

**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: 12/00062/ENOTH2**

To:  
Mr Charles Dixon Spain  
Mrs Sadie Dixon Spain  
Dunans  
Glendaruel  
Colintraive  
Argyll and Bute  
PA22 3AD

**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 ('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**

Land at **Dunans Castle, Glendaruel, Colintraive, Argyll and Bute, PA22 3AD**, shown edged red on the attached plan.

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

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

the siting and erection of a timber outbuilding used as an office and installation of mains services.

#### 4. REASONS FOR ISSUING THIS NOTICE

It appears to Argyll and Bute Council that as;

I. The Development has been carried out in, over, and/or under the Land Affected without the benefit of planning permission and as such is unauthorised.

II. The timber outbuilding used as an office is contrary to Policies LP ENV 13A and LP ENV 19 and also Appendix A of the adopted Argyll and Bute Local Plan 2009

There has been a breach of planning control and it is expedient to issue this notice having regard to the provisions of the adopted Development Plan.

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

You are required to;

- 1) Remove the timber outbuilding used as an office in its entirety from the Land Affected.
- 2) Remove the drainage, water pipes and electricity ducting and cables serving the timber outbuilding used as an office.
- 3) Make safe and reinstate the land to grass..

Time period for compliance: **9 months from the date this notice takes effect.**

#### 6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on **27 June 2014** 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 then this notice shall be of no effect pending the final determination or the withdrawal of the appeal.

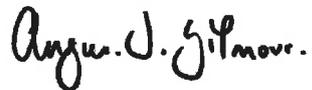
#### 7. YOUR RIGHT OF APPEAL

You can appeal against this notice, but your appeal must be received or posted in time to be received by the Scottish Government before 27 June 2014. 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 **27 June 2014** 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.

Dated: 22 May 2014

Handwritten signature of Angus J. Gilmore in black ink.

Head of Planning and Regulatory Services

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

<p style="text-align: center;"><b>SCHEDULE 1</b> <b>EXPLANATORY NOTE FOR THOSE IN RECEIPT OF</b> <b>AN ENFORCEMENT NOTICE</b></p>
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**RELEVANT 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 **27 June 2014**. 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.

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

### *Enforcement notices*

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 opinion of the authority, is materially affected by the notice.

(3) The service of the notice shall take place-

- (a) not more than 28 days after its date of issue, and
- (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

Contents and effect of notice.

**128.** - (1) An enforcement notice shall state-

- (a) the matters which appear to the planning authority to constitute the breach of planning control, and
- (b) the paragraph of section 123(1) within which, in the opinion of the authority, the breach falls.

(2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.

(3) An enforcement notice shall specify the steps which the authority requires to be taken, or the activities which the authority requires to cease, in order to achieve, wholly or partly, any of the following purposes.

(4) Those purposes are-

- (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
- (b) remedying any injury to amenity which has been caused by the breach.

(5) An enforcement notice may, for example, require-

- (a) the alteration or removal of any buildings or works,

- (b) the carrying out of any building or other operations,
- (c) any activity on the land not to be carried on except to the extent specified in the notice, or
- (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 affect the power of the planning authority to issue a further enforcement notice.

Appeal against enforcement notice.

**130.** - (1) A person on whom an enforcement notice is served or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds-

(b) that the matters which, by virtue of section 128(1)(a) have been stated in the notice, have not occurred;

(c) that those matters( if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as required by section 127;

(f) 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;

(g) that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.

(2) An appeal under this section shall be made either-

(a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect, or

(b) by sending such notice to him in a properly addressed and prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.

(c) by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date.

(3) A person who gives notice under subsection (2) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing-

(a) specifying the grounds on which he is appealing against the enforcement notice, and

(b) giving such further information as may be prescribed.

Appeals:  
supplementary  
provisions.

**131.** - (1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 130 and, in particular, but without prejudice to the generality of the foregoing provisions of this subsection, in so prescribing may-

(a) specify the matters on which information is to be given in a statement under section 130(3);

(b) require the planning authority to submit, within such time as may be specified, a statement indicating the submissions which they propose to put forward on the appeal;

(c) specify the matters to be included in such a statement;

(d) require the authority or the appellant to give such notice of an appeal as may be specified to such persons as may be specified;

(e) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be specified, a copy of the enforcement notice and a list of the persons served with copies of it.

(3) Where an appeal is brought under section 130 the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(4) Schedule 4 applies to appeals under section 130, including appeals under that section as applied by 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-

(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.

**133.** - (1) On the determination of an appeal under section 130, the Secretary of State may-

(d) determine whether on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which the permission was granted was lawful and, if so, issue a 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

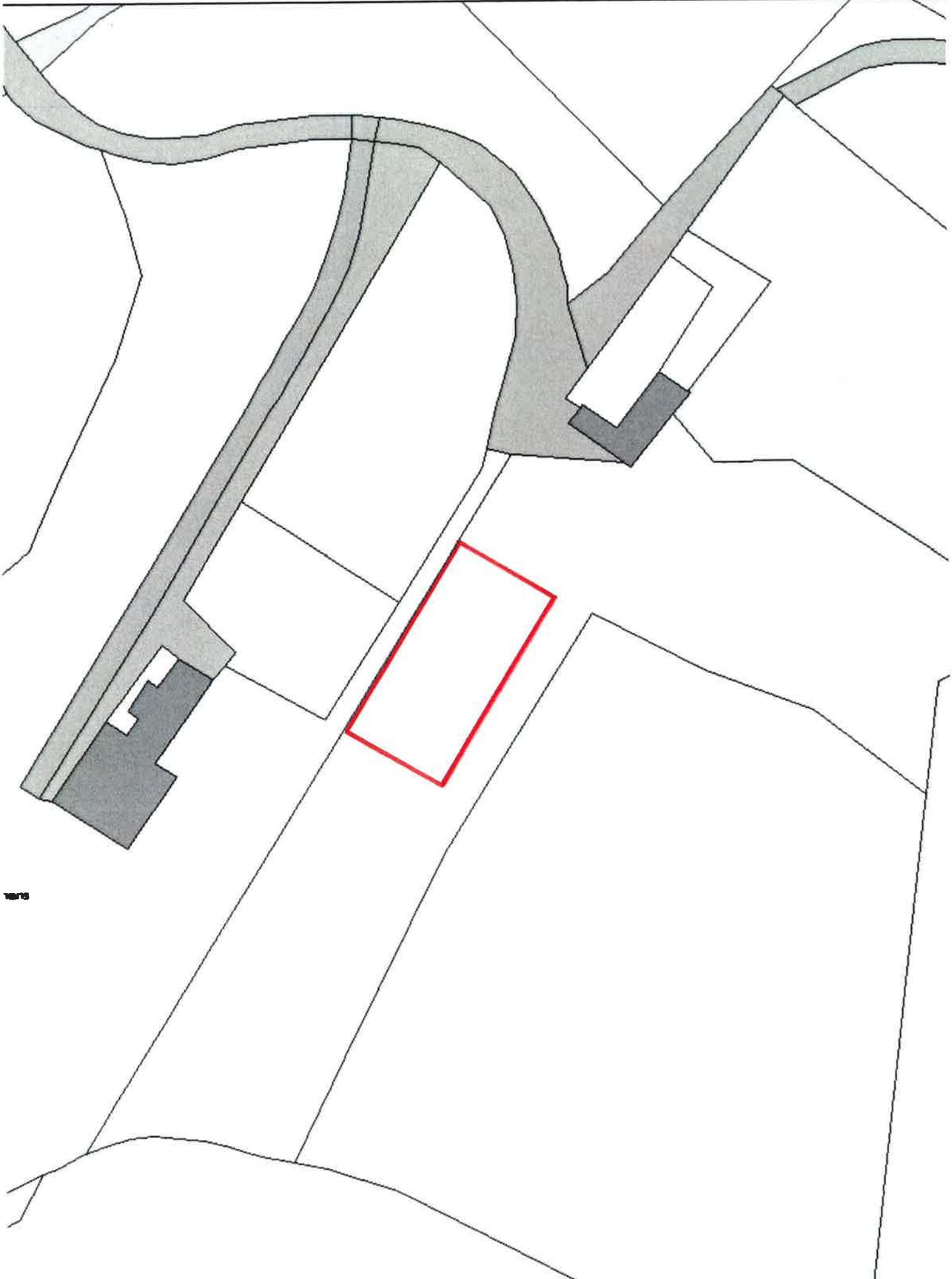
reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made, and

(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.

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 appeal under that section



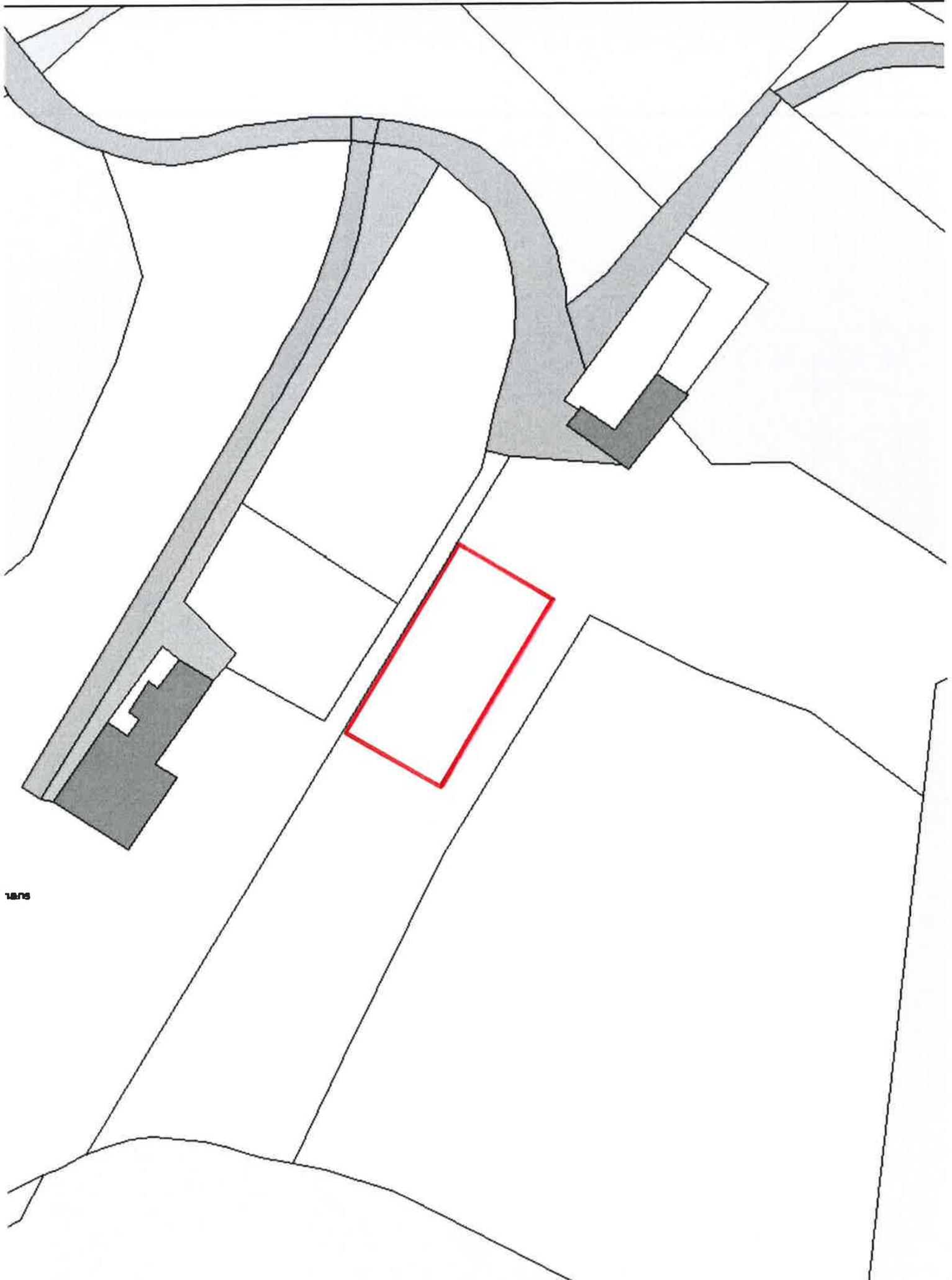
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# Enforcement Notice 12/00062/ENOTH2



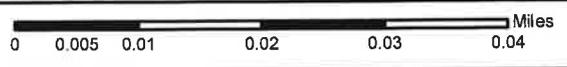


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Enforcement Notice 12/00062/ENOTH2



## Appeal Decision Notice

T: 01324 696 400  
F: 01324 696 444  
E: [dpea@scotland.gsi.gov.uk](mailto:dpea@scotland.gsi.gov.uk)



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Decision by Donald Harris, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-130-2015
- Site address: Dunans Castle, Glendaruel, Colintrave, Argyll PA22 3AD
- Appeal by Mr Charles Dixon-Spain and Mrs Sadie Dixon-Spain against the enforcement notice dated 22 May 2014 served by Argyll and Bute Council
- The alleged breach of planning control: without planning permission, the siting and erection of a timber outbuilding used as an office and installation of mains services
- Date of site visit by Reporter: 13 August 2014

Date of appeal decision: 3 September 2014

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### Decision

I allow the appeal and vary the terms of the notice by the deletion of “9 months” in the time period for compliance (specified in section 5 of the notice dated 22 May 2014) and the substitution therefor of the words “three years”. 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 appeal against the enforcement notice was made on the following ground as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997:

(g) the period specified in the notice to comply with the steps to be taken falls short of what should reasonably be allowed.

The enforcement notice gives the time period for compliance as 9 months.

2. The timber shed the subject of this appeal is located within the site shown on the plan attached to the notice, but at its north-eastern end. It is of one storey and measures some 5.5 by 4.5 metres. It lies to the north-east of Dunans Castle, which with the exception of the attached Georgian house, is now a burnt-out shell, having suffered a disastrous fire in 2001. Between the castle and the appeal premises is a large modern shed. The castle is accessed from the A886 by a driveway which crosses the deep gorge of the River Ruel by Dunans Bridge.



3. Dunans Castle is in the Scots Baronial (or French) style and dates from 1864. It is an impressive building with a prominent tower at the south-west (or west) corner. It is Listed Category B. Dunans Bridge was built in 1815. It is a Gothick bridge of three pointed arches. The central arch spans the river and is larger than the other two. It is a particularly impressive structure and is listed Category A. From the bridge there is a fine view of the castle. The castle and bridge are set in a distinguished and well-wooded parkland landscape.

4. The appellants state that they bought the property in 2003. They claim that the period of 9 months is too short given that the building is used as an office for the business which provides for the restoration of the listed buildings.

5. For the castle, an Initial Structural Appraisal, Condition Report, Conservation Plan and Options Appraisal (with outline indicative casts) were produced in January/February/March 2014. For the bridge, an Initial Structural Appraisal and Indicative Costs were produced in the same months. A draft timetable shows work on the bridge completed by October 2015 and offices constructed by November 2015. Construction work on the castle could not start until the bridge had been made safe for the heavy traffic that would be generated. The construction phase would last for some three years.

6. The planning authority argues that given the relatively small size of the timber outbuilding and the minor nature of the operations necessary to remedy the breach of planning control, the compliance period of 9 months is totally reasonable. Such a lengthy period would allow the consideration of the current application for the retention of the structure, or for suitable alternative premises to be found. For as long as the building stands, the planning authority claims that the policies of the Argyll and Bute Local Plan 2009 are breached. Policy LP ENV 13A seeks to preserve the settings of listed buildings and Policy LP ENV 19 requires development to be of a high standard of design, paying regard to its surroundings.

## Conclusion

7. I note that since the appellants bought the property in 2003, much of the Georgian House adjoining the castle has been restored and is now occupied. It appears that business enterprises have been established which provide a measure of economic support. Apart from some works towards making the ruined castle safe, work has yet to start on the restoration of the bridge and castle. However, it is clear that a thorough and professional scheme of restoration is planned. I have no doubt that this is a very serious bid to restore this property, with economic support provided by business enterprises established here.

8. The task is daunting. It is fortunate indeed that the appellants are willing to undertake it. Otherwise, two remarkable and valuable historic buildings would be threatened with decay and demolition. Given the uncertainties and difficulties which are all too likely to lie ahead, I consider that a much longer period for compliance is justified. I see no public benefit in requiring the timber outbuilding to be removed and the office to be relocated when it could disrupt the progress of the scheme of restoration. That disruptive effect might be indirect, but the enterprises which operate from the premises are linked to

the castle in that they provide economic support. Any disadvantage to the public is minimal, as the timber building is simple and comparatively unobtrusive. It is hardly likely to be noticed as affecting the setting of the castle for as long as restoration works are in progress.

9. If, in accordance with the draft timetable, work on the castle were to start in October 2015 and be completed by October 2018, it would in my view be reasonable to expect the need to address the finer points of presentation of the site to arise in the last year of the programme. Accordingly, I have decided to vary the terms of the notice so that the compliance period is three years.

10. I have considered all other points made, including the representations of a neighbour who is concerned about car parking on his land near the entrance to Dunans Castle on the A886. However, this does not relate to the issue raised by this appeal. None of these points causes me to alter my decision.

*Donald Harris*

Reporter