No argument has been promoted by the Appellant that this development would benefit from any “permitted development” rights as conferred by the terms of the Town and Country Planning (General Permitted Development) (Scotland) Regulations 1992 as amended, nor is it argued that the works undertaken are of such an insignificant scale that they could be considered *de minimis*.

3.8 Given the above, and the evidence produced by the Council as part of this Appeal Submission, it is evident that development constituting a breach of planning control has taken place at the site.

3.9 It is therefore respectfully requested that the Reporter dismisses the Appellants Appeal under the terms of Section 130(1) (c) of the 1997 Act.

Third Ground of Appeal – Section 130(1)(f) of the 1997 Act

‘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 stated in the notice, or to remedy any injury to amenity caused by that breach

3.10 Whilst the Appellants statement of case refers to Sections 5(1), 5(3), 5(6) and 5(7) of the served EN, there is no specific reference to 5(2), 5(4) and 5(5) of the Notice. It is therefore considered and noted that the Appellant appears to accept these particular requirements of the Notice are not excessive and do not exceed what is necessary to remedy the breach(es) identified.

3.11 These specific requirements of the Notice are:

“2) Identify to the Planning Authority the locations within the site where waste has been tipped or buried in the form of plan with all areas where tipping has occurred marked up in colour. In addition a schedule of the type and volume of waste tipped on site is to be provided to the Planning Authority to accompany that plan”

“3) Decontaminate all areas of the site where waste has been sited in accordance with the terms of the Environmental Protection Act 1990 and the Environment Act 1995 and provide documentary evidence to the Planning Authority in consultation with SEPA that this has been undertaken and achieved.”

“5) Reinstate ground levels at areas of excavation to those previously on site prior to the unauthorised works taking place ie. no voids should be left on site once the unauthorised materials have been removed and decontamination has taken place.”

3.12 If this is indeed the Appellants position then without prejudice to the Council's above stated position in relation to the first two grounds of appeal, it counters any submission made under Sections 130(1)(b) and 130(1)(c) of the 1997 Act that either the alleged breaches have not occurred or that if they have, they do not constitute a breach of planning control. The failure to address these particular points is considered by East Ayrshire Council as an acceptance by the Appellant that the breaches identified within the Notice have occurred.

3.13 Having set out this position, the Council would now propose to respond to the Appellants specific points of appeal under Section 130(1)(f) in turn as follows:

3.14 *“The First Requirement of the Enforcement notice (Paragraph 5(1) is that the Appellant and others “Stop the importation of materials to the site.” This requirement lacks specification and is of such general nature that it is incompetent. There is no specification of what is meant by “material” and such general requirement is incapable of being complied with by the Appellant and others. Said requirement is grossly excessive.”*

The planning history of the site and the current position on site do not afford any of the site owners the authority to import waste and materials on to the site and thereafter carry out excavations and earth moving operations to form voids to accommodate the waste material, which are then filled over with spoil and soil from other parts of the appeal site. Accordingly, there is currently no authorised use of the site which would permit landfill operations to take place in planning terms. Further, it is the Council's position that the EN and plan require to be read in a straightforward manner by a reasonable reader. It is therefore the Council's position that it is clear and unambiguous as to what is required by paragraph 5(1) of the EN having regard to the ordinary meaning of the words used and the activities

and use that have taken place on and within the appeal site. It is therefore denied that the EN goes beyond what is required, particularly when there is no consent or permitted development rights in force at the site which would allow anything to be imported.

- 3.15 *“In addition, the Third Requirement of the Enforcement Notice requires removal of “all imported materials from the site”. There is no specification of the term “imported materials” and it is unclear what is being required by the Council for compliance with this Requirement. Such general requirement is incapable of being complied with by the Appellant and others. Said requirement is grossly excessive.”*

As stated above, it is the Council’s position that the EN and plan require to be read in a straightforward manner by a reasonable reader. It is therefore the Council’s position that it is clear and unambiguous as to what is required by paragraph 5(3) of the EN having regard to the ordinary meaning of the words used and the activities and use that have taken place on and within the appeal site.

- 3.16 *“The Requirements numbered 5(6) and 5(7) of the Enforcement Notice require removal of a portable building from the site and dismantling and removal of the palisade fencing and gates from the Affected Land. It is the submission of the Appellant that the Council are barred from proceeding with the Enforcement notice insofar as it relates to the said fencing, gates and portable cabin, as a result of the advice provided by ██████████ on 2nd May 2018 in respect of those structures.”*

The Council’s position in relation to the meeting that took place on 2 May 2018 is set out in paragraph 2.7 above, and the advice provided by ██████████ at that meeting was in response to information provided by the Appellants representative, ██████████, during a meeting of the same date. It also took account of the circumstances encountered on site during a visit on 30 April 2018 by Council Officers. As stated above, the Council understood that at the time of the meeting on 2 May 2018 no further work would be undertaken on site by the Appellant. On that basis, the Council acknowledged that whilst the palisade fencing and gate, and portable building had been erected and located respectively on land forming part of the appeal site, and were considered to be a breach of planning control by them, it would not take enforcement action at that time to have them removed. However, it was the Council’s position that should further works continue on site, the Council reserved the right to take further enforcement action against the Appellant not only

in relation to the fencing, gate and portable building but also in relation to other works that the Council considered to be in breach of planning control at that time. This e-mail is produced **as EAC14**.

Given the material change in circumstances which then occurred at the appeal site, the Council consider that they were entitled to take formal enforcement action to have the unauthorised development, including the gates, fence and portable building removed from the site. The advice offered on 2 May 2018 does not bar the Council as Planning Authority from subsequently commencing formal action on a breach of planning control. It is evident from the discussion at the meeting on 2 May 2018 and the content of the e-mail (EAC14) that the Council were not stating that they would never take formal enforcement action on these breaches, nor does it state anywhere that they were considered to be acceptable breaches of planning control. The Council therefore, having regard to Section 127 of the 1997 Act, considered it expedient at the time of service of the EN to include all breaches of planning control which had been encountered at the site for the reasons set out in paragraph 2.15 above.

- 3.17 It is therefore respectfully requested that the appeal under Section 130(1) (f) of the 1997 Act is dismissed.

Fourth Ground of Appeal – Section 130(1)(g) of the 1997 Act

“The period specified in the notice (to comply with the steps to be taken) falls short of what should reasonably be allowed”

- 3.18 It is noted at the date of this Appeal Statement that the ‘Do Not Disturb’ Notice served by SEPA was withdrawn on 19 July 2018, 6 days after the EN was due to take effect. This would not have affected the Appellant’s ability to comply with the requirements of the EN, which the Council considers to be reasonable having regard to the particular circumstances of this case. It is therefore respectfully requested that the appeal under Section 130(1)(g) of the 1997 Act is dismissed.
- 3.19 Alternatively, should the Reporter consider that the DONOT DISTURN Notice may have prevented the Notice recipients from carrying out the requirements referred to in Section 5 of the Notice within the time periods stated in Section 6 of the Notice as served, which is not accepted, it is the Council’s position that this does not affect

the validity of the EN or the requirements contained within it, which, for the avoidance of doubt, the Council considers reasonable.

3.19 It was anticipated that this DO NOT DISTURB Notice would have been withdrawn following the investigative works which SEPA intended to carry out and SEPA have in fact now confirmed that the DO NOT DISTURB Notice was formally withdrawn on 19 July 2018. The Notice is not yet in effect however. The effective date of the Notice will be the date of any Decision which the Reporter makes. The Council therefore consider that the time periods contained within the EN are reasonable to have the works required by each section undertaken from that date.

3.20 Alternatively, should the Reporter consider that the time periods for compliance should be extended, which is denied by the Council, it is considered that the Reporter could, if he was so minded, be within his powers, in line with Section 132(2) of the 1997 Act, to amend or vary the Notice in the following manner;

1) *Stop the importation of material to the site.*

Immediately this notice takes effect

It is considered that this is reasonable given that the importation of material to the site is unlawful. The time period for compliance should remain unaltered.

2) *Identify to the Planning Authority the locations within the site where waste has been tipped or buried in the form of plan with all areas where tipping has occurred marked up in colour. In addition a schedule of the type and volume of waste tipped on site is to be provided to the Planning Authority to accompany that plan.*

14 days from the effective date of the Notice

It is considered that a period of 14 days is reasonable for this requirement given the SEPA DO NOT DISTURB Notice has been withdrawn from the site. The Appellant has not identified a period which he considers would be acceptable for this requirement. However, it is contended that if the Reporter is minded to do so, which is not accepted, he could extend the time period for compliance of this particular matter by no more than 4-6 weeks at the maximum.

- 3) *Remove all imported materials from the site to appropriately licensed waste facilities to be agreed with the Planning Authority in consultation with the Scottish Environment Protection Agency (SEPA) and provide copies of consignment notes for all waste removed from site.*

28 Days from the effective date of the notice

It is considered reasonable that once the areas where waste and materials have been tipped or buried have been identified that a period of compliance of 28 days is realistic and reasonable. However, if the Reporter was minded to vary the time period for compliance, which is not accepted, the period could be extended in limited terms to 28 days beyond the compliance period for Step 2. This would give an effective compliance period of 42 Days.

- 4) *Decontaminate all areas of the site where waste has been sited in accordance with the terms of the Environmental Protection Act 1990 and the Environment Act 1995 and provide documentary evidence to the Planning Authority in consultation with SEPA that this has been undertaken and achieved.*

56 days from the effective date of this Notice.

This period is considered reasonable however, should the Reporter be minded to vary the time period, which is not accepted, any addition to the time allowance for Steps 2 and 3 could be reflected in a revised compliance period for this requirement in similar terms ie 70 days rather than 56.

- 5) *Reinstate ground levels at areas of excavation to those previously on site prior to the unauthorised works taking place ie. no voids should be left on site once the unauthorised materials have been removed and decontamination has taken place.*

84 Days from the effective date of this Notice

This period is considered reasonable however, should the Reporter be minded to vary the time period, which is not accepted, any addition to the time allowance for Steps 2, 3 and 4 could be reflected in a revised compliance period for this requirement in similar terms ie 98 days rather than 84.

- 6) *Remove the portable building from the site.*

7 Days from the effective date of this Notice

This period is considered reasonable. The building has no physical connection to the ground on site and can easily be craned onto the back of a flatbed truck. The SEPA Notice at the site, as the Council understands matters, does not, and did not, cover the part of the site on which this building is located and there is no legal reason why this requirement of the Notice cannot be undertaken within the specified period.

- 7) *Dismantle and remove the palisade fencing and gates from the site.*

Within 7 Days of completion of Part 5 of Section 5 above

This requirement is for the removal of a portion of palisade fencing and gates extending to some 36m. It is considered that this period is reasonable for the dismantling and transportation of same.

4. Submissions on Further Procedure

- 4.1 The Appellant in his Appeal Form states that he considers it necessary for the appeal to be heard by further written submissions on specific matters and also by the holding of one or more hearing sessions on specific matters. Whilst the Council would have no difficulty providing further written response to any matters which the Reporter felt required further information, it is not considered that the matters at hand are unduly complex which would require hearing sessions.
- 4.2 Whilst the Appellant has cited grounds 130(1)(b) and 130(1)(c) of the 1997 Act among his grounds of appeal, there has been no promotion from the Appellant within his submission which contends that the works have been done under permitted development rights or with the benefit of planning consent. Similarly he does not seem to contest that material has been imported to the site. Any claim by the Appellant of ignorance is not accepted by the Council and, in any event, is not relevant in these appeal proceedings.
- 4.3 The use of land is clearly identified within the Notice as part of the breach identified. The Use of land for the disposal of refuse or waste materials does not fall within any of the Classes identified by the Town and Country Planning (Use Classes) (Scotland) Order 1997, as amended. Indeed Section 3(5)(k) of the Order specifically excludes this use from any of the identified classes.

“3.

(5) Nothing in any class shall include any use—

(a) as a theatre;

(b) as an amusement arcade or centre or funfair;

(c) for the sale of fuel for motor vehicles;

(d) for the sale or display for sale of motor vehicles;

(e) for a taxi business or for the hire of motor vehicles;

(f) as a scrapyards or a yard for the breaking of motor vehicles;

(g) for the storage or distribution of minerals;

(h) as a public house;

(i) for any work registrable under the Alkali etc. Works Regulation Act 1906[1];

(j) for the sale of hot food for consumption off the premises;

(k) as a waste disposal installation for the incineration, chemical treatment (as defined in Annex IIA to Directive 75/442/EEC under heading D9), or landfill of waste to which Directive 91/689/EEC applies;

*(l) as a betting office; or
(m) as a pay day loan shop.”*

The last known use of the site was as part of a former opencast coal mine with a small section remaining in agricultural use. Regardless of the previous use of the site, the works and change of use which have taken place would constitute a breach of planning control. It is unclear how a Hearing Session on this point would be beneficial to allow a proper consideration and determination to be made in relation to this appeal.

- 4.4 Similarly it is unclear to the Council what the benefit to parties would be of a Hearing Session to discuss the specification of the requirements and alleged breaches. The Council contend that the alleged breaches and the requirements of the Notice are sufficiently clear and capable of being understood by an informed reader, giving the words therein their normal meanings
- 4.5 The DO NOT DISTURB Notice served at the site by SEPA was withdrawn on 19 July 2018. There is therefore no legal impediment to the matters required by the EN being undertaken.
- 4.6 The Council do not consider that Hearing Sessions on the above matters would be of any benefit to parties and would add additional time and expense to parties which is not required. The Council would therefore request that the current appeal is dealt with by Written Submissions, and if required, further written Submissions in relation to specific matters identified by the Reporter.
- 4.7 It is also noted that, should the Reporter determine that any of the points raised by the Appellant have merit, which is denied, he has the power, conferred by Section 132(2) of the 1997 Act to;

*“(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.”*

without the requirement for and additional Hearing or Inquiry procedures.

4.8 It is noted from the Appellant's Appeal Statement that he believes that there is merit in the current appeal proceedings being sisted to allow SEPA to conclude their investigations. The Council has no objection to this, and has previously indicated that the appeal should be sisted for this purpose.

5. Conclusion

5.1 It is therefore respectfully submitted that:

- (i) The Council has acted reasonably and appropriately, and within the terms of the Town and Country Planning (Scotland) Act 1997, as amended, in the serving of the EN.
- (ii) The EN sets out the breach of planning control. The Appellants Statement of Case fails to evidence that the matters detailed as breaches of Planning Control within the EN have not occurred. Rather the Appellant contests that he has been unaware of the breaches taking place, which is not a relevant consideration. It is the Council's position that the EN is unambiguous and precise in its terms. It is therefore respectfully requested that the appeal under S130(1)(b) is dismissed
- (iii) The events narrated in the EN constitute a breach of planning control. The Appellants Statement of Case fails to evidence that the matters detailed within the Notice (if they occurred) do not constitute a breach of planning control. Again the Appellant contests that he has been unaware of the breaches taking place, which is not a relevant consideration. It is therefore the Council's position that the matters specified within the EN constitute a breach of planning control. It is therefore respectfully requested that the appeal under S130(1)(c) is dismissed
- (iv) The Appellants statement of case fails to explain in any detail whatsoever, why the steps required by the Notice exceed what is necessary to remedy the breach which has taken place within the Enforcement site. Nor does the statement promote any alternative steps which they propose could remedy the breaches of planning control which they accept have taken place. As owner of part of the Enforcement Site it is the Appellants responsibility to remedy the breaches identified within the EN as they relate to the land under his control, regardless of whether these were caused by his hand or by others. Accordingly, this aspect of the Appellant's appeal should be dismissed.
- (v) Alternatively, should the Reporter consider that the DO NOT DISTURB Notice may have prevented the Appellant from carrying out the requirements referred to in Section 5 of the EN within the time periods stated in Section 6 of the EN, which is not accepted, it is the Council's position that this does not affect the validity of the EN or the requirements contained within it.

However, the EN is not yet in effect. The effective date of the EN will be the date of any Decision which the Reporter makes. The Council therefore consider that the time periods contained in the EN are reasonable to have the works required by each part of Section 5 undertaken from the specified date in Section 6.

- (vi) The Council considers that the time periods contained within the EN are reasonable to have the works required by each part of Section 5 undertaken.
- (vii) Alternatively, should the Reporter consider that the time periods for compliance should be extended, which is denied by the Council, it is considered that the Reporter could, if he was so minded, be within his powers, in line with Section 132(2) of the 1997 Act, to amend or vary the Notice.

Given the above and the associated productions it is therefore respectfully requested that the Reporter refuse the appeal on the stated grounds.

East Ayrshire Council
9 August 2018

Appendix

East Ayrshire Council Productions

EAC01	Enforcement Notice dated 13 June 2018
EAC02	Enforcement Notice Plan dated 13 June 2018
EAC03	EAC site photographs 30 April 2018
EAC04	EAC site notes 30 April 2018
EAC05	Complaint dated 7 May 2018
EAC06	EAC site notes 17 May 2017
EAC07	Site Photographs 17 May 2018
EAC08	Temporary Stop Notice dated 17 May 2018
EAC09	Stop Notice dated 13 June 2018
EAC10	Plan showing ownership within Appeal Site
EAC11	Circular 10/2009 Planning Enforcement
EAC12	East Ayrshire Council Enforcement Charter March 2017
EAC13	E-mail response from [REDACTED] dated 4 May 2018
EAC14	Email from [REDACTED], Planning Enforcement Officer dated 2 May 2018

Important – this notice affects this property and has immediate effect. Failure to comply with the requirements of the notice may result in prosecution.

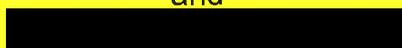
**Town and Country Planning (Scotland) Act 1997
(as amended by the Planning etc. (Scotland) Act 2006)**

TEMPORARY STOP NOTICE

ISSUED BY EAST AYRSHIRE COUNCIL



and



**Darnconner OCCS
Common Farm
Auchinleck
KA18 3JN**

and

**Forde Training Ltd
Darnconner OCCS
Common Farm
Auchinleck
KA18 3JN**

Ref No: EN/17/0165/UNTIDY

Date: 17 May 2018

Whereas:

1. In respect of land at: Darnconner South (Title Number AYR95314), U713 Commonloch from U730 Glenshamrock to C22 Coal Road, Auchinleck, Cumnock, East Ayrshire, KA18 3JN

2. East Ayrshire Council, being the planning authority for the land identified above and to which this notice relates, considers that;

(a) There has been a breach of planning control under section 123(1)(a) of the above Act at the land described above;

(b) That the said breach of planning control consists of the engagement of the activity which is described in schedule 1 of this notice; and,

(c) That for the reasons set out in schedule 2 of this notice it is expedient that the said activity is stopped immediately.

3. NOTICE IS HEREBY given that as of the time and date recorded above, being the time and date of display of this notice, East Ayrshire Council in exercise of their power in section 144A of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006) now prohibit the carrying out of the activity/activities specified in schedule 1 of this notice **with immediate effect**.

4. It is an offence under section 144C of the Act for any person to either; carry out the specified activity/activities or to permit others to carry out the activity/activities identified in schedule 1 once this notice has taken effect.

5. Unless it is otherwise withdrawn by East Ayrshire Council, this notice shall remain in effect until 14 June 2018.

Date: 17 May 2018

Signed: 

On behalf of: EAST AYRSHIRE COUNCIL, COUNCIL H.Q., LONDON ROAD, KILMARNOCK, KA3 7DG

SCHEDULE 1

The importation of any materials to the site including waste for landfill

THE AFOREMENTIONED ACTIVITIES ARE PROHIBITED BY THIS NOTICE

SCHEDULE 2

There is no planning permission in place for the site to be used as a landfill operation. In addition the Council consider that the importation of waste material should stop with immediate effect as there is the potential for contamination or pollution of the site and the adjacent watercourse, the Auchinleck Burn, as there has been no evidence of what type of material is being imported.

SCHEDULE 3

If any person on whom this Stop Notice has been served contravenes it after 11 am he/she or they shall be guilty of an offence under the terms of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006). Any person(s) found guilty of an offence shall be liable:

- (a) on summary conviction to a fine not exceeding £20,000
- (b) on conviction on indictment to a fine

144C Temporary stop notices: offences

- (1) A person is guilty of an offence if he contravenes a temporary stop notice—
 - (a) which has been served on him, or
 - (b) a copy of which has been displayed in pursuance of section 144A(4).
- (2) Contravention of a temporary stop notice includes causing or permitting the contravention of it.
- (3) An offence under this section may be charged by reference to a day or to a period longer than a day.
- (4) A person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different days or different periods.
- (5) It is a defence in any proceedings under this section that—
 - (a) the temporary stop notice was not served on the accused, and
 - (b) he did not know, and could not reasonably have been expected to know, of its existence.
- (6) A person convicted of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding £20,000,
 - (b) on conviction on indictment, to a fine.
- (7) In determining the amount of the fine, the court is in particular to have regard to any financial benefit which has accrued or appears likely

the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million, and the number of people aged 75 and over has increased from 4.5 million to 6.5 million (Office for National Statistics 2000).

There is a growing awareness of the need to address the needs of older people, and the need to ensure that the health care system is able to meet the needs of older people. The Department of Health (2000) has set out a strategy for the health care system to meet the needs of older people. The strategy is based on the following principles:

- To ensure that older people have access to the same range of health care services as younger people.
- To ensure that older people are able to live independently for as long as possible.
- To ensure that older people are able to participate in the decisions that affect their lives.

The strategy also sets out a number of key objectives for the health care system to meet the needs of older people. These objectives are:

- To reduce the number of older people who are admitted to hospital.
- To reduce the length of stay of older people in hospital.
- To reduce the number of older people who are admitted to care homes.

The strategy also sets out a number of key actions for the health care system to meet the needs of older people. These actions are:

- To improve the quality of care for older people.
- To improve the access of older people to health care services.
- To improve the support for older people living in the community.

The strategy also sets out a number of key indicators for the health care system to meet the needs of older people. These indicators are:

- The number of older people who are admitted to hospital.
- The length of stay of older people in hospital.
- The number of older people who are admitted to care homes.

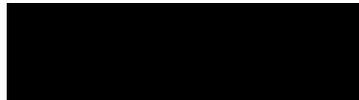
The strategy also sets out a number of key messages for the health care system to meet the needs of older people. These messages are:

- Older people are a valuable resource.
- Older people should be able to live independently for as long as possible.
- Older people should be able to participate in the decisions that affect their lives.

OFFICIAL



Our Ref: KM/MT/16/18045/PD/AC/C/WMLU



18 May 2018

Dear [Redacted]

**ENVIRONMENTAL PROTECTION ACT 1990 (AS AMENDED)
ENVIRONMENT ACT 1995
POLLUTION PREVENTION AND CONTROL (SCOTLAND) REGULATIONS 2012**

SEPA INVESTIGATION AT DARNCONNER OPEN CAST, AUCHINLECK KA18 3JN

I write with reference to the attendance of authorised SEPA officers at the above site on the 17 May 2018. SEPA understands that you are the landowner.

SEPA has identified unauthorised waste deposits at the Darnconner former open cast coal site and during our site visit on 17 May 2018 an authorised officer under Section 108 of the Environment Act 1995, verbally instructed those present that the premises should be left undisturbed. This direction was given under section 108 (4)(d) of the Environment Act 1995 and applies to the entire site. For the avoidance of doubt the area this direction relates to is delineated in red on the enclosed site plan.

At the time of the site visit SEPA officers partially marked out boundary area(s) of the site with coloured plastic tape. The boundary and site gate has been labelled clearly with the tape and labels on these areas(s) which highlight the direction "DO NOT DISTURB THIS AREA"

We write to direct you by virtue of section 108 (4)(d) of the Environment Act 1995 SEPA not to disturb the aforementioned waste deposits until such time as SEPA confirms in writing to you that you may disturb the same.

Please be aware that it is an offence under Section 110 of the Environment Act 1995 for a person, without reasonable excuse, to fail to comply with any requirement imposed under Section 108 of that Act. Failure to comply with the terms of the direction contained in this correspondence may, therefore, lead to submission of a report to the Procurator Fiscal recommending prosecution.

Should you have any questions in respect of this direction please contact [Redacted] at the address below.

Cont'd / . . .



Chairman
Bob Downes

Chief Executive
Terry A'Hearn

Angus Smith Building

6 Parklands Avenue, Eurocentral,
Holytown, North Lanarkshire ML1 4WQ
tel 01698 839000 fax 01698 738155

www.sepa.org.uk • customer enquiries 03000 99 66 99

OFFICIAL

Page 2

18 May 2018

[REDACTED]

Yours sincerely

[REDACTED]

Unit Manager
Waste Crime Investigations Team

ENC. Site plan delineating area subject to direction under section 108 (4)(d) of the Environment Act 1995

