Planning and Environmental Appeals Division
Hadrian House, Callendar Business Park, Falkirk, FK1 1XR
E: dpea@gov.scot T: 0300 244 6668

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

Decision by Jamie Macvie, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2090
- Site address: land 35m SE Of Cuil View, Portnalong, Carbost, Isle of Skye, IV47 8SL
- Appeal by Mr Matt Heath against the enforcement notice dated 28 May 2026 served by The Highland Council
- The alleged breach of planning control: the material change of use of the land from crofting/agricultural use to a mixed use comprising residential, storage and recreational use, including: the siting and use of one static caravan for human habitation; the siting of three moveable caravans; the siting of a horse box and other vehicles; the storage of vehicles, materials and domestic items; and the presence of paraphernalia and detritus associated with human occupation
- Date of site visit by Reporter: 27 August 2026

Date of appeal decision: 28 September 2026

Decision

I dismiss the appeal and direct that the enforcement notice dated 28 May 2026 be upheld, subject to the variation of the terms of the notice by:

- deleting the words “chicken coops not reasonably required for crofting purposes” from the tenth bullet point of paragraph iv. of section 4 of the notice and replacing them with the words “chicken coops”;
- deleting the words “Remove all waste and debris arising from the unauthorised use, and restore the land, as far as reasonably practicable, to its condition prior to the breach” from paragraph v. of section 4 of the notice and replacing them with the words “Remove all waste and debris arising from the unauthorised use, and reinstate the surface of the land using vegetation from the site, resulting in a mix of soil and existing vegetation only”; and
- deleting the words “Time period(s) for compliance: 30 September 2026” from section 4 of the notice and replacing them with the words “Time period for compliance: Three months from the date the notice takes effect”.

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

In accordance with section 132(2) of the Act, I may vary the terms of the enforcement notice if I am satisfied that the variation will not cause injustice to the appellant or the planning authority.

A. Section 4 of the notice describes what the recipient is required to do. This includes removal of listed items, including chicken coops. I describe below that I regard moveable items as contributing to the change of use of land to the residential, storage and recreational use alleged, and based on my observations on site that it would not be practical in planning terms to separate moveable items that may be able to contribute to agricultural production from other mixed items and materials across the site.

The steps required set out a blanket requirement for removal of the items listed, except for chicken coops where a more ambiguous description is provided, necessitating a test of "reasonable requirement" for crofting purposes. I find this risks different interpretations of what retention would be 'reasonable' and could lead to a situation whereby non-compliance could be found by the council, despite retention of coops considered reasonable by the appellant. I vary the notice to remove this ambiguity and lack of precision, and for consistency with other matters listed.

B. Following removal of waste and debris, section 4 also requires restoration of the land. The notice requires this to be carried out as far as "reasonably practicable" and to "its condition prior to the breach". I also regard these terms as imprecise, and the recipient would again risk non-compliance over different interpretations of what is reasonably practicable. Similarly, I see no evidence that the condition of the land prior to the breach is recorded, other than street view images.

I therefore vary the step so that when the site is cleared, the requirement is to leave the surface of the site as soil, or vegetated using vegetation from the site only. This avoids the importation of grass or other seed to the site. Based on my observations of surrounding semi-natural vegetation, I am satisfied any bare soil would re-vegetate without the need for planting or seeding. Importantly, the variation removes ambiguity and ensures precision in the requirement.

I am satisfied both steps in section 4 are capable of the above variations without injustice to the appellant or the planning authority.

C. Section 4 of the notice specifies a fixed compliance date. On the basis the enforcement notice takes effect on the date of this decision, I vary the notice to remove the fixed date and instead refer to a compliance period.

I explain this below in relation to the appeal on ground (g). On the basis the total time provided for compliance is not in itself varied, and only the commencement of that time period is varied to reflect the date of this decision, I am satisfied the time for compliance is capable of this variation without injustice to the appellant or the planning authority.

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;
(c) that those matters (if they occurred) do not constitute a breach of planning control;
(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach; and
(g) that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.

Appeal on ground (b)

2. For an appeal to succeed on ground (b), it must be demonstrated that the alleged breach of planning control has not occurred. During my site inspection, I observed the static caravan, three towable caravans and a horsebox referred to in the notice. In relation to the alleged siting of vehicles, I observed a car and therefore use of the site for vehicle parking, albeit a different car to those included in the council's site photographs dated June 2025. In addition, I noted construction materials and 'paraphernalia' including bulk bags, pallets, and sheets of engineered timber, and items associated with residential use including gas canisters, refuse bins, and gardening and other containers. I also noted boundaries formed using windbreak netting, barrier fencing, pallets laid on edge and other materials. Public street view imagery is submitted by the council, dated November 2021, and not disputed by the appellant. Relative to the condition of the site in that image, which is rough grass including at the access gates, and shrubby trees, I observed conditions including a gravel hardstanding inside the gates and stoney unvegetated ground in parts of the site.

3. In relation to the part of the alleged breach comprising change of use of the land to residential, it is not in dispute that the caravan has been occupied on a residential basis. Notwithstanding comments in submissions regarding dates of this occupation and the appellant's claim that it is currently vacant, I do not need to establish a chronology of this. My observation was of a static caravan still on site, with gas canisters and other items of a residential nature connected to or immediately surrounding it, and I have no evidence that any alterations have been made to the structure since its occupation, or that it has been put to any other use.

4. Based on the evidence before me and my observations, I find that the matters stated in the notice have occurred, and the appeal on ground (b) fails.

Appeal on ground (c)

5. For the appeal on ground (c) to succeed it must be demonstrated that the matters listed in the notice are not a breach of planning control. Section 26 of the Act defines "development" as building, engineering, mining or other operations in, on, over or under land, or any material change in the use of land or buildings. I consider the use of land for storage, recreation and residential purposes, and siting of the structures and materials listed, to constitute development for which planning permission is required, even if the caravan is currently unoccupied.

6. No evidence has been submitted that planning permission has been granted for any of the alleged development.

7. I turn to The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) and consider whether any of the matters stated in the notice benefit from permitted development provisions.

8. In submissions, the appellant does not link any activities carried out to permitted development provisions specifically, but does refer to the land as a croft and cites “croft related activities”. This includes reference to a “livestock box, the croft vehicle we use to pull it, compost bins, chicken coops, storage for livestock feed and similar items”. The appellant does not dispute that materials are stored on site, and claims that these include fencing materials for the croft.

9. I accept above in relation to ground (b) that the matters stated in the notice have occurred, including the change of use of the site to a mix of residential, storage and recreational use. Despite the comments provided by the appellant regarding crofting activities and notwithstanding the tenancy indicated in the search of the crofting register submitted by the council, during my site inspection I observed no livestock or cultivation, and limited evidence of agricultural activity. I found structures and materials on the site to be mainly associated with or ancillary to the static and towable caravans, which are the dominant features in the site.

10. I therefore regard moveable items as contributing to the change of use of land to residential, storage and recreational use. Based on my observations on site, it would not be practical in terms of an enforcement notice to separate moveable items that may be able to contribute to agricultural production, from other mixed items and materials across the site.

11. For these reasons, I find that the matters constitute a breach of planning control. Accordingly, the appeal under ground (c) fails.

Appeal on ground (f)

12. For this ground to succeed, the appellant must demonstrate that the steps required by the notice exceed what is necessary to remedy any breach of planning control.

13. The appellant does not claim that removal of the static and towable caravans, or cessation of the residential, storage and recreational use, would be excessive.

14. Instead, as referenced above in relation to ground (c), he refers to the horsebox and associated vehicle, compost bins, chicken coops, storage for livestock feed, fencing materials and similar items, stating that removal of these would inhibit some crofting activities at the croft. I regard this as a claim by the appellant that removal of these items would be excessive.

15. Given my observations of the land affected and surrounding area, as I conclude above I regard those items as contributing to the breach of planning control. In the context of the site, it is not practical to separate those items from other matters listed in the notice. This includes my variation to the steps required, to remove ambiguity in relation to whether a chicken coop would be “reasonably required”.

16. Impact on amenity is referenced in the notice, but neither party has commented on this point specifically in submissions. In terms of whether the steps would exceed what would be necessary to remedy effects on amenity, the appeal cannot turn on this point as it is not possible for me to specify lesser steps via a variation to the notice, which would be

sufficient to address the effects on amenity but insufficient to remedy the breach of planning control. This is because the notice was served to remedy the breach of planning control.

17. In regard to the question of whether lesser steps might address the breach of planning control, it is not my role to consider on a hypothetical basis, whether that might be possible. Having concluded the matters listed in the notice are a breach of planning control, including claimed crofting-related activities, I am satisfied that the steps required directly address the breaches and do not exceed what is necessary to remedy them. For the reasons given, the appeal on ground (f) fails.

Appeal on ground (g)

18. The appellant considers the three-month compliance period too short, in relation to the work required, due to access difficulties, family disabilities and health problems.

19. The council considers that three months is reasonable, noting that it has “engaged extensively” with the appellant prior to service of the notice. I note informal correspondence in submissions, between the council and the appellant. This includes indications from the appellant that the site would be cleared, before the notice was served, and reasons provided for delays.

20. I agree with the council that three months is a reasonable period for compliance, including on the basis the appeal process has delayed the period before the notice comes into effect. In reaching this conclusion, I take account of the nature of the breach of planning control in its context. I am mindful of pending autumn and winter weather potentially affecting the process of complying with the notice, including practical matters relating to removal of caravans. However, given that the items to be removed are mixed in type and size and some unsecured, strong winds may also risk dispersal of these items in the locality. I therefore do not consider it appropriate to extend the compliance period longer or over the whole winter.

21. Section 4 of the notice specifies a fixed compliance date: “Time period(s) for compliance: 30 September 2026”. The enforcement notice takes effect on the date of this decision. The reference to a fixed date must be removed and I therefore vary the notice to reflect this.

Conclusion

22. For the reasons given I dismiss the appeal and uphold the enforcement notice subject to variations. I have considered all matters raised, but there are none which have led me to alter my conclusion.

23. I acknowledge matters raised by the appellant regarding his intention to construct a house close to the site and the planning application history of the site. However, these procedural matters are beyond the scope of my decision.

Jamie Macvie
Reporter