

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY
OR PROPERTY THAT YOU HAVE AN INTEREST IN

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

ENFORCEMENT NOTICE

REFERENCE NUMBER: 17/00212/ENBOC2

To:

ISSUED BY: ARGYLL AND BUTE COUNCIL, KILMORY, LOCHGILPHEAD

1. THIS IS A FORMAL NOTICE which is issued by Argyll and Bute Council, having their head office at Kilmory, Lochgilphead, Argyll, PA31 8RT, a local authority constituted under the Local Government etc. (Scotland) Act 1994, and as such the Planning Authority for the area of Argyll and Bute in terms of the Town and Country Planning (Scotland) Act 1997 (as amended) ("the Act") because it appears to them that there has been a breach of planning control, under Section 127 of the Act, at the Land Affected as hereinafter defined. Argyll and Bute Council consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material considerations.

2. THE LAND AFFECTED

That plot or area of ground shown delineated in red on the attached plan, forming part and portion of the subject land identified by Land Registry of Scotland Title Plan ARG17385 (hereinafter referred to as 'the Land Affected').

3. THE BREACH OF PLANNING CONTROL ALLEGED

In terms of Section 123(1)(b) of the Act, failing to comply with any condition or limitation

4. REASONS FOR ISSUING THIS NOTICE

Planning Permission 11/00875/PP was granted by the Planning Authority on the 12th August 2011 for the redevelopment of 2 existing barns, 1 stable building and a static caravan to erect a dwellinghouse, a new private access, an associated parking and turning area and for the installation of a biodisc sewage treatment plant on the Land Affected. This planning permission was granted, subject to several planning conditions, one of which (Condition 2) stated:

Prior to the initial occupation of the dwellinghouse hereby approved, both of the existing barns and the stable building shall be removed from site to the satisfaction of the Planning Authority.

Reason: To underpin the justification of redevelopment for the dwellinghouse hereby approved.

After receiving a complaint, and subsequently carrying out an investigation it has been confirmed that one of the barns and the stable building remain onsite, constituting a breach of planning control as the full requirements of condition 2 have not been complied with.

In the adopted Argyll and Bute Local Development Plan, the application site is shown within the 'Countryside Zone'. Policy LDP DM 1 provides that encouragement shall only be given to small scale developments in the countryside on the basis of an appropriate development opportunity which exploits a suitable 'infill site'; a 'rounding off' site; or else on the basis of a redevelopment of an existing substantial building, or buildings, or an appropriate change of use of an existing building. In addition a proposed development may accord with the provisions of policy LDP DM 1 where it can be demonstrated that an appropriate 'exceptional case' exists and where that development accords with an Area Capacity Evaluation. The development proposal advanced at the time of granting Planning Permission 11/00875/PP was for a redevelopment opportunity, seeking to redevelop 2 existing barns, 1 stable building and a static caravan to erect a 1 and 3/4 storey dwellinghouse. In granting Planning Permission 11/00875/PP the proposal was considered to constitute an acceptable form of small scale redevelopment (small scale corresponding to development not exceeding 5 dwelling units), resulting in the removal of outbuildings from this site in favour of a proposed dwellinghouse.

As the development proposal advanced by Planning Permission 11/00875/PP could only find policy support within the LDP as a redevelopment opportunity, the Planning Authority would submit that Condition 2 is fundamentally integral to this decision. It is submitted that the unlawful retention of these buildings, namely an existing barn and stable building, in addition to the dwellinghouse constructed on the land affected, is causing material harm to the character and amenity of the immediate area by resulting in over development of the land affected, and by removing the policy justification for allowing the development in the first place.

In light of the above Argyll and Bute Council considers that it is expedient to issue this notice.

5. WHAT YOU ARE REQUIRED TO DO

You are required to:

1. Remove from the Land Affected the barn and stable buildings, labelled Building 1 and Building 2 on the attached plan.

Time period for compliance: 4 months from the date this notice takes effect .

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on the 3rd December 2018 subject to section 131(3) of the Act which provides that where an appeal is made to the Scottish Government before the date this notice takes effect that this notice shall be of no effect pending the final determination or the withdrawal of the appeal.

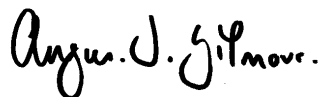
7. YOUR RIGHT OF APPEAL

You can appeal against this notice, but your appeal must be received or posted in time to be received by the Scottish Government before the 3rd of December 2018. Schedule 1 to this notice gives information on your rights of appeal. READ IT CAREFULLY .

8. WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this notice, it will take effect on the 3rd of December 2018 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

Dated: 31st of October 2018



Head of Planning and Regulatory Services
Kilmory
Lochgilphead

On behalf of Argyll and Bute Council, Kilmory, Lochgilphead, PA31 8RT

SCHEDULE 1
EXPLANATORY NOTE FOR THOSE IN RECEIPT OF
AN ENFORCEMENT NOTICE

RELEVENT LEGISLATION

RELEVENT LEGISLATION

A summary of Sections 127 to 134 of the Town and Country Planning (Scotland) Act 1997 (as amended) are attached. You will wish to note in particular the points referred below.

RIGHT OF APPEAL

If you wish to appeal against this notice, you should write to the Directorate for Planning and Environmental Appeals, 4 The Courtyard, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR. The appeal must be received, or posted in time to be received, by the Scottish Government before the 3rd of December 2018. The Scottish Government has no power to consider an appeal lodged out of time.

The appeal, which must be made in writing, must be based on one or more of the grounds set out in Section 130 of the 1997 Act, and you should state the facts on which you propose to rely in support of each of the grounds of the appeal. The grounds of appeal and statement of facts must be submitted with your appeal or within 14 days of your being required to do so by the Scottish Government.

If you lodge an appeal, the enforcement notice is suspended and will not take effect unless the appeal is withdrawn or dismissed.

DIRECT ACTION FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

If the steps required by an enforcement notice are not taken within the specified period(s) the Council may enter on the land, take those steps and recover the cost from the owner or lessee of the land.

FURTHER OFFENCES

Compliance with the terms of an enforcement notice does not discharge the notice. It will continue in effect and any repetition of the breach of control may incur further penalties or may result in direct action by the Council.

Enforcement Sections of the Town & Country Planning (Scotland) Act 1997

Issue of enforcement notice. - (1) The planning authority may issue a notice (in this Act referred to as an "enforcement notice") where it appears to them-

- (a) that there has been a breach of planning control, and
- (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

(2) A copy of an enforcement notice shall be served-

(d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.

(6) An enforcement notice issued in respect of a breach of planning control consisting of demolition of a building may require the construction of a building (in this section referred to as a "replacement building") which, subject to subsection (7), is as similar as possible to the demolished building.

(7) A replacement building-

(a) must comply with any requirement imposed by or under any enactment applicable to the construction of buildings,

(b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control, and

(c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b) of this subsection).

(8) An enforcement notice shall specify the date on which it is to take effect and, subject to section 131(3), shall take effect on that date.

(9) An enforcement notice shall specify the period for compliance with the notice at the end of which any steps are required to have been taken or any activities are required to have ceased, and may specify different periods for different steps or activities.

(a) an enforcement notice requires the construction of a replacement building, and
(b) all the requirements of the notice with respect to that construction have been complied with,
planning permission shall be treated as having been granted under section 33 in respect of development consisting of that construction.

Variation and withdrawal of enforcement notice.

- (1) The planning authority may-

(a) withdraw an enforcement notice issued by them, or
(b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 128(9).

(2) The powers conferred

allowed.

regulations under any other provisions of this Act.

General provisions relating to determination of appeals.

- (1) On the determination of an appeal under section 130, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice.

(2) On such an appeal the Secretary of State may-

(a) correct any defect, error or misdescription in the enforcement notice, or

(b) vary the terms of the enforcement notice,

if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority.

(3) The Secretary of State may-

(a) dismiss an appeal if the appellant fails to comply with section 130(3) within the prescribed time, and

(b) allow an appeal and quash the enforcement notice if the planning authority fail to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of section 131(1).

(4) Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required by section 127(2) to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

Grant or modification of planning permission on appeal against enforcement notice.

certificate under section 150.

(2) The provisions of sections 150 to 153 mentioned in subsection (3) shall apply for the purposes of subsection (1)(d) as they apply for the purposes of section 150, but as if-

(a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made, and

(b) references to the planning authority were references to the Secretary of State.

(3) Those provisions are sections 150(5) to (7), 152(4) (so far as it relates to the form of the certificate), (6) and (7) and 153.

(4) In considering whether to grant planning permission under subsection (1), the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.

(9) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.