

### 3 ENFORCEMENT NOTICE APPEAL DECISION - 5 ESPLANADE, BROUGHTY FERRY, DUNDEE - ALLEGED UNAUTHORISED ERECTION OF A PLASTIC VENTILATION PIPE ON THE ROOF ELEVATION (AN196-2003)

Reference is made to the terms of an Enforcement Notice served on Links Building and Development Company on 1st October 2002 under powers delegated to the Director of Planning and Transportation. The Notice alleged the unauthorised erection of a plastic ventilation pipe on the roof elevation at the above address. The Council considered that the works had occurred within the past four years and did not have the benefit of the necessary planning permission. The development was not appropriate within a conservation area and should not be granted planning permission as conditions could not overcome the injury to amenity caused. The Notice specified that the pipe should be removed within thirty days of the Notice taken effect.

The Enforcement Notice was appealed by the applicant under the provisions of Section 130 and Schedule 4 of the Town and Country Planning (Scotland) Act 1997.

The appeal was determined by written representations and the decision was received by the Council on 17th March 2003. A copy of the decision letter can be found in the Members' Lounges.

The Reporter concluded that a new section of pipe had in fact been installed and that the pipe was different in form and location to that which had previously existed more than four years previously, in terms of both position and extent.

In upholding the Enforcement Notice the Reporter considered it appropriate to extend the period allowed for compliance from thirty days to six weeks from the date of the appeal decision, namely by 28th April 2003. The decision is final subject to any reference of the decision to the Court of Session on points of law under Sections 237 and 239 of the Act.

**Commentary:** This property has an extensive planning and enforcement history. A previous enforcement notice appeal in relation to this pipe was upheld (July 2001) requiring the appellant to remove the pipe. The terms of this Notice were not complied with but during the processing of the appeal the pipe was moved to a different position. The circumstances were reported to the Procurator Fiscal and the case taken up. The Fiscal found in the favour of the defendant and confirmed that the pipe in question, although still on the roofscape of the property, had been moved in compliance with the original Enforcement Notice.

This required the Council to serve a further Enforcement Notice to seek the removal of the offending pipe from the roofscape. The latest Enforcement Notice and appeal ensued.

The appellant has been advised to seek an alternative location for the pipe to accord with planning requirements and the Building Regulations.

This latest decision is a welcome clarification of the planning status of this development and compliance with the Notice should be strictly enforced. At the end of the prescribed period if the Notice is not complied with fully then it is recommended that a further report be lodged with the Procurator Fiscal.