

**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: 17/00215/ENOTH3

To: Janet Fleming Hamilton Love
Ballygown Farm
Glenlonan
Oban
PA34 4 QE

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 within Land Registry of Scotland, Land Certificate ARG23873 (hereinafter referred to as 'the Land Affected').

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

In terms of Section 123(1)(a) of the Act, the carrying out of development without the required planning permission, relative to:

1. **The material change of use of land, to land for siting of a caravan,**
2. **The erection or siting of a timber framed extension affixed to the aforementioned caravan,**
3. **The siting of a shipping container,**
4. **The siting of a small animal shed and or aviary structure.**

in, over, and/or under the Land Affected.

4. REASONS FOR ISSUING THIS NOTICE

In terms of the adopted 'Argyll and Bute Local Development Plan' (LDP) 2015, the land affected is situated within the Countryside Zone where Policy LDP DM 1 only gives encouragement to small scale development, on appropriate infill, rounding off, redevelopment and change of use of existing buildings. This policy further states that, in exceptional cases, development in the open countryside may be supported on appropriate sites if it accords with an Area Capacity Evaluation (ACE). In this instance, the site does not represent an opportunity for infill, rounding off, redevelopment or change of use and as no exceptional case has been demonstrated to justify any aspect of the development in the open countryside, the development as a whole, including all structures and the caravan, are considered contrary to the terms of Policy LDP DM 1 as set out above.

Furthermore, the LDP identifies the land affected as being within strategic allocation area DRA 5/4 which is a safeguarded corridor to provide essential future access improvements. It is considered that the development of any part of this safeguarded land would be harmful to these aspirations.

The use of land for the siting of a caravan for residential development is not supported by the LDP where it is intended to be used a permanent home. Supplementary Guidance policy SG LDP HOU 4 provides that no new residential caravans or caravan sites will be permitted for such use except on the basis of temporary necessity. Temporary necessity is defined as applying to emergency situations where re-housing is urgently required or for the purpose of temporary occupation when building a principle residence on site. No temporary necessity has been able to be demonstrated in this instance.

In light of the above, due to the constraints of the site, Argyll and Bute Council considers that it is

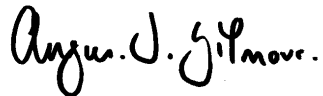
7. YOUR RIGHT OF APPEAL

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 **10th of August 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 **10th of August 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: 9th July 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
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RELEVANT LEGISLATION

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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 **10th of August 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.

PENALTIES FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

Where an enforcement notice requires the discontinuance of a use of land or compliance, in respect of a use of land or the carrying out of operations, with any conditions or limitations, then any person who, without the grant of planning permission uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, is guilty of an offence and liable on summary conviction to a fine not exceeding Twenty Thousand Pounds or on conviction on indictment to an unlimited fine. Furthermore, if the use is continued after conviction the person may be convicted of a second or subsequent offence.

FIXED PENALTY NOTICE

Section 136A of the 2006 Act amended the 1997 Act to introduce a new planning enforcement power enabling planning authorities to issue a fixed penalty notice (FPN) as an alternative to prosecution where a person fails to comply with the terms of an enforcement notice.

Failure to comply with this notice may result a fixed penalty notice being issued, with a fine of £2000 in respect of a breach of an enforcement notice. Please note that while payment of this fine prevents future prosecution this does not remove your responsibility to comply with

DIRECT ACTION FOR NON

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

Issue of enforcement notice. **127.** - (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-

- (a) on the owner and on the occupier of the land to which it relates, and
- (b) on any other person having an interest in the land, being an interest which, in the

(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.

(10) Where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

(11) An enforcement notice shall specify such additional matters as may be prescribed.

(12) Regulations may require every copy of an enforcement notice served under section 127 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 130.

(13) Where-

(a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so, and

(b) all the requirements of the notice have been complied with,
then, so far as the notice did not so require, planning permission shall be treated as having been granted under section 33 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

(14) Where-

- (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. **129.** - (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 by subsection (1) may be exercised whether or not the notice has taken effect.

(3) The planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were reissued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not af

regulations under any other provisions of this Act.

General provisions relating to determination of appeals.

132. - (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

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.

(5) The planning permission which may be granted under subsection (1) is any planning permission which might be granted on an application under Part III.

(6) Where the Secretary of State discharges a condition or limitation under subsection (1), he may substitute for it any other condition or limitation.

(7) Where an appeal against an enforcement notice is brought under section 130, the appellant shall be deemed to have made an application for planning permission in respect of the matters stat

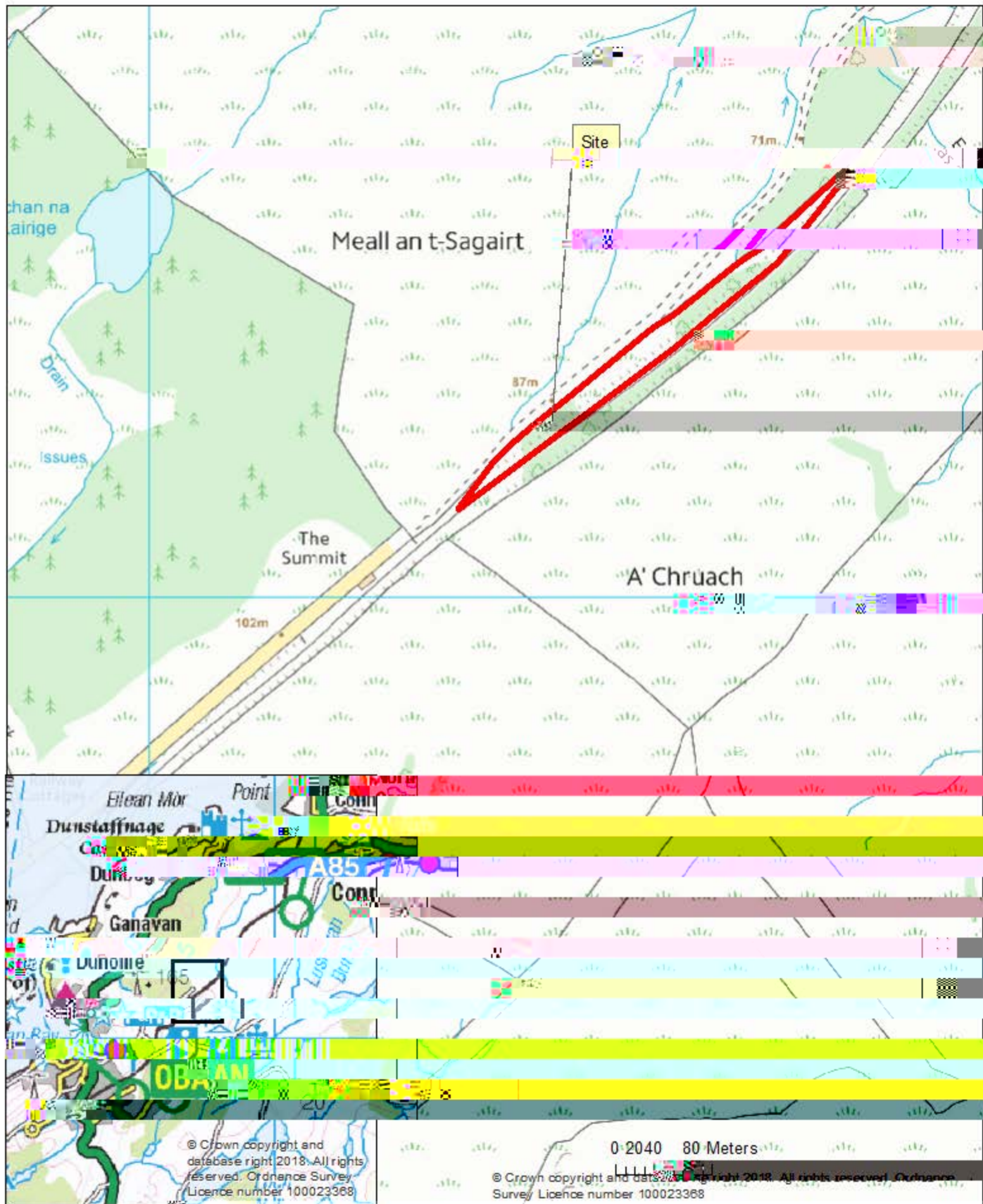
(9) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(10) In relation to a grant of planning permission or a determination under subsection (1) the Secretary of State's decision shall be final.

(11) For the purposes of section 36 the decision shall be treated as having been given by the Secretary of State in dealing with an application for planning permission made to the planning authority.

Validity of enforcement notices.

134. The validity of an enforcement notice shall not be questioned in any proceedings whatsoever on any of the grounds specified in section 130(1)(b) to (e) except by



Location of [redacted] Relative to Enforcement Case 17/00 [redacted] 15/ENOTH3