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## Town and Country Planning (Scotland) Act 1997 Appeal Decision Notice

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Decision by Katrina Rice, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2044
- Site address: land by Achingale, Easter Kinkell, Conlon Bridge, IV7 8HY
- Appeal by Ewen Ross against the enforcement notice dated 25 January 2024 served by The Highland Council
- The alleged breach of planning control: unauthorised building, engineering or other operations on the above land by the establishment of a polytunnel on the land without the required planning permission
- Date of site visit by Reporter: 26 April 2024

Date of appeal decision: 8 May 2024

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### Decision

I uphold the enforcement notice subject to the variation of the terms of the notice by deleting the words “shown edged orange” and replacing them with the words “shown edged and cross-hatched in purple”, but allow the appeal to the extent that I vary the terms of the notice by changing the time period for compliance with part (i) to six weeks. Subject to any application to the Court of Session, the enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.

### Preliminary matter

The appellant has argued that the enforcement notice is flawed and incompetent. The notice requires the appellant to remove the polytunnel from land by “Achingale” shown “edged orange on the location plan” but there is no land either identified as Achingale or edged orange on the plan attached. The two areas of land identified are red and purple. As a consequence, the appellant considers that the notice fails to correctly identify the land on which the unauthorised development is alleged to have occurred and its terms cannot be complied with.

I acknowledge that the incorrect colour is referred to in the notice. However, I do not accept that this is incapable of being rescued by being corrected/varied. The precise boundaries of the land to which the notice relates should be shown, but I agree with the council that this could be achieved by amending the wording. It should read “edged and cross-hatched in purple” rather than “edged orange”. Having confirmed the precise boundaries of the land with parties on my site inspection, I am satisfied that this would remedy the error identified and would not make a material change to the notice, nor cause injustice to any party. The addition of the name “Achingale” to the plan would not then be necessary.

## Reasoning

1. The appeal against the enforcement notice was made on the following ground as provided for by section 130(1) of the Act:

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

2. The appellant has only ticked the above ground of appeal on the appeal form. However, in the comments on the council response to the appeal, an extended period for compliance is also requested. This relates to ground (g):

(g) that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.

I deal with both of these grounds below.

### Ground (b)

3. On my site inspection, I noted that a structure described as a polytunnel in the enforcement notice, has been erected on the site and is in use for the shelter of sheep/lambs. The appellant cites various dictionary definitions of a polytunnel which refer to its use as a greenhouse, or for protecting plants from the weather and contends that the structure on this site cannot, therefore, be described as a polytunnel. I note that the Collins English dictionary definition mentioned describes a polytunnel as “a large tunnel made of polythene...” and the Cambridge dictionary as “a long curved plastic structure...” I am not persuaded that the large tunnel like, curved plastic structure which I saw on my site inspection could not be described as a polytunnel, despite its use for sheltering sheep/lambs rather than plants. My conclusion is reinforced by the fact that the appellant himself describes the proposal as “The erection of a polytunnel”, on his original planning application form (22/02172/FUL).

4. I find that the breach of control alleged in the notice has occurred. Accordingly, the appeal on ground (b) fails.

### Ground (g)

5. The appellant argues that the time for compliance with criterion (i) of the notice is unacceptably short, given that the structure is not readily demountable or capable of relocation and that alternative arrangements would have to be made for the housing of the ewes and lambs during the lambing season. An extended period until the end of June is requested. I am aware from my site inspection that the polytunnel has been attached to the ground using concrete embedded anchors. It is constructed from galvanised steel tubes covered in a polythene roof sheet with open mesh walls. It measures 22 metres by 9 metres and is 3 metres in height. I do not consider that one month is an unreasonable amount of time to remove a structure of this construction or size, given its accessible location adjacent to a road. I am aware of the animal welfare issues raised, but the peak lambing season would be over by the end of May. I am not convinced that the need for an extended period to the end of June has been justified.

6. Nevertheless, the time period for complying with an upheld notice should always be at least six weeks, to allow for the possibility of an appeal to the Court of Session. I, therefore, find that the time allowed to comply with criterion (i) of this notice should be

extended to six weeks. This would give the appellant an extra two weeks to remove the polytunnel and make alternative arrangements for the livestock. Accordingly, the appeal on ground (g) partially succeeds.

### Conclusion

7. In conclusion, I uphold the notice subject to the variation of its terms, but allow the appeal to the extent that I vary the terms of the notice by changing the compliance period. I have considered all matters raised by the parties, but find none which would alter my conclusions. I have noted all of the information submitted with regard to whether or not the proposal should have been granted planning permission, but this is an enforcement notice appeal and it is not possible for me to grant planning permission. Any concerns with regard to the processing of the original planning application should be addressed to the council.

8. Finally, there is no right of appeal under section 130(1) in respect of the planning authority's decision as to the expediency of issuing the notice. Any challenge to the planning authority's decision to serve a notice can only be made by way of judicial review. I am not entitled to consider whether I think that the planning authority ought to have issued the notice in the first place.

*Katrina Rice*

Reporter

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Mr A Brennan  
Highland Council  
Sent By E-mail

Our ref: ENA-270-2044  
Planning Authority ref: 21/00107/ENF

8 May 2024

Dear Mr Brennan

**ENFORCEMENT NOTICE APPEAL: CROFT HOUSE BRAE OF KINKELL DINGWALL  
IV7 8HZ**

Please find attached a copy of the decision in this appeal.

The reporter has upheld the enforcement notice but has allowed the appeal to the extent that the terms of the enforcement notice have been varied. Full details can be viewed within the decision notice.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see <https://beta.gov.scot/publications/challenging-planning-decisions-guidance/>.

DPEA is continuing to look at how we can improve the services we deliver and welcomes contributions from all those involved. In this regard I would be grateful if you could take five minutes to complete [our customer survey](#).

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I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

*Laura Walker*

**LAURA WALKER**  
**Case Officer**  
**Planning And Environmental Appeals Division**

