

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**  
**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 As Amended**

**BREACH OF CONDITIONS NOTICE**

**REFERENCE NUMBER: 23/00040/ENBOC1**

To: Calum Eoghann MacLachlainn  
Bad Daraich  
Tobermory  
Isle of Mull

Allan MacLean  
Cearcal-a-Chuainn  
Tobermory  
Isle of Mull

Tobermory Harbour Association  
Units 5-6 Balisgate Industrial Estate  
Tobermory  
Isle of Mull

**SERVED BY: ARGYLL AND BUTE COUNCIL, KILMORY, LOCHGILPHEAD**

1. **THIS IS A FORMAL NOTICE** which is served by Argyll and Bute Council, under Section 145 of the Town and Country Planning (Scotland) Act 1997 as amended, because it is considered that a condition imposed on the grant of planning permission, relating to the land described below, has not been complied with. It is considered that you are (the person who is carrying out or has carried out the development) (the person having control of the land affected and as such as are the person responsible for securing compliance with the conditions specified in this notice).

2. **THE LAND AFFECTED BY THE NOTICE**

The site to which this notice relates an area of land known as **Taigh Solais Tobermory Isle Of Mull Argyll And Bute** (hereinafter referred to as “the Land Affected”)

3. **THE RELEVANT PLANNING PERMISSION**

The relevant planning permission to which this notice relates is the permission granted by Argyll and Bute Council Reference Number **17/01205/PP** on the **04.12.2020** for **Erection of retail unit, visitor centre and 3 self-catering units, including realignment of escape stairs to Taigh Solais and MacGochans** on the Land Affected (hereinafter referred to as “the Planning permission”)

4. **BREACH OF CONDITION**

The following condition(s) of the Planning Permission has/have not been complied with:

2.) Notwithstanding the effect of Condition 1, no development shall commence until written details of the type and colour of external materials to be used in the construction of the building and the flooding refuge area, including render details, cladding and roofing details, window and door details, guttering details, external stair, balustrading and hand rail details, have been submitted to and approved in writing by the Planning Authority. The development shall thereafter be completed using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.

*Reason: In order to integrate the development into its surroundings and having appropriate regard to the location of the development within a conservation area.*

3.) Notwithstanding the effect of Condition 1, no development shall commence until detailed sections and a written specification showing the existing and the proposed levels of the site have been submitted to and approved in writing by the Planning Authority. These details shall clearly show the extent and method of the proposed site recontouring required to accommodate the development and, specifically, the approved 'flooding refuge area' and shall include a detailed specification of any required retaining wall or other means of slope stabilisation/retention. The development shall thereafter be completed in accordance with the approved details and methodology or such alternatives as may be agreed in writing with the Planning Authority.

*Reason: In order to allow for a detailed assessment of these elements of the proposed development and, in particular, their impact upon the character and appearance of the site and its wider surroundings and no such detailed information having been submitted with this planning application.*

6.) No development shall commence until full details of the following flood risk mitigation strategies and 'protection by design' techniques have been submitted to and approved in writing by the Planning Authority:

\* Full written details of the proposed 'flood warning' scheme, including how such a scheme will operate and who will be responsible for its implementation and continued operation; such a scheme as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706).

\* Full written details of the proposed 'briefing and guidance for guests' flood management system for the approved first floor self-catering holiday accommodation, including how such a scheme will operate and who will be responsible for its implementation and continued operation; such a scheme as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706). These required details shall also include the proposed means of recording and maintaining a detailed written log of these 'briefings'; the resulting log to be made available, at all reasonable times, for inspection by the planning authority if so required.

\* Full written details of the proposed 'property level flood protection measures' for the approved ground floor tourist information facility and shop(s). These details shall include a full specification of any proposed 'stop logs', 'demountable barriers', 'flood proof doors' and any other proposed 'protection by design' measures to be incorporated into the development, as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706).

\* Full written details of the size, type and precise permanent location of the 'emergency boat/dinghy fixed to the wall of a nearby building' as proposed by the developer within the report dated 15th August 2019 by Kaya Consulting Limited (document reference number KC1706). These details shall also detail how such a scheme will operate and who will be responsible for its implementation and continued operation together with the responsibility for any required maintenance/replacement of the proposed emergency boat/dinghy.

All of the subsequently approved details shall be implemented in full and shall be operational before the development hereby approved is first brought into use and in perpetuity thereafter.

*Reason: In order to ensure that the development is constructed and operated in accordance with the*

*specific flood risk mitigation strategy proposed by the developer and subsequently approved; such a strategy being assessed by the Planning Authority as essential to underpin the reasons for departing from national and local flood risk planning policy and the advice of SEPA.*

## **5. WHAT YOU ARE REQUIRED TO DO**

As the person responsible for the breach of condition specified in paragraph 4 of this notice, you are required to comply/secure compliance with the stated condition(s) by taking the following steps:

- 1.) Submission of details of the type and colour of external materials that are being used in the construction of the building and the flooding refuge area, including render details, cladding and roofing details, window and door details, guttering details, external stair, balustrading and hand rail details for the consideration of the Planning Authority in order to secure compliance with the suspensive element of condition 2.
- 2.) Submission of detailed sections and a written specification showing the existing and the proposed levels of the site for the consideration of the Planning Authority in order to secure compliance with condition 3. These details shall clearly show the extent and method of the proposed site recontouring required to accommodate the development and, specifically, the approved 'flooding refuge area' and shall include a detailed specification of any required retaining wall or other means of slope stabilisation/retention. The development shall thereafter be completed in accordance with the approved details and methodology or such alternatives as may be agreed in writing with the Planning Authority.
- 3.) Fully discharge the requirements of condition 6 to the satisfaction of the Planning Authority in consultation with SEPA in respect of flood risk.

## **6. TIME FOR COMPLIANCE**

You are required to comply with the requirements of this notice within 2 months from the date on which you receive this notice by postal delivery.

## **7. DATE THIS NOTICE TAKES EFFECT**

This notice takes effect immediately when it is served on you or you receive it by postal delivery.

Dated: 27<sup>th</sup> of July 2023



Fergus Murray  
Head of Development and Economic Growth  
Kilmory  
Lochgilphead

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

## **WARNING - THERE IS NO RIGHT OF APPEAL AGAINST THIS NOTICE**

Copies of sections 145 and 145A of the Town and Country Planning (Scotland) Act 1997 (as amended) are attached. You will wish to note in particular the points referred below.

It is an offence to contravene the requirements stated in paragraph 5 of this notice after the end of the compliance period. The maximum penalty for such an offence is £1000.00.

If you are in any doubt about what this notice requires you to do, you should get in touch immediately by telephone, followed by written enquiry to:

Planning Services, 1A Manse Brae, Lochgilphead, Argyll PA31 8RD.

Section 145A of The Planning etc. (Scotland) Act 2006 provides the Planning Authority with power to issue a fixed penalty notice for breaching the terms of a breach of condition notice. The issue of a fixed penalty notice is at the discretion of the Planning Authority. There is no right of appeal against a fixed penalty notice. The Town & Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2008 sets out that the penalty for breach of a breach of condition notice is £300. Payment of the penalty does not discharge the requirement to comply with the terms of the breach of condition notice, while prosecution proceedings can be taken where a fixed penalty notice is unpaid.

If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional advisor specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the Court of Session for judicial review. A lawyer will advise you on what procedure this process involves.

**DO NOT LEAVE YOUR RESPONSE TO THE LAST MINUTE**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)**

**SECTIONS 145 AND 145A**

145

(1) This section applies where planning permission for carrying out any development has been granted subject to conditions.

(2) The planning authority may, if any of the conditions is not complied with, serve a notice (in this Act referred to as a “breach of condition notice”) on—

(a) any person who is carrying out or has carried out the development, or

(b) any person having control of the land,

requiring him to secure compliance with such of the conditions as are specified in the notice.

(3) References in this section to the person responsible are to the person on whom the breach of condition notice has been served.

(4) The conditions which may be specified in a notice served by virtue of subsection (2)(b) are any of the conditions regulating the use of the land.

(5) A breach of condition notice shall specify the steps which the authority consider ought to be taken, or the activities which the authority consider ought to cease, to secure compliance with the conditions specified in the notice.

(6) The authority may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve on him a further breach of condition notice in respect of the conditions specified in the earlier notice or any other conditions.

(7) The period allowed for compliance with the notice is—

(a) such period of not less than 28 days beginning with the date of service of the notice as may be specified in the notice, or

(b) that period as extended by a further notice served by the planning authority on the person responsible.

(8) If, at any time after the end of the period allowed for compliance with the notice—

(a) any of the conditions specified in the notice is not complied with, and

(b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,

the person responsible is in breach of the notice.

(9) If the person responsible is in breach of the notice he shall be guilty of an offence.

(10) An offence under subsection (9) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction for such an offence.

(11) It shall be a defence for a person charged with an offence under subsection (9) to prove—

(a) that he took all reasonable measures to secure compliance with the conditions specified in the notice, or

(b) where the notice was served on him by virtue of subsection (2)(b), that he no longer had control of the land.

(12) A person who is guilty of an offence under subsection (9) shall –

(a) be liable on summary conviction to a fine not exceeding level 5 on the standard scale, and

(b) the court when setting the fine shall have regard to any financial benefit or likely financial benefit that the convicted person may accrue in consequence of the activity which constitutes the offence

(13) In this section—

(a) “conditions” includes limitations; and

(b) references to carrying out any development include causing or permitting another to do so.

145A

(1) Where a planning authority have reason to believe that, by virtue of subsection (8) of section 145, a person is in breach of a breach of condition notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.

(2) The fixed penalty notice is to specify—

(a) the step specified, under subsection (5) of section 145, in the breach of condition notice which has not been taken, or

(b) the activity so specified which has not ceased.

(3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.

(4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days

which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in that notice, any liability to conviction for an offence under section 145(9) as respects the breach of the breach of condition notice.

(5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.

(6) The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.

(7) The conditions are that the fixed penalty notice—

(a) is served within the period of 6 months which immediately follows the period allowed by section 145(7) for compliance with the breach of condition notice, and

(b) is not served after the person has been charged with an offence under section 145(9) as respects the breach of the breach of condition notice.

(8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 145(9) as respects that breach.

(9) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 145(9) as respects that breach.

(10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.

(11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.