

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**

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

**BREACH OF CONDITIONS NOTICE**

**REFERENCE NUMBER: 18/00197/ENBOC**

To: Mr and Mrs Keith and Denice Punler  
Kiloran Hall  
Middle Balado  
Balado  
Kinross  
KY13 0NH

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

**1. THIS IS A FORMAL NOTICE** which is served by Argyll and Bute Council, as Planning Authority, under Section 145 of the Town and Country Planning (Scotland) Act 1997, as amended ('the Act') because a condition regulating the use of land subject to which planning permission for the carrying out of development at the Land Affected, as hereinafter defined, has been granted, 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 are the person responsible for securing compliance with the conditions specified in this notice

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

That plot or area of ground shown delineated in red on the attached plan which plot or area of ground forms the **curtilage to Castle Toward, Toward** (hereinafter referred to as 'the Land Affected')

**3. THE RELEVANT PLANNING PERMISSION**

The planning permission to which this notice relates is the permission granted by Argyll and Bute Council Reference Number **17/02052/PP** on the 26/01/2018 for **Erection of 1800mm high deer fence (retrospective)** on the Land Affected (hereinafter referred to as 'the Planning Permission')

**4. BREACH OF CONDITION**

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

2. Within three months of the date of this permission, a detailed Access Plan including mitigation measures shall be submitted for the written approval of the Planning Authority. Such an Access Plan shall include but not limited to:
  - a. The route of the proposed path linking the Chinese Lakes with the eastern driveway;
  - b. Standard cross section detail for the construction of the path, showing width to be 1.8m and the finishing materials;

- c. Detail drawing for the timber bridge across the burn along the eastern footpath, including dimensions;
- d. Improvements to the path/s to the south of the enclosed area to mitigate the loss of public access within the area enclosed by the proposed deer fence including standard cross section construction details, showing width;
- e. Location of the Core Path a short section of which will need to be diverted since it will be obstructed by the proposed fence and gates. The plan will need to show the line of the diversion.
- f. Location and details of any directional signage to be provided to manage public access on the estate, referred to in the Report of Handling for the Masterplan;

Reason: To ensure continued public access around Castle Toward Estate and to ensure consistency with policy SG LDP TRAN 1.

3. Notwithstanding the submitted information, all gates within the deer fencing shall remain 'open' until alternative access routes along the southern and eastern boundary of the estate have been provided and available for public use.

Reason: In order to maintain access for pedestrians and horse riders.

4. Prior to the commencement of works details shall be provided of a footpath that will link the east and west driveways within the southern area of the estate below to the 'haha'. Such details shall include but are not limited to:

- Location including start and finishing points,
- Construction details that shall include suitable drainage, 1.8m width and a type one finish,
- Timetable of works with the footpath to be completed within three months of the details approved.

The full details shall be submitted to the planning authority for approval and the works complete within three months from the date of approval unless otherwise agreed in writing with the planning authority.

Reason: To improve access around the estate and address any loss of access resulting from the development hereby approved.

## **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. Submit a single document Access Plan under the terms of condition 2. This shall include:
  - a. The route of the proposed path linking the Chinese Lakes with the eastern driveway;
  - b. Standard cross section detail for the construction of the path, showing width to be 1.8m and the finishing materials;
  - c. Detail drawing for the timber bridge across the burn along the eastern footpath, including dimensions;

- d. Improvements to the path/s to the south of the enclosed area to mitigate the loss of public access within the area enclosed by the proposed deer fence including standard cross section construction details, showing width;
  - e. Location of the Core Path a short section of which will need to be diverted since it will be obstructed by the proposed fence and gates. The plan will need to show the line of the diversion.
  - f. Location and details of any directional signage to be provided to manage public access on the estate, referred to in the Report of Handling for the Masterplan;
2. Unlock the gates within the deer fencing and keep them unlocked. They can then be locked when the eastern and southern footpaths are constructed.
  3. Provide details of a southern access footpath with the following information:
    - Location including start and finishing points,
    - Construction details that shall include suitable drainage, 1.8m width and a type one finish,
    - Timetable of works with the footpath to be completed within three months of the details approved.

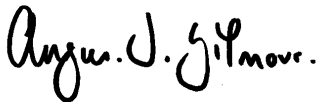
## **6. TIME FOR COMPLIANCE**

You are required to comply with the requirements of this notice within **3 months** from the date on which you receive this notice by postal delivery.

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

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

Dated: 5<sup>th</sup> November 2018



Head of Planning and Regulatory Services  
Kilmory  
Lochgilphead

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

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|------------------------------------------------------------------|
| <b>WARNING - THERE IS NO RIGHT OF APPEAL AGAINST THIS NOTICE</b> |
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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.

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| <b>DO NOT LEAVE YOUR RESPONSE TO THE LAST MINUTE</b> |
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**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)**

**SECTIONS 145 AND 145A**

(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 be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(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

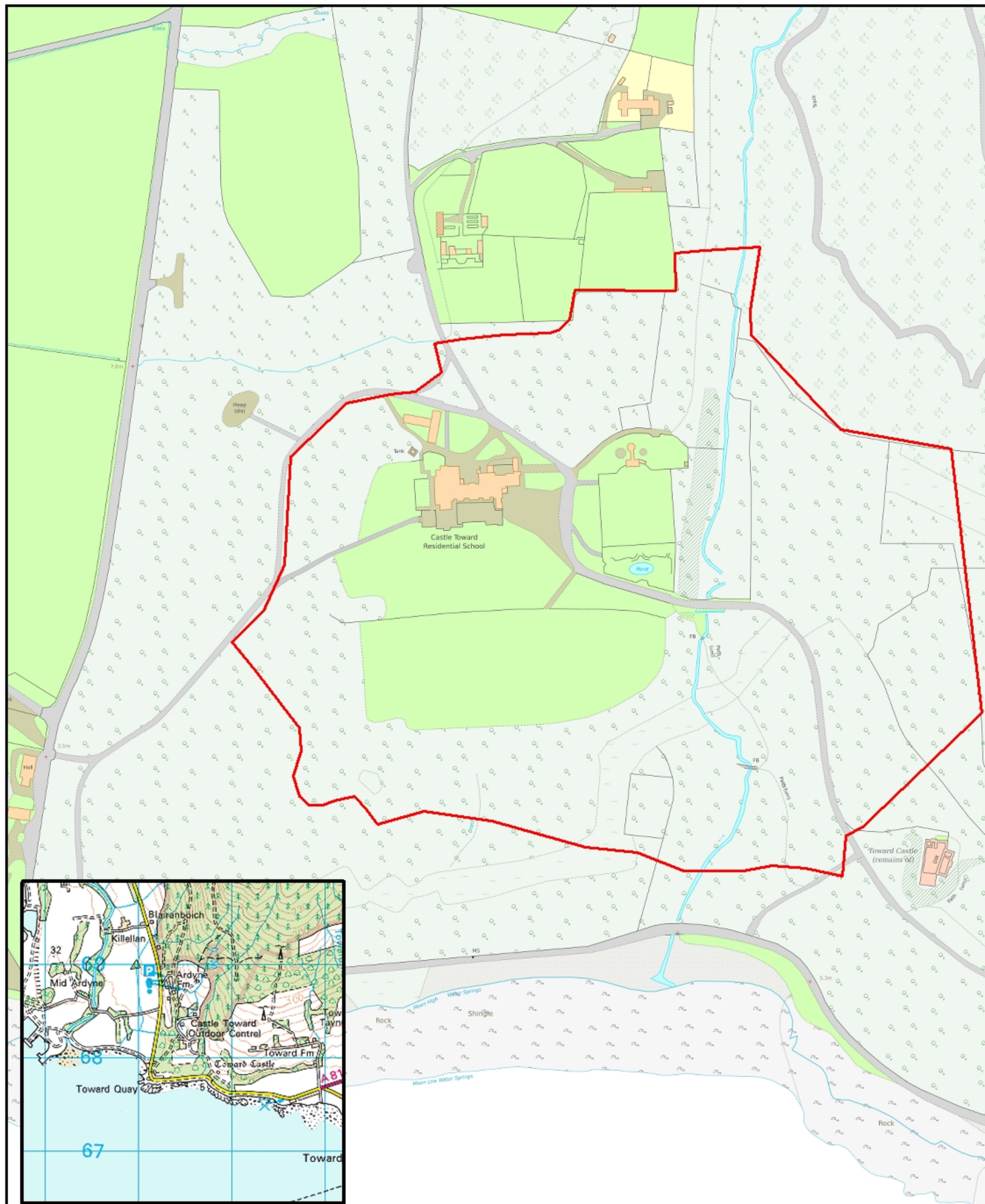
(b) is not served after the person has been charged with an offence under section 145(9) as respects the breach of the breach of condition notice.

(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.



**Location Plan relative to Enforcement Case**  
**Ref No: 18/00197/ENBOC**

Scale 1:35,531



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