

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

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

**AMENITY NOTICE REQUIRING PROPER
MAINTENANCE OF LAND**

REFERENCE NUMBER: 18/00053/ENAMEN

To:
Mr George Byars
5 Leven Lane
Kirn
Dunoon
PA23 8DR

Mr Richard Byars
197 Victoria Road,
Dunoon,
Argyll,
PA23 7PA

Company Secretary
Byars Developments Limited
6 Marine Parade
Kirn
PA23 8HE

ISSUED BY: ARGYLL AND BUTE COUNCIL, KILMORY LOCHGILPHEAD

1. **THIS IS A FORMAL NOTICE** which is issued by Argyll and Bute Council as Planning Authority under the provisions of Section 179 of the Act Town and Country Planning (Scotland) Act 1997 ("the Act") because it appears to them that the condition of the Land Affected as hereinafter defined adversely affects the amenity of its district.

2. THE LAND AFFECTED

The land shown delineated in red on the attached plan which land forms the former Kirn Garden Centre, 6 Marine Parade, Kirn PA23 8HE (hereinafter referred to as 'the Land Affected')

3. REASONS FOR ISSUING THIS NOTICE

It appears to Argyll and Bute Council that the amenity of part of its district is adversely affected by the condition of the Land Affected.

4. WHAT YOU ARE REQUIRED TO DO

You are required to:

Remove all debris from the space between 6 Marine Parade, Kirn and 4 Marine Parade, Kirn as delineated hatched on the attached plan. This includes, but is not limited to:

- All items of plastic,
- All items of metal,
- All items of unfixed stone,
- All items of unfixed concrete, and
- All items of wood.

Time period for compliance: **6 weeks from the date the notice takes effect.**

5. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect **1st January 2019** unless an appeal is made to the Scottish Government before the date the notice takes effect.

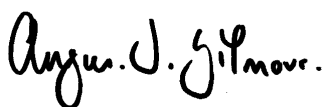
6. YOUR RIGHT OF APPEAL

You can appeal against this notice, but your appeal must be received or posted in time to be received by the Scottish Government before **1st January 2019** Schedule 1 to this notice gives information on your rights of appeal **READ IT CAREFULLY.**

7. WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this notice, it will take effect on **1st January 2019** 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 this notice once it has taken effect may result in the Council entering the Land Affected and undertaking the steps required by this notice and recovering the costs of doing so from the owner or lessee of the Land Affected.

Dated: 28th November 2018



Head of Planning and Regulatory Services
Kilmory
Lochgilphead
On behalf of Argyll and Bute Council, Kilmory, Lochgilphead, PA31 8RT

AMENITY NOTICE

SCHEDULE 1

EXPLANATORY NOTE FOR THOSE IN RECEIPT OF AN AMENITY NOTICE

Relevant Legislation

A copy of Sections 130(3), 131(1), 132(3), 135, 179, and 180 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 **[insert date on which notice will take effect]**. 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 180 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 the 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, this Amenity Notice will be suspended and will not take effect unless the appeal is withdrawn or dismissed.

Penalties for Non-Compliance with an Amenity Notice

If the steps required by an Amenity Notice are not taken within the specified period(s), the Council may enter the Land Affected and take Direct Action under section 135 of the 1997 Act to meet those requirements. Please note that it is an offence for any person to wilfully obstruct a person acting in the exercise of such Direct Action.

Furthermore, all reasonable costs incurred by the Council during this process, including administration expenses, will be recovered from the owner, or lessee of the land.

Failure to reimburse the Council when required may lead to prosecution through the courts.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

SECTIONS 130(3), 131(1), 132(3), 135, 179, and 180

130 (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.

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.

132 (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).

135

(1) If any steps which are required by an enforcement notice to be taken have not been taken within the compliance period, the planning authority may—

- (a) enter the land and take those steps, and
- (b) recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.

(2) If that person did not appeal to the Secretary of State although entitled to do so, he shall not be entitled to dispute the validity of the action taken by the planning authority under subsection (1) in accordance with the enforcement notice.

(3) In computing the amount of the expenses which may be recovered by them under subsection (1), a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.

(4) Where a copy of an enforcement notice has been served in respect of any breach of planning control—

(a) any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with the notice, and

(b) any sums paid by the owner or lessee of any land under subsection (1) in respect of expenses incurred by the planning authority in taking steps required by such a notice to be taken,

shall be recoverable from the person by whom the breach of planning control was committed.

(5) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by an enforcement notice, the sheriff may by warrant authorise the owner to go on to the land and carry out that work.

(6) A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal.

(7) After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.

(8) Where a planning authority seek, under subsection (1), to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that—

(a) he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and

(b) he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,

his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.

(9) A planning authority who by reason of subsection (8) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.

(10) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) In this section and in sections 136, 136A, 140 and 141 any reference to the compliance period, in relation to an enforcement notice, is a reference to the period specified in the notice for compliance with it or such extended period as the planning authority may allow for compliance with it.

179

(1) If it appears to a planning authority that the amenity of any part of their district, or an adjoining district, is adversely affected by the condition of any land in their district they may serve on the owner, lessee and occupier of the land a notice under this section requiring such steps for abating the adverse effect as may be specified in the notice to be taken within such period as may be so specified.

(2) Service under subsection (1) shall be effected by the service of a copy of the notice.

(3) Subject to section 180, a notice under this section shall take effect on such date as may be specified in the notice, being a date not less than 28 days after the latest service thereof under subsection (1).

(4) The planning authority may withdraw a notice under this section (without prejudice to their power to serve another) at any time before it takes effect; and if they so withdraw it, they shall forthwith give notice of the withdrawal to every person on whom the notice was served.

(5) No notice may be served under subsection (1) with reference to any building which is—

(a) a building which is the subject of a scheme or order under the enactments for the time being in force with respect to ancient monuments, or

(b) a building for the time being included in a list of monuments published by the Secretary of State under any such enactment.

(6) The provisions of section 135 shall, subject to any necessary modifications, apply in respect of a notice under this section as they apply in respect of an enforcement notice under section 127.

180

(1) A person on whom a notice under section 179 is served, or any other person having an interest in the land to which the notice relates, 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—

(a) that neither the amenity of any part of the planning authority's district nor that of any adjoining district has been adversely affected;

(b) that the steps required by the notice to be taken exceed what is necessary to remedy any such adverse effect;

(c) that the specified period for compliance with the notice falls short of what should reasonably be allowed;

(d) that the condition of the land is attributable to, and such as results in the ordinary course of events from, a continuing lawful use of the land or from continuing lawful operations carried out thereon; or

(e) that the notice was served other than in accordance with section 179.

(2) An appeal under this section shall be made by notice in writing to the Secretary of State.

(3) The provisions of sections 130(3), 131(1) and 132(3) shall apply to appeals under this section as they apply to appeals under those sections.

(4) On an appeal under this section the Secretary of State—

(a) may correct any informality, defect or technical error in the notice if he is satisfied that it is not material, and

(b) may disregard the failure of the planning authority to serve the notice upon a person upon whom it should have been served, if it appears to him that neither that person nor the appellant has been substantially prejudiced by that failure.

(5) Where an appeal is brought under this section, the notice under section 179 shall be of no effect pending the final determination, or the withdrawal, of the appeal.

(6) In determining an appeal under this section the Secretary of State shall give such directions as seem to him appropriate; and these may include directions for quashing the notice or for varying its terms in favour of the appellant.

(7) Schedule 4 applies to appeals under this section.

