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Decision by R W Maslin, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2025
- Site address: 21 Crown Street, Inverness IV2 3AX
- Appeal by Mr David Duthie against an enforcement notice dated 29 October 2018 served by the Highland Council, reference 17/00432/ENF
- The alleged breach of planning control: unauthorised removal of front garden wall, railings and gate
- Date of site visit by Reporter: 18 February 2019

Date of appeal decision: 4 March 2019

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## Decision

I dismiss the appeal and direct that the enforcement notice dated 29 October 2018 be upheld subject to the variation of the terms of the notice by:

(a) deleting from section 4(I) the words “no later than 31<sup>st</sup> March 2019” and replacing them with the words “no later than 10 May 2019”; and

(b) deleting from section 4(II) the words “no later than the 19<sup>th</sup> December 2018” and replacing them with the words “no later than 19 April 2019”.

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 enforcement notice is dated 29 October 2018. The alleged breach of planning control is:

The front garden ground wall of concrete block construction, topped with metal railings and centred gate access that borders the public footway, was removed without the required planning permission (section 123(1)(a) of the Act) within the Inverness (Crown) Conservation Area.

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



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.

3. The appeal premises are within that part of Crown Street which is between Kingsmills Road and Denny Street. During my site visit, I noted the following in relation to this part of Crown Street.

- Except for houses on end corner plots, houses on both sides of the street are terraced, single-storey with stone walls and slate roofs.
- Front gardens are small – about 2.5 metres from the public footways to the house fronts.
- All front gardens, apart from the front garden of the appeal premises, are enclosed. Most are enclosed by a wall. The walls are varied in appearance and height. The wall immediately to the west of the appeal premises is about 0.8 metre high; the wall immediately to the east is about 0.7 metre high.
- The front gardens of two houses are enclosed by timber fencing.
- Four houses have walls that are surmounted by metal railings.
- Some walls or parts of walls have a painted finish. This is generally the exception. Most have a weathered finish. The overall appearance of the walls is muted.

4. Section 3 of the enforcement notice gives two reasons for issuing the notice. I find that the first reason is, in effect, seeking to restore the site to its condition before the alleged breach took place. This accords with section 128(4)(a) of the Town and Country Planning (Scotland) Act 1997 (as amended).

5. The second reason for issuing the notice refers to a refusal of conservation area consent. Taking into account the reason for the refusal of conservation area consent, I find that the second reason for issuing the notice is, in effect, seeking to remedy an injury to amenity. This accords with section 128(4)(b) of the Town and Country Planning (Scotland) Act 1997 (as amended).

6. Ground of appeal (f) has two elements. The first is that the steps required to be taken exceed what is necessary to remedy the breach of planning control. I find that the enforcement notice seeks no more than reinstatement of the demolished wall, railings and gate. For this reason, I find that it does not exceed what is necessary to remedy the breach of planning control. The appeal must therefore fail in relation to the first element of ground (f).

7. The second element of ground (f) is that the steps required to be taken exceed what is necessary to remedy any injury to amenity that has been caused by the breach of

planning control. I find that the removal of the wall and railings has caused an injury to amenity. The resultant open frontage is not in keeping with the character of the relevant part of Crown Street. As already noted, all other front gardens in this part of the street are enclosed. Although the enclosures are of varied appearance, I find that their overall effect contributes to the character of the street and the character of this part of Inverness Riverside Conservation Area.

8. I have considered whether some lesser steps than those specified in the enforcement notice would remedy the injury to amenity. In the grounds of appeal, the appellant indicates that he wishes to erect a simple wooden fence coated with natural oil. He says that he has had no opportunity to even apply for permission for this. It is not within the scope of this appeal for me to give approval to some kind of enclosure different from that which has been removed from the appeal premises.

9. I have considered whether reinstatement of the wall alone, without the metal railings, would remedy the injury to amenity. I find that this would not be satisfactory because it would result in an enclosure of markedly lesser height than the height of other enclosures in the street.

10. My conclusion is that the appeal fails in relation to the second element of ground (f).

11. I have no reason to doubt that the appellant was unaware of the need for consent at the time when he demolished the wall and railings. I have given careful consideration to all the matters contained in the various submissions. I find that they do not alter my conclusion that the appeal fails.

12. I must therefore dismiss the appeal. In so doing, I shall direct that the two time limits in the enforcement notice be extended to allow for the possibility of an appeal to the Court of Session and for the possibility that the appellant may wish to consider submitting to the council an application for approval of some alternative form of front garden enclosure.

*R W Maslin*

Reporter