

Appeal Decision Notice

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Decision by Scott M Ferrie, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2015
- Site address: 56 Milton Crescent, Inverness IV2 3DH
- Appeal by Roger Cran against the enforcement notice dated 11 June 2015 served by The Highland Council
- The alleged breach of planning control: erection of a 1.8 metre high fence
- Date of site visit by Reporter: 20 October 2015

Date of appeal decision: 26 October 2015

Decision

I dismiss the appeal and direct that the enforcement notice dated 11 June 2015 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.

Reasoning

1. The appeal against the enforcement notice was made on the following ground as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997:

- (c) the matters stated in the notice (if they occurred) do not constitute a breach of planning control.

2. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) sets out those classes of development in respect of which permitted development rights apply. Such 'permitted development' does not require planning permission. Class 3E of the Order relates to the construction of fences, amongst other things. Class 3E(2)(b)(ii) states that development is not permitted by this class if any part of the fence exceeds 1 metre in height where that fence extends beyond the line of the wall of the principal elevation of the house that is nearest a road.

3. My site inspection confirmed the west-facing wall to be the principal elevation of the appellant's dwelling. As the fence exceeds 1 metre in height and projects beyond the line of that wall towards Milton Crescent, it follows that permitted development rights do not apply. Planning permission for the erection of the fence was refused by the council in May

2014. I conclude, therefore, that a breach of planning control has occurred and that the appeal on ground (c) must fail.

4. I sympathise with the appellant's circumstances but these cannot influence whether or not planning permission is required. Similarly, the appellant's references to other examples of fencing exceeding 1 metre in height nearby cannot override the need for planning permission in this case. Such other examples are for the council to investigate and seek to remedy should that be considered to be in the public interest.

Scott M Ferrie
Principal Reporter