



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

Decision by Christopher Warren, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2079
- Site address: land at Achnabobane 120M north of Fern Cottage, Spean Bridge, PH34 4EX
- Appeal by Alexander Ross MacGregor against the enforcement notice dated 20 February 2025 served by the Highland Council
- The alleged breach of planning control: material change of use of the land by developing an area of woodland to create a mixed use of woodland and individual development plots for leisure/recreation including overnight accommodation; the siting/installation of camping "pods" and caravans on the land; and the undertaking of engineering operations on the land comprising both the reprofiling of land to form areas of hardstanding and the formation/upgrading of access tracks

Date of appeal decision: 21 July 2025

Decision

I dismiss the appeal and direct that the enforcement notice dated 20 February 2025 be upheld. 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 matters

The enforcement notice to which this appeal relates was served on 84 parties, which the council have identified as owners and/or occupiers of the land in question, or otherwise have an interest in the land which, in the council's opinion, would be materially affected by the notice. A total of 30 appeals (including this appeal) have been made against the enforcement notice. I have dealt with each appeal separately, although there is inevitably significant overlap in my findings.

Taking account of the nature of the appeal and the submissions lodged I have concluded that my consideration of the case would not be assisted by an in-person inspection of the land. I am satisfied that the written submissions and my ability to view the land using online mapping and submitted imagery have enabled me to give full and proper consideration to this appeal.

Reasoning

1. The appeal against the enforcement notice was made on the following grounds 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; and
- (c) that those matters (if they occurred) do not constitute a breach of planning control.

2. I deal with both grounds of appeal in turn.

The appeal on ground (b):

3. In order for an appeal to succeed on ground (b), it must be demonstrated - on the balance of probabilities - that what the enforcement notice alleges to have happened on the land has not taken place, or at least that it had not taken place on the date that the enforcement notice was served.

4. The enforcement notice identifies the entire land over which the council considers a material change of use, and associated engineering operations, to have taken place. In its appeal submissions, the council acknowledges that this incorporates parts of the site which to date have not been the direct subject of unauthorised development; in other words, some areas of the land are not directly affected by the 'footprint' of development.

5. The ownership of the land identified in the enforcement notice is complex, with individual plots of land having been sold to many otherwise unrelated individuals and companies. Some of these plots have been physically demarcated on the land with fencing, but many are only capable of being individually identified with reference to title plans, where a sale has been made. There are numerous other plots that have been (and as far as I am aware may continue to be) marketed for sale, but which are not currently physically defined on the land. The appellant in this case has been identified by the council as a director of the company (Ben Nevis Landings Ltd) which holds ownership over the majority of land within the enforcement area under land registry title INV9349, with all recent and pending sales having been made by that company. A separate appeal has been made on behalf of the company under reference ENA-270-2078. The council has also identified that where plot sales have recorded and thereafter been registered as separate entities, recorded burdens in favour of the company have been retained for access, using the tracks created on the land, for the purpose of sale of designated areas within the enforcement area. The appellant's position is that he does not own any of the land upon which breaches have occurred, but it is evident that the company for which the appellant has responsibility continues to possess a significant interest in the land as a whole, as well as extensive ownership.

6. It is however not in dispute that the appellant (whether in a personal capacity or as director of Ben Nevis Landings Ltd) does not own the entire area of land to which the enforcement notice relates. A critical first step in this appeal is therefore to identify the appropriate planning unit for assessing any alleged breach of planning control. A 'planning unit' is, in simple terms, the appropriate area of land to be looked at when considering the materiality or otherwise of a change of use. The identification of a planning unit is ultimately a matter of judgement in the individual circumstances of a case, based on an assessment of fact and degree. Although the council has not explicitly asserted that it considers the land identified by the enforcement notice to constitute a single planning unit, that conclusion

seems to me to be implicit in its approach. Had the council considered each individually owned plot to be a separate planning unit, it would have presumably served separate enforcement notices on each of these, where a breach of planning control was alleged.

7. The characteristics of the emerging alleged use of the land stem directly from the formation and/or upgrading of access tracks, for which the appellant appears to be directly responsible. These tracks provide direct access to notional individual plots. Some plots have seen reprofiling works and/or the formation of hardstandings, whilst some plots also have overnight accommodation units sited on the land. None of this would have been possible on individual plots without the access tracks that serve them.

8. Having regard to all of the submissions before me in this and other parallel appeals against the same enforcement notice, it seems highly likely that the appellant (in the capacity of director of Ben Nevis Landings Ltd) has been the driving force behind the marketing (with a surprising level of success) of an ostensible 'masterplan' for the land as a whole, as an opportunity (whether as an investment or for lifestyle/recreational purposes) to acquire individual plots amongst many others for the primary purpose of siting some form of short-stay accommodation upon it, in amongst retained areas of woodland. I consider there to be a high probability that this perceived 'development potential', however speculative or misinformed, would have been the main reason for purchasing the plots. I can see no other plausible reason for why the individuals concerned would wish to purchase the land in question. In some of the appeals the purchase price has been disclosed, which appear to be significantly greater than the likely market value for purely its lawful use, which adds weight to this assertion.

9. The ownership of the overall parcel of land has been divided up into individual notional plots, but the pattern of physical ownership is not itself sufficient to alter the extent of the planning unit. In this case, I consider a more accurate description of the situation to be that there are multiple owners of a single wider overall unit of land, all of whom occupy (or otherwise have aspirations to occupy) specific plots within it for the same primary purpose – that is the use of the land for the siting of some form of accommodation unit. In the case of the appellant's land, it may not have a wish to occupy the land, but is the driving force behind the emerging use of the land in this way. It seems clear to me that the access tracks have been constructed or otherwise upgraded to enable the use of the overall site for a common purpose, so are integral to the land's use in this way.

10. Those who have purchased plots have thus both literally and figuratively 'bought in' to the concept of the site as a whole being used for the siting of accommodation, be it camping pods, chalets or caravans, with shared access arrangements. The physical extent of development that has taken place across the land as a whole is significant, and whilst many plots have not been developed further to date, the locations of the plots that have been developed, together with the access tracks and other engineering works, are widespread. It is my firm view that individual plots are incapable of being sensibly disassociated from the wider land in which they sit, in this context. It would not be appropriate to consider each plot as a separate planning unit, because each plot is a component part of an overall and partially implemented plan for the land as a whole. It therefore follows that the land which continues to be owned or otherwise controlled by the appellant is also an integral part of this single planning unit.

11. Although not entirely comparable, some parallels can be drawn with a more traditional static caravan site, where the planning unit would typically be the caravan site as a whole. The extent of the planning unit would not ordinarily be altered by individual

caravans on the site being privately owned, or by there not being caravans sited on particular plots within the caravan site.

12. In conclusion, in the highly unusual circumstances of this case and based on the foregoing, I consider the appellant's company to be one of many individual owners of a component part of a wider single planning unit. I find that single planning unit to have been correctly delineated in the enforcement notice.

13. Having reached the conclusion that the appropriate planning unit is the overall land area rather than individual plots within it, I am able to establish whether the matters stated in the enforcement notice have occurred on the land, as per the basis of a ground (b) appeal.

14. The council's photographs clearly show extensive engineering operations involving the creation of tracks and hardstandings across various parts of the land identified by the enforcement notice. These photographs also show that a variety of camping pods and caravans have been sited on the land. There is no dispute that the foregoing had taken place before the enforcement notice was served. Furthermore, the council has demonstrated that development has taken place on the appellant's plot. The appeal on ground (b) therefore fails.

The appeal on ground (c):

15. In order for an appeal made on ground (c) to succeed, it must be shown that the matters alleged by the enforcement notice (and which I have already found to have occurred) do not constitute a breach of planning control.

16. The statement of appeal made on behalf of the appellant does not address this ground of appeal directly, but asserts that the appellant does not own or control any of the land upon which a breach of planning control has occurred. Having established that the appropriate planning unit is however all of the land identified by the enforcement notice, I must consider whether a material change of use of the land as a whole has occurred, regardless of the precise 'footprint' of any operations or siting of accommodation; a finding that a material change of use has occurred is not dependent on all land being directly affected by any such footprint.

17. In my judgement, the council's submitted photographs of the works that have taken place on various different parts of the land provide compelling evidence that this is sufficiently extensive to alter the character of the whole site identified by the enforcement notice. The formation of access tracks and areas of hardstandings are inextricably linked to the emerging use of the land for the siting of overnight accommodation, and supports the marketing of plots for that potential purpose. A number of accommodation units have been sited on areas of hardstanding that are only accessible by using these new and/or widened access tracks, demonstrating the inextricability of the various components of development.

18. The question of whether or not overnight stays have actually taken place to date is of limited relevance. It is plainly the case that the land is being used for the siting of accommodation suitable for overnight habitation, and that is also their clear purpose. The use of the land for that purpose does not occur only when the accommodation is occupied. In any case and on the balance of probabilities, I consider it highly likely that overnight stays at the accommodation sited on the land have occurred.

19. I find that the activity across various parts of the site, and associated operations, have materially altered the character of the use of the land as a whole. I consider that this is accurately described by the enforcement notice as having become a mixed use of woodland and leisure/recreation, with associated engineering operations.

20. This material change of use of the land (including the associated engineering operations) is not permitted development, nor does it have planning permission. The appeal on ground (c) fails on this basis.

Other matters:

21. It is clear to me that the appellant does have an interest in the land, given his role in the company which is one of multiple owners of the overall planning unit upon which an unauthorised material change of use has occurred. That company has also been the driving force behind the sale of plots for this purpose (regardless of whether it was made clear to purchasers that planning permission would still need to be obtained). Consequently, it was correct for the enforcement notice to have been served on the appellant, in his capacity as director of the company. I recognise the challenges that this situation creates, but it is not for me to assist in resolving any practical difficulties facing the various landowners in coming together to arrange for the necessary restoration of the land to be completed, in accordance with the enforcement notice.

22. A matter which has been referred to in passing in this appeal, but which is at the heart of a parallel appeal made against the same enforcement notice (under reference ENA-270-2061), is whether consent from NatureScot would first be needed for the remedial works required by the enforcement notice. This is because the land is a designated Site of Special Scientific Interest (SSSI), and the Nature Conservation (Scotland) Act 2004 requires the prior consent of NatureScot for certain works affecting SSSIs.

23. In that parallel appeal, I sought further written submissions principally from NatureScot, in order to clarify the situation. NatureScot's response has confirmed its position that reinstating the land in the manner required by the enforcement notice would not require separate NatureScot consent. The enforcement notice is in effect the necessary 'permission' from the relevant regulatory authority (the council, in this case), so the activities/works it specifies are exempt from requiring separate SSSI consent.

24. The fact that there has been permanent and irreparable damage to the land's subsurface geomorphological features does not mean that reinstatement of the land to its previous condition cannot be achieved at surface level. The aim of the enforcement notice is not to rectify the damage to the SSSI that has already occurred, but to rectify the breach of planning control and the associated visual impact of this, and to prevent further damage to the SSSI. Compliance with the enforcement notice would return the character and appearance of the site to its pre-development state.

25. Submissions have suggested that the council has predetermined the outcome of any future retrospective or other planning applications on the site which may seek to regularise the current breach of planning control. Neither the planning merits of this development, nor the council's view on the likelihood or otherwise of planning permission being granted, are relevant to my determination of this appeal. Compliance with the enforcement notice is also required to the timescales stipulated by it, regardless of whether any planning applications are made and/or pending determination in the interim.

26. I dismiss the appeal and uphold the enforcement notice.

Christopher Warren

Reporter

Enforcement notice appeal reference: ENA-270-2079

Site address: land at Achnabobane 120M north of Fern Cottage, Spean Bridge, PH34 4EX

Appeal by Alexander Ross MacGregor against the enforcement notice dated 20 February 2025 served by the Highland Council

The alleged breach of planning control: material change of use of the land by developing an area of woodland to create a mixed use of woodland and individual development plots for leisure/recreation including overnight accommodation; the siting/installation of camping "pods" and caravans on the land; and the undertaking of engineering operations on the land comprising both the reprofiling of land to form areas of hardstanding and the formation/upgrading of access tracks

1. The Enforcement Notice to which this Appeal [23/05616/FUL (PN-270-001)] relates was served on 84 parties, which the Council identified as owners and/or occupiers of the land in question, or persons otherwise having an interest in the land which, in the Council's opinion, would be materially affected by the notice. A total of 30 appeals were made against the Enforcement Notice.
2. Our Planning Enforcement team have spent a considerable amount of time and resource on this site, and the decision from the Reporter to dismiss all of the appeals is welcomed.
3. I have attached one of the decision letters from the 30 Appeals to provide an insight into the issues and the assessment of matters by the Reporter. The Appeal was made by Alexander Ross MacGregor, and relates to:
4. *The alleged breach of planning control: material change of use of the land by developing an area of woodland to create a mixed use of woodland and individual development plots for leisure/recreation including overnight accommodation; the siting/installation of camping "pods" and caravans on the land; and the undertaking of engineering operations on the land comprising both the reprofiling of land to form areas of hardstanding and the formation/upgrading of access tracks*
5. The Reporter notes (at 19) that
"...activity across various parts of the site, and associated operations, have materially altered the character of the use of the land as a whole. I consider that this is accurately described by the enforcement notice as having become a mixed use of woodland and leisure/recreation, with associated engineering operations."
20. *This material change of use of the land (including the associated engineering operations) is not permitted development, nor does it have planning permission."*

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6. In consultation with Legal Services, we are considering our next steps regarding the actions set out in the Enforcement Notice. These are:
 - i. Cease the use of the Land for the purposes of leisure/recreation including overnight accommodation.
 - ii. Remove from the Land the camping 'pods' and caravans.
 - iii. Reinstate the Land affected by the unauthorised engineering operations, i.e. the reprofiling of land to form areas of hardstanding and the formation/upgrading of access tracks, to its previous condition, and
 - iv. Remove from the Land all building materials, rubble and/or debris arising from compliance with the above requirements.
7. The other Appeal decisions can be accessed on the DPEA website at <https://www.dpea.scotland.gov.uk/casesearch.aspx?T=2> using the filters
 - 'Authority' Highland
 - 'Case Status' Decision issued
 - 'Address contains' Spean Bridge.

Bob Robertson – (Acting) Planning Manager South
22 August 2025