

[Redacted]

From: [Redacted] on behalf of DPEA
Sent: 19 July 2018 09:42
To: [Redacted]
Subject: FW: Planning Enforcement Notice Appeal - [Redacted] v East Ayrshire Council
Attachments: scanned [Redacted]-20180712161708.pdf
Categories: New Appeal/Case

From: [Redacted] <[Redacted]@bto.co.uk>
Sent: 12 July 2018 16:19
To: DPEA <DPEA@gov.scot>
Subject: Planning Enforcement Notice Appeal - [Redacted] v East Ayrshire Council

Dear Sirs,

We are instructed by [Redacted], who appeals against the Planning Enforcement Notice issued by East Ayrshire Council on 13 June 2018 under reference EN/17/0165/UNTIDY.

Attached is the Appeal Form and relevant enclosures.

Please acknowledge receipt of this email and the attachments.

Regards,

[Redacted]
Senior Solicitor
for BTO Solicitors LLP

48 St Vincent Street Glasgow G2 5HS
T: +44 (0)141 221 8012
F: +44 (0)141 221 0288
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12 July 2018

Planning and Environmental Appeal
4 The Courtyard
Callendar Business Park
FK1 1XR

Our Ref: GST/DYO/ELLI/0041/0002

Your Ref:

Direct e-mail: gst@bto.co.uk

Dear Sirs

Planning Enforcement Notice Appeal
[REDACTED] v East Ayrshire Council
EN/17/01656/UNTIDY

We act on behalf of [REDACTED] who has instructed us to lodge an Appeal against the Planning Enforcement Notice served upon him by East Ayrshire Council.

We enclose herewith the following documents: -

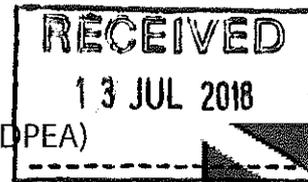
- Planning Enforcement Notice Appeal Form
- Appeal Statement
- Copy Enforcement Notice EN/17/0165/UNTIDY
- Copy letter from SEPA to [REDACTED] dated 18 May 2018
- Copy email from [REDACTED] to [REDACTED] dated 2nd May 2018

We look forward to hearing further from you in due course. We confirm that the papers enclosed with this letter have also been intimated upon East Ayrshire Council.

Yours faithfully,

[REDACTED]

Partner
For and on behalf of BTO Solicitors LLP



PLANNING ENFORCEMENT NOTICE APPEAL TO SCOTTISH MINISTERS

UNDER SECTION 130 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2013
**IMPORTANT: Please read and follow the notes provided when completing this form -
failure to supply all relevant information could invalidate your appeal**
Use **BLOCK CAPITALS** if completing in manuscript

Appellant(s)

Name

Address

Postcode

Contact Tel No 1

Contact Tel No 2

Fax No

E-mail

Agent (if any)

Name

Address

Postcode

Contact Tel No 1

Contact Tel No 2

Fax No

E-mail

Mark this box to confirm all contact should be through this representative

* Do you agree to all correspondence regarding your appeal being sent **by e-mail**? Yes No

Planning authority

Planning authority's application reference number (if known)

Site address

OS Map Grid Ref or Postcode

Area of Appeal Site (m²/ha)

Date on which the enforcement notice is specified to take effect. *Note: the appeal must be received by DPEA before that date.*

What is your interest in the land?

Owner Occupier Tenant Lessee

If none of the above, please explain your interest in the land here.

STATEMENT OF APPEAL

Ground(s) of appeal, as set out in Section 130(1)(b)-(g) of the Town and Country Planning (Scotland) Act 1997. *Note: your appeal must be based on one or more of these grounds.*

- (b) the matters stated in the notice to involve a breach of planning control have not occurred
- (c) the matters stated in the notice (if they occurred) do not constitute a breach of planning control
- (d) at the date when the notice was issued, no enforcement action could be taken in relation to the matters stated in the notice to involve a breach of planning control
- (e) copies of the enforcement notice were not served as required by Section 127 of Town and Country Planning (Scotland) Act 1997
- (f) 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
- (g) the period specified in the notice (to comply with the steps to be taken) falls short of what should reasonably be allowed

Provide a statement of your appeal below, setting out all matters you wish to raise and which require to be taken into account in determining your appeal. *Note: you may not have an opportunity to add to your appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account. (If necessary, this can be continued or provided in full on a separate document.)*

Please See Paper Apart

List of documents/evidence

Provide a list of all documents, materials and evidence which you have provided with your appeal and intend to rely on in support of your appeal and ensure that the documents are clearly numbered. (If necessary, this can be continued or provided in full on a separate document.)

Enforcement Notice EN/17/0165/UNTIDY

Letter from SEPA dated 18 May 2018

Copy email from [REDACTED] Planning Enforcement Officer to [REDACTED] dated 2nd May 2018

APPEAL PROCEDURE

The person appointed to determine your appeal will decide the procedure to be used. In general, a decision will be made based on your appeal documents and the planning authority's response. In some cases the appointed person may require further procedures to gain more information on specific matters before reaching a decision. This is your opportunity to indicate what procedure you think is most appropriate for the handling of your appeal. (See Notes for Appellants)

- 1 Review of all relevant information provided by yourself and other parties only, with no further procedure
- 2 Inspection of the land subject of the appeal
- 3 Further written submissions on specific matters
- 4 Holding of one or more hearing sessions (i.e. round table discussions) on specific matters
- 5 Holding of one or more formal inquiry sessions on specific matters

* You can suggest a combination involving more than one further procedure, if necessary.

If you have marked boxes 3, 4 or 5, please explain here which of the matters (as set out in your statement above) you believe ought to be subject of that procedure, and why. (If necessary, this can be continued or provided in full on a separate document.)

Use of the Land
Specification of the requirements and alleged breaches

Site inspection

In the event that the Scottish Government Reporter appointed to consider your appeal decides to inspect the appeal site, in your opinion:

Can the site be viewed entirely from public land?

Yes No

Is it possible for the site to be accessed safely, and without barriers to entry?

Yes No

Are there any biosecurity issues that affect the site?

Yes No

(for more information on biosecurity, please see the site inspection section in the notes for appellants)

If there are reasons why you think the Reporter would be unable to access and view the appeal site alone, please explain here:

OTHER APPEALS

Have you made any other appeals to Scottish Ministers concerning this land?

Yes No

If yes, please give details, including our appeal reference numbers (if known):

CHECKLIST

Please mark the appropriate boxes to confirm you have provided all supporting documents/evidence relevant to your appeal:

- Enforcement notice issued by the planning authority, which is the subject of your appeal
- Full completion of all parts of this form
- Full statement of appeal
- All documents, materials and evidence which you intend to rely on

The Scottish Government routinely publishes all documents relating to each appeal on its website at www.dpea.scotland.gov.uk. You must advise DPEA if there are particular reasons why you think any document you have provided cannot be published.

DECLARATION

I appeal to the Scottish Ministers as set out on this form and supporting documents. I confirm that I have today sent a copy of my appeal to the planning authority.

Signed

Date

11 Jul 2018

If you take part in the appeals process, use DPEA websites, contact the division or attend a webcast, the DPEA may collect certain information about you. To find out more about what information is collected, how the information is used and managed please read the [DPEA's privacy notice](#)

This form and all supporting documents should be sent to:

E-mail: dpea@gov.scot

Post: Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Falkirk
FK1 1XR

Contact Tel: 0300 244 6668

Appeal by [REDACTED] (“the Appellant”)
Against The Enforcement Notice (EN/17/0165/UNTIDY)
issued on 13 June 2018 by
East Ayrshire Council (“the Council”)

1. The Appellant is [REDACTED] residing at [REDACTED]
2. The Appellant appeals to the Scottish Ministers against the Planning Enforcement Notice issued by East Ayrshire Council on 13 June 2018 under Reference EN/17/0165/UNTIDY.

Enforcement Notice Appealed Against

3. On 13 June 2018, East Ayrshire Council issued an Enforcement Notice (EN/17/0165/UNTIDY), a copy which is produced (Applicant Production 1) (“the Enforcement Notice”).
4. The Enforcement Notice was addressed to the Appellant and four other parties, namely Mr [REDACTED], Forde Training Limited, [REDACTED] and Viridor Waste Management Limited. The Appellant has no knowledge of the interest of the other parties named within the Enforcement Notice.
5. The Land affected by the Enforcement Notice is stated to be “Darnconner South, U713 Commonloch from U730 Glenshamrock to C22 Coal Road, Auchinleck, Cumnock, East Ayrshire KA18 3JN and shown delineated in red on the plan attached to the Enforcement Notice (“the Affected Land”).
6. The Appellant is the owner of a part of the Affected Land. The Appellant has no knowledge as to the identity of the owners of the remainder of the Affected Land.
7. At present the Appellant is unable to investigate the condition of the land further at this time due to a direction provided under section 108(4) of the Environment Act 1995 which was issued by SEPA dated 18 May 2018. (Applicant Production 2)

Site History

8. The area of land covered by the Enforcement Notice is part of the former Darnconner Open Cast Coalmine.
9. It is believed that the land has not been actively mined for a number of years. The land has lain unsecured and access to the site has been unrestricted for many years prior to the Appellant’s purchase of his land. Flytipping and depositing of waste is believed to have occurred upon the land prior to the Appellant purchasing this.
10. The land owned by the Appellant forming part of the Affected Land was purchased by the Appellant at auction. The Applicant has no detailed knowledge of the condition of the land prior to his purchase.
11. The Appellant intended using the area of land he purchased for commercial purposes, one option for which was to lease the site to a tenant. The Appellant had sourced a potential tenant whose intention was to operate a plant training school on the site. The Appellant required to clear the site to accommodate this tenant and the site required to be secured.

12. The Appellant has engaged with the Planning Department of the Council regarding the proposed use of his site. The Appellant had suggested a number of proposed uses for the site to the Planning Department.
13. The Appellant has incurred costs in providing fencing and a lockable gate in order to secure the site. On 2nd May 2018, [REDACTED], Planning Enforcement Officer for the Council and [REDACTED] Team Leader for the Council met with [REDACTED] on behalf of the Appellant. A copy of an email from [REDACTED] to Mr [REDACTED] dated 2nd May 2018 is produced. (Appellant Production 3).
14. The Council's Planning Enforcement Officer, [REDACTED] was made aware of the fencing which had been erected and the temporary building which had been sited on the land. [REDACTED] advised the Appellant on 2nd May 2018 that it was not the intention of East Ayrshire Council to pursue any formal enforcement action at present in relation to the new fencing and gates which have been erected, nor the siting of the portable cabin."

Alleged Breach of Planning Control

15. The Enforcement Notice alleges a number of breaches of planning control, namely:
 - a. "Unidentified waste has been introduced to the site and a change of use to facilitate landfill operations has taken place."
 - b. "Unauthorised engineering works have taken place within the site to facilitate the change of use in the form of significant excavation and earth moving operations to form voids to accommodate the waste materials introduced to the site and subsequently filled over the spoil from other parts of the site."
 - c. "A palisade fence and gates have been erected to the southern end of the site extending to some 2.4 metres in height and some 36 metres in length."
 - d. "A portable building has been sited at the entrance at the southern entrance to the site."

Requirements

16. The Enforcement Notice states a number of required actions of the Appellant (and others), ("the Requirements") namely:
 - a. Stop the importation of material to the site.
 - b. Identify to the Council the locations within the site where waste has been tipped or buried in the form of a 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.
 - c. 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.
 - d. 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.
 - e. 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.

- f. Remove the portable building from the site.
- g. Dismantle and remove the palisade fencing and gates from the site.

Appeal

17. The Appellant appeals against the Enforcement Notice on the grounds noted on page 3 of the Appeal Form. Relevant to that Appeal, the Appellant submits: -

- a. The Appellant has no knowledge of the condition or use of the Affected Land prior to his purchase of part of the land. The Council has failed to specify within the Enforcement Notice the use of the Affected Land prior to the Appellant having an interest therein. There is insufficient detail in the Enforcement Notice relating to when any alleged importation of unidentified waste is alleged to have occurred, nor the period of time during which the alleged use of the site has been changed. The Enforcement Notice should be set aside as it does not specify any identifiable breach of planning control.
- b. The Appellant has not imported any waste onto the Affected Land. The Enforcement Notice provides no specification regarding the nature of the waste materials alleged to have been introduced to the Affected Land.
- c. The First Requirement of the Enforcement Notice (Paragraph 5(1)) is that the Appellant and others "Stop the importation of material 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 or others. Said requirement is grossly excessive.
- d. 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.
- e. The Requirements of the Enforcement Notice provide for timescales which cannot realistically be achieved by the Appellant. As noted above, the Affected Land is also subject to ongoing investigatory proceedings by SEPA. The Appellant at this time is not in a position to carry out enquiries and investigation of the site due to the existence of a Direction under section 108 (4)(d) of the Environment Act 1995 by SEPA. The timescales set out within the Enforcement Notice are not reasonable, as compliance with the Requirements is not within the control of the Appellant, due to the involvement of multiple other parties and the regulatory involvement of SEPA.
- f. 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 Mr Dickie on 2nd May 2018 in respect of those structures.

Submissions on Further Procedure

- 18. There is an ongoing process of investigation being undertaken by SEPA in connection with the Affected Land. The duration and nature of those investigations and any outcome to result therefrom are unknown to the Appellant at this time. Those investigations and enforcement activities impact upon the Appellant's ability to investigate his part of the Affected Land.

19. Accordingly, it is submitted that no assessment can be made with any certainty regarding the reasonable timescale for the Appellant (and others) to comply with said Requirements.
20. In those circumstances, it is submitted that this Appeal should be sisted until SEPA has concluded any competent investigations.

Email dated Wednesday May 2nd from [REDACTED] to [REDACTED], [REDACTED] and [REDACTED]

[REDACTED]

Our thanks for taking the time to come in this morning as discuss the above site with myself and my Team Leader [REDACTED].

As advised this site has been subject of discussion for some time within the office particularly in relation to the visual amenity and safety issues its current condition poses.

You advised that you have several potential uses in mind for the site and these would be dependent on what the local authority considered acceptable in planning and other regulatory terms.

We have some concern over the type of work which is currently being undertaken on site and would advise that this work is stopped pending discussion with SEPA due to its proximity to the adjacent watercourse. SEPA can be contacted at their Local Office in Ayr at 31 Miller Road, Ayr, KA7 2AX or by phone on 01292 294000.

Once agreement is reached with SEPA in relation to the extent and content of any works on the site I would request that early contact is made with either myself or Craig Iles, certainly before any of the agreed work is undertaken, to discuss whether these works will require to be the subject of a planning application.

I can confirm that I have made contact with [REDACTED] who may be interested in the fireclay stocks which currently sit within your site. I have advised him of our meeting earlier in the week and he has confirmed that he is happy for me to pass on his contact details. [REDACTED]
[REDACTED] has advised that after initial contact he will require to sample the materials on site and perhaps this can be arranged once you make contact.

In relation to the other potential uses of the site discussed it is clear that most of these may come with some issues and our advice to you in this regard was to seek professional advice prior to promoting any of the uses further. The Council will be happy to discuss proposals with any representative you may choose.

To this end, once you have appointed a representative I would suggest that it would be beneficial to make early contact with the statutory consultees who may be involved in the determination of any scheme put to the East Ayrshire as Planning Authority.

These consultees will certainly include SEPA, whose contact details are above, Ayrshire Roads Alliance who can be contacted on 01563 503190 or at The Johnnie Walker Bond, 15 Strand Street, Kilmarnock, KA1 1HU, RSPB who can be found at Vane Farm Nature Centre, By Loch Leven, Kinross KY13 9LX 01577 862355 and SNH who can be found at Russell House, King Street, Ayr, KA8 0BF, tel: 01292 270760 and e-mail strathclyde_ayrshire@snh.gov.uk

It may be that further consultation may be required on any submission made but I would suggest comments from the above would be beneficial to you prior to the submission of any application.

As previously intimated it is not the intention of East Ayrshire Council to pursue any formal enforcement action at present in relation to the new fencing and gates which have been erected, nor the siting of the portable cabin which you advised has been delivered to the site today. It remains our position however that the works which have been undertaken are development and as such are a breach of planning control and would advise that anything further undertaken on site without any necessary consent is done so entirely at your own risk.

I look forward to hearing from you once you have had the opportunity to digest the contents above and would be obliged if you would keep myself and Craig "in the loop" as matters progress to avoid any unnecessary action.

My contact details are reproduced below should you wish to discuss anything further.

Best Regards

██████████
Planning Enforcement Officer
Planning and Economic Development
East Ayrshire Council
The Johnnie Walker Bond
15 Strand Street
Kilmarnock
KA1 1AU
Tel: 01563 576655
Mob: ██████████
E-mail: ██████████

Email dated 4th May in response to ██████████ from ██████████

Good afternoon ██████████,

Firstly, please forgive my tardiness in only responding to you now. I have been out of the office since our meeting and only just had the opportunity to get back to you properly.

You will be pleased to note that we have retained the services of a local planning consultant, ██████████ who as fortune has it is a longstanding resident of Kilmarnock and is familiar with not just the area but the Darnconner site intimately. Upon speaking to ██████████ I told her of our meeting and our desire to work as closely as necessary with all the various interested parties, chiefly yourselves but also SEPA, the RSPB and ██████████ I will be sending her all the details necessary and once everything is in order we will contact you again regarding this.

I would also like to thank you for sending over ██████████ details regarding the Fireclay. I will be contacting him in due course.

As I mentioned the measures we put in place so far have very much been with Health & Safety in mind and not in any way to make anyone's lives awkward. I am glad you see that too and I appreciate your gestures with regards to both the gate and cabin. I must say it is encouraging to be dealing with someone like yourself and [REDACTED] who obviously want to work with us in order to make the site work for everyone. Rest assured we will do our best to ensure we are all on the same page and will keep you apprised of our dealings with the other relevant parties.

Kind regards

[REDACTED]

From: [REDACTED] <[REDACTED]@east-ayrshire.gov.uk>
Sent: 13 August 2018 15:32
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Darnconer South Enforcement Notice Appeal ENA-190-2013 [OFFICIAL]
Attachments: [REDACTED] Planning authority appeal response form.pdf [REDACTED] East Ayrshire Council Appeal Statement.pdf

Importance: High

Categories: Darnconner

CLASSIFICATION: OFFICIAL

Gordon,

My apologies, you are correct the wrong appeal documents have been submitted. Please find the correct documentation attached. Can you confirm if you have been able to access the dropbox which I sent the link to?

[REDACTED]

Apologies for the error. Can the attached be substituted for the information sent in error last week.

Best Regards

[REDACTED]
*Planning Enforcement Officer
East Ayrshire Council
Planning and Economic Development
The Johnnie Walker Bond
15 Strand Street
Kilmarnock
KA1 1HU
T: 01563 576655
M: [REDACTED]
E: [REDACTED]@east-ayrshire.gov.uk*

From: [REDACTED] bto.co.uk>
Sent: 13 August 2018 14:19
To: [REDACTED]@east-ayrshire.gov.uk>; [REDACTED]
[REDACTED]@east-ayrshire.gov.uk>
Subject: RE: Darnconer South Enforcement Notice Appeal ENA-190-2013 [OFFICIAL]

Dear Tom,

I have today returned from annual leave and have received your email below.

It would appear that the PARF and Statement of Case you have enclosed do not relate to the Appeal submitted by Mr [REDACTED]. I would ask that you provide me with a copy of the relevant response for my client's appeal, and I can provide any response thereto as required to the DPEA.

I look forward to hearing from you.

Kind regards,

[REDACTED]
Senior Solicitor
for BTO Solicitors LLP

48 St Vincent Street Glasgow G2 5HS
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F: +44 (0)141 221 0288
www.bto.co.uk

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From: [REDACTED] [east-ayrshire.gov.uk](mailto:[REDACTED]@east-ayrshire.gov.uk)
Sent: 09 August 2018 16:31
To: [REDACTED]
Subject: Darnconer South Enforcement Notice Appeal ENA-190-2013 [OFFICIAL]

CLASSIFICATION: OFFICIAL

Dear [REDACTED]

I refer to the above and attach a copy of the Council PAARF and Statement of Case in this regard.

I confirm that I have submitted the productions referred to therein through your Document Exchange System, your ref: **EDEX00000956**

I have copied the appellants agent into this e-mail and have also sent them a link to a dropbox where the productions can be downloaded.

Best Regards

[REDACTED]
*Planning Enforcement Officer
East Ayrshire Council
Planning and Economic Development
The Johnnie Walker Bond
15 Strand Street
Kilmarnock
KA1 1HU
T: 01563 576655
M: [REDACTED]
[@east-ayrshire.gov.uk](mailto:[REDACTED]@east-ayrshire.gov.uk)*

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[REDACTED]

From: [REDACTED] bto.co.uk>
Sent: 27 August 2018 16:06
To: [REDACTED]
Subject: Appeal Reference: ENA-190-2013

Dear Sirs,

With reference to the letter dated 10 August 2018 inviting comments from the Appellant in response to the Planning Authority's Response Form, the Appellant submits the following responses following the numbering of the Planning Authority's Appeal Statement where possible.

The Planning Authority's comments regarding the background to the issuing of the Enforcement Notice are not accepted by the Appellant. Reference is made to the Appellant's Appeal Statement.

2.9 – 2.12 The Planning Authority's Appeal Statement makes reference to 'unlawful dumping of waste' and 'materials were being imported onto the site (including waste for landfill)'. The Appellant refutes that waste material has been imported onto the site in the period he has had control of part of the site. Reference is made to paragraphs 17 b to 17 d of the Appellant's Statement of Appeal. The Council has failed to provide any specification of what they maintain has been imported to the site and the period in which they maintain that material has been imported. The position of the Appellant is as stated in his Appeal Statement that no materials have been imported on to the site and such material as is shown on the photographs produced by the Planning Authority was not imported by the Appellant or under his instruction. It is not clear from the Council's Appeal Statement the basis on which the assertion is made that materials have been imported onto the site.

Reference is made to the comments within the Appeal Statement regarding the lack of specification within the Enforcement Notice, and the failure of the Planning Authority to provide any specification of what is meant by general terms such as 'material' and 'waste'. The Enforcement Notice lacks in specification regarding the actions which it seeks to impose upon the Appellant and in the absence of such specification, the reasonableness of timescales for each of the steps at paragraph 5 of the Notice cannot be assessed.

3.10 The Planning Authority note that there is no specific reference made to paragraphs 5(2), 5(4) and 5(5) of the Enforcement Notice. The Planning Authority seek to suggest that the Appellant accepts the steps set out there. For the avoidance of any doubt, the Appellant does not accept any of the requirements set out within the Enforcement Notice. Reference is made to the comments in paragraphs 17 and 19 of the Appellant's Appeal Statement. The Enforcement Notice lacks sufficient specification to allow any assessment of the reasonableness of the steps which the Planning Authority seeks to impose upon the Appellant and others. Where the Appellant does not refer to any comment or assertion made by the Planning Authority in its Enforcement Notice or in its Appeal Statement, it should not be taken as an admission of any particular matter.

The Appellant remains of the view that the present appeal should be sisted in circumstances where separate investigations are being undertaken by SEPA.

I look forward to hearing further from you.

Regards,

[REDACTED]
Senior Solicitor
for BTO Solicitors LLP

48 St Vincent Street Glasgow G2 5HS

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F: +44 (0)141 221 0288

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**THE TOWN AND COUNTRY PLANNING (APPEALS)
(SCOTLAND) REGULATIONS 2013**

PLANNING AUTHORITY APPEAL RESPONSE FORM

For completion by the planning authority in connection with appeals under Sections 47, 75, 130, 154, 169 and 180 of the Town and Country Planning (Scotland) Act 1997 and Regulations 21 and 25 of the Town and Country Planning (Control of Advertisements) Regulations 1984

Regulations 4(2) and 14(2): The planning authority response, copy of documents, report on handling and suggested conditions must be provided to DPEA **within 21 days** of being notified of the appeal

Please note that the text boxes throughout this form are limited. Please use additional space on page 6 if required, or attach additional information on a separate word document when submitting by email.

Address/location of appeal site:	DARNCONNER SOUTH, U713 COMMONLOCH FROM U730 GLENSHAMROCK TO C22 COAL ROAD, AUCHINLECK, CUMNOCK,
Postcode:	KA18 3JN
Planning authority ref:	EN/17/0165/UNTIDY
DPEA ref:	ENA-190-2013

1. PLANNING AUTHORITY CONTACT

Please provide the following information about the authority official who will be lead contact regarding the appeal:

Name:	<input type="text"/>
Role/Job title:	Planning Enforcement Officer
Postal address:	East Ayrshire Council The Johnnie Walker Bond, 15 Strand Street Kilmarnock KA1 1HU
Telephone no:	<input type="text" value="01563 576655"/>
Fax no:	<input type="text"/>
E-mail address*:	<input type="text" value=" @east-ayrshire.gov.uk"/>

* In general, DPEA contact with the planning authority will be by **e-mail**.

2. RIGHT OF APPEAL (complete for planning permission appeals only)

Under the Hierarchy of developments, is this development: National Major Local

For local developments only: has the appellant correctly made an appeal to the Scottish Ministers (rather than the local review body)? Yes No

If Yes, please explain why, with reference to your authority's Scheme of Delegation.

Maximum number of characters 200

3. NOTIFICATION REQUIREMENTS OF PLANNING AUTHORITY

The Appeals Regulations require the planning authority, not later than 14 days after it receives notification of the appeal, to send a notice to each interested party informing them of the appeal and providing them with the information specified in the regulations.

Consent Appeals

Date of notice to interested parties:

**Please provide one copy of this notice and, where relevant, the newspaper advertisement.*

Please indicate the number of interested parties here (do not include consultees):

(You must provide a copy of the original letters of representation and, if more than 50 interested parties, please provide a list of names, addresses on an excel spreadsheet listing the addresses on individual lines)

Enforcement Notice Appeals

Date of notice to each person served the notice of appeal

13 Jun 2018

4. REPORT ON HANDLING (Planning Permission Appeals only)

Have you provided a Report on Handling? Yes No

Did the committee accept the Planning Officers recommendations? Yes No

If you have not provided a Report on Handling, please provide details of the provisions of the **development plan** and any other material considerations relevant to the development here.

Maximum number of characters 740

If you have not provided a Report on Handling, please provide details of the **consultations**, including internal, carried out by the planning authority next. *Please also include details of any body or person the planning authority would have consulted before making a decision, had the appeal not been lodged (i.e. for appeals against non-determination).*

7. MATTERS RELEVANT TO THE APPEAL

The planning authority is required to send DPEA and the appellant a note of matters it considers to be taken into account in determining the appeal. Please do so here.

Please see Paper Apart - Enforcement Notice Appeal Statement

8. DOCUMENTS BEFORE THE PLANNING AUTHORITY

Please provide a list and copies of all documents which were before the planning authority and which were taken into account in reaching the authority's decision on the application (or decision to issue the notice) which is the subject of the appeal.

Note: DPEA will only accept links to documents which are available in their Core Document Library

1) The Town and Country Planning (Scotland) Act 1997 as amended
2) Planning Contravention Notice responses from Martin Plant Hire, Tom Grant Plant, Thomas Plant Hire and R & L Miller Ltd.
3) The East Ayrshire Local Development Plan February 2017
Plus
See Production List

Appeal plans (complete for planning permission appeals only)

The documents provided by the appellant have been published on the DPEA website at www.dpea.scotland.gov.uk Section 32A of the Town and Country Planning (Scotland) Act 1997 prevents a proposed development from being varied through the appeal process.

Are the plans provided with this appeal the same as those which were before your authority when it considered the planning application? Yes

If 'no', you should now provide a copy of the plans relevant to this appeal. No

If the plan numbers on the decision notice are different from the numbers shown on the applicant's drawings, please attach a cross-reference of numbers to make it clear which of the applicant's plans were the subject of the Council's decision (or, in the case of failure to determine cases, which plans were under consideration by the Council at the time the appeal was made).

9. ADDITIONAL MATTERS (only applies to appeals under section 47(1) of the Town and Country Planning Act)

In your response, have you raised any matters which were not before the planning authority at the time the decision now subject of the appeal was made? Yes No

If yes, you should explain why they could not have been raised before that time or that exceptional circumstances prevented them from being raised; and also why you consider that these matters should now be taken into account. Please explain this here:

Maximum number of characters 220

10. CONDITIONS (Not required for Planning Obligation Appeals or for Good Neighbour Agreement Appeals)

State any conditions which the planning authority considers should be imposed in the event that permission be granted.

N/A

11. APPEAL PROCEDURE

The person appointed by the Scottish Ministers will determine the appeal following an initial exchange of information.

On some occasions the appointed person may consider further procedure to be necessary, to examine any specific matters, before reaching a decision. This is your opportunity to indicate what procedure your authority considers is most appropriate for the handling of this appeal.

- 1 Review of all relevant information provided by yourself and other parties only, with no further procedure
- 2 Inspection of the land subject of the appeal
- 3 Further written submissions on specific matters
- 4 Holding of one or more hearing sessions (i.e. round table discussions) on specific matters
- 5 Holding of one or more formal inquiry sessions on specific matters

* You can suggest a combination involving more than one further procedure, if necessary

If you have marked boxes 3, 4 or 5, please explain here which of the matters (as set out in your statement above) you believe ought to be the subject of that procedure, and why.

Maximum number of characters 160

In the event that a hearing or inquiry session might be needed, please suggest any suitable venue(s) in the local area.

The Boswell Centre, Well Road, Auchinleck

11. SITE INSPECTION

The person appointed by the Scottish Ministers, may consider it necessary to make an inspection of the appeal site prior to determining the appeal. The following information would be helpful in guiding the appointed person as to the nature of any site inspection.

- Can the site be viewed entirely from public land?
 Yes
 No
- Is it possible for the site to be accessed safely, and without barriers to entry?
 Yes
 No

If there are reasons why the Reporter would be unable to access and view the appeal site alone, please explain here:

The site is fenced off and it will require the cooperation of the the main site owner, Mr Nicholas Ellis to allow access as the entrance to the site is fenced and gated with a padlock for security.

13. DIRECTIONS BY THE SCOTTISH GOVERNMENT

Have the Scottish Ministers made a direction under regulation 31 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013* relating to the application? Yes No

(This might be a direction specific to the application, or a general direction requiring the planning authority to notify Scottish Ministers before it could have granted planning permission.)

If so, what is the title and date of the direction?

Title:

Date:

* or a direction under Article 17 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992

14. OTHER MATTERS BEFORE THE SCOTTISH GOVERNMENT OR THE PLANNING AUTHORITY FOR DECISION

Related cases

Are there any other applications or appeals or other planning matters relating to the site or area currently being considered by Scottish Ministers? Yes No

Are there any other applications or reviews relating to the site or area currently being considered by the planning authority? Yes No

If yes to either of the above, please give details here (including any Scottish Government and/or planning authority reference where appropriate): *Limit 160 Characters*

Enforcement Notice Appeal ENA-190-2012 has also been lodged for the same enforcement notice at the same site by another of the notice recipients, [REDACTED].

Emerging Development Plan

Does the proposed development have significant implications for a policy local plan/local development plan and or a structure plan/alteration or a strategic development plan currently before Scottish Ministers for consideration? Yes No

If yes, please give details here:

Maximum number of characters 160

15. NEWSPAPER

Which is the appropriate local newspaper for the purpose of any advertisement that might be required?

16. ADDITIONAL INFORMATION

Please see Paper Apart - Enforcement Notice Appeal Statement

Additional Information (continued), maximum number of characters 740

17. CHECKLIST

Please confirm that this form and the documents attached* comprise the planning authority's full submission on the appeal, as required by regulation 4(2) or 14(2) of the Town and Country Planning (Appeals) (Scotland) Regulations 2013:

- | | |
|--|---|
| (a) <u>Planning Authority's Response</u> : a note of the matters that the planning authority considers should be taken into account in determining the appeal, and by what procedure (or combination of procedures) the authority thinks these should be examined. | <input checked="" type="radio"/> Yes |
| (b) <u>Documents</u> : a copy of the documents (other than those specified in the appellant's list of documents, materials and evidence) which were taken into account by the planning authority in reaching its decision. | <input checked="" type="radio"/> Yes |
| (c) <u>Report on Handling</u> : where applicable, a copy of any report on the authority's handling of the planning application (as required by Schedule 2, paragraph 3 (d) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013) | <input type="radio"/> Yes
<input checked="" type="radio"/> N/A |
| (d) <u>Conditions</u> : where applicable, the conditions which the planning authority considers should be imposed in the event that planning permission is granted. | <input type="radio"/> Yes
<input checked="" type="radio"/> N/A |
| (e) <u>Environmental Impact Assessment</u> : where applicable a copy of any screening option under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 | <input type="radio"/> Yes
<input checked="" type="radio"/> N/A |
| (f) <u>Environmental Impact Assessment</u> : where applicable a copy of any scoping opinion or scoping direction before May 2017 under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 | <input type="radio"/> Yes
<input checked="" type="radio"/> N/A |
| (g) <u>Opportunities for the public to participate in decision-making</u> : where applicable a copy of any neighbour notification, list of neighbours notified and published notification under regulations 18,19 or 20 of the Town and Country Planning (Development Management) (Scotland) Regulations 2013 | <input type="radio"/> Yes
<input checked="" type="radio"/> N/A |
| (h) <u>Opportunities for the public to participate in decision-making</u> : where applicable a copy of any neighbour notification, list of neighbours notified, published notification of the EIA report and any additional information under regulations 20 and 21 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 | <input type="radio"/> Yes
<input checked="" type="radio"/> N/A |
| (i) <u>Opportunities for the public to participate in decision-making</u> : where applicable a copy of any pre-determination report and minutes of meeting | <input type="radio"/> Yes
<input checked="" type="radio"/> N/A |

* **Note:** Copies of documents can be submitted to DPEA as electronic attachments, zip files, or on a CD and all documents must be clearly named and referenced. Alternatively we can accept documents in hard copy. DPEA cannot accept links to documents held on any website as part of this submission.

This form and all supporting documents should be sent to:

E-mail: dpea@gov.scot

Post: Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Falkirk
FK1 1XR

Fax: 01324 696444

You must also send this form and the supporting documents to the appellant (or agent) – contact details are on the front page of the appeal form.

After selecting "submit by email" button, you will have the opportunity to attach additional documents to your email.

Print Form	Submit by Email
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