

**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: 17/00199/ENOTH3/A

To: Mackenzie Welding
Achalic
Taynuilt
Argyll
PA35 1JQ

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 ARG15917 (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, (with an existing null use), to land for use as a commercial yard, currently being used for the ancillary storage of materials, equipment and repairable items, in association with a (Class 5) commercial welding business.**
2. **The carrying out of an engineering operation to form earth bunds**

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

4. REASONS FOR ISSUING THIS NOTICE

The development, the subject of this notice, is unlawful. It has not been the subject of any applications for express planning permission and neither does it benefit from any deemed planning permission granted under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. In the adopted Argyll and Bute Council Local Development Plan (LDP), the plot of land is shown within the key rural settlement zone of Taynuilt where, under policy LDP DM 1, encouragement is given to sustainable forms of development on appropriate sites. Supplementary Guidance (SG) policy SG LDP BUS 1 also gives encouragement to the development of extensions to existing business and industrial enterprises within existing settlements, provided that in residential locations, the proposed development would not erode the residential character of the area, or adversely affect local residents, through an increase in traffic levels, noise, fumes or hours of operation.

The land affected is a plot of ground which has previously had the benefit of Planning Permission in Principle for the erection of a dwellinghouse as part of a linear row of 5 dwellinghouses. The land to the immediate north of the plot of ground was granted detailed planning permission, reference 15/01033/PP, for the erection of a dwellinghouse on the 23rd of September 2015. Three of the five dwellinghouses have since been built, including on the plot of ground immediately to the north of this development.

The use of land for the storage of material, equipment and / or repaired materials, conflicts directly with SG policy LDP BUS 1, by adversely impacting residential character and amenity. Whilst this development is ancillary to a lawfully established welding business at this location (on land immediately to the south west of the land affected), the existing business operation was contained to a smaller site, and separated from any developed and or proposed housing to the north and east by an existing road. The expansion of this business, (being within Use Class 5 in Town and Country Planning (Use Classes) (Scotland) Order 1997), into an area of the housing development will create an increase in noise and fumes from machinery, as well as potentially further impacting any amenity due to the hours of operation of this business. Accordingly, this development has been assessed as a bad neighbour development in accordance with Schedule 7 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992. SG policy LDP BAD 1 provides that such development will only be considered where there are no unacceptable adverse effects on the amenity of neighbouring residents. Due to the level open topography of this site and the intended use of this land, any such impacts are considered material harmful to the residents in this locality. The development does therefore not meet SG policy LDP BAD 1.

In respect of the construction of earth bunds along the south eastern and northern boundaries of the land affected, the carrying out of such works is also considered to have an adverse impact on the character of the area. The earth bunds do not accord with the surrounding area in terms of design and appearance. SG policy LDP ENV 14 provides that when assessing development proposals, the Council will resist development where its scale, location and design will have significant impact on the character of the landscape unless, such impacts are outweighed by social, environmental or community benefits, or possible mitigation measures have been incorporated to minimise any impacts. As noted no such mitigation is provided and the earth bunds are considered to have a materially harmful impact on landscape quality. The proposal is not considered to accord with policy LDP 9 or SG policy LDP ENV 14.

The proposed development will also be required to have adequate services and access provisions in order to be supported by this Service. The current standards of access has not been appropriately assessed by the Planning Authority.

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. Cease the use of the land affected by permanently removing any unlawful stored materials and / or plant equipment from the plot of ground.
2. Remove the engineered earth bunds from the land affected. The reinstatement of land shall comprise the following actions;
 - The earth bunds located along the south east, north east, and south western boundaries of the land affected shall be removed from the land affected. The area of ground formally occupied by those earth bunds shall then be scraped and or raked to achieve an approximately even profile. At the conclusion of works, the finished ground level within any part of the land affected shall be no greater than 400 millimetres above the surface of the road carriageway located immediately to the south east of the plot of ground.
 - The plot or areas of ground where material has been removed and or disturbed shall be sown with grass seed to encourage soil stabilization.

Time period for compliance: **3 months from the date this notice takes effect.**

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on the **7th of November 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.

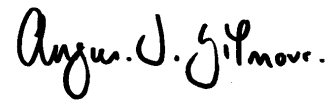
7. YOUR RIGHT OF APPEAL

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 **7th of November 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 **7th of November 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: 1st October 2018

A handwritten signature in black ink, reading "Angus J. Gilmore". The signature is written in a cursive style with a large initial 'A' and a distinct 'J'.

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**

RELEVANT LEGISLATION

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 the **7th of November 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 the terms of this notice and may, as a result, instigate the undertaking of further planning enforcement proceedings.

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.	<p>127. - (1) The planning authority may issue a notice (in this Act referred to as an "enforcement notice") where it appears to them-</p> <ul style="list-style-type: none">(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. <p>(2) A copy of an enforcement notice shall be served-</p> <ul style="list-style-type: none">(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. <p>(3) The service of the notice shall take place-</p> <ul style="list-style-type: none">(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.	<p>128. - (1) An enforcement notice shall state-</p> <ul style="list-style-type: none">(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. <p>(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.</p> <p>(3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.</p> <p>(4) Those purposes are-</p> <ul style="list-style-type: none">(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. <p>(5) An enforcement notice may, for example, require-</p> <ul style="list-style-type: none">(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 those matters 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.

(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.

(2) Subject to section 132(3), the Secretary of State shall, if either the appellant or the planning authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(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-

(a) grant planning permission in respect of any of the matters stated in the enforcement notice as constituting a breach of planning control or any of those matters so far as relating to part of the land to which the notice relates,

(b) discharge any condition or limitation subject to which planning permission was granted,

(c) grant planning permission for such other development on the land to which the enforcement notice relates as appears to him to be appropriate, and

(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.

(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 stated in the enforcement notice as constituting a breach of planning control.

(8) Where-

(a) the statement under section 130(3) specifies the ground mentioned in subsection (1)(a) of that section,

(b) any fee is payable under regulations made by virtue of section 252 in respect of the application deemed to be made by virtue of the appeal, and

(c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

(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 appeal under that section