

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

**PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)
(SCOTLAND) ACT 1997**

ARGYLL AND BUTE COUNCIL

LISTED BUILDING ENFORCEMENT NOTICE

REFERENCE NUMBER: 09/00138/ENFLB

To:

Mr Charles McFadyen
32 Castleacres
Campbeltown
Argyll
PA28 6SJ

ISSUED BY: ARGYLL AND BUTE COUNCIL, KILMORY, LOCHGILPHEAD

1. **THIS IS A FORMAL NOTICE** which is served by Argyll and Bute Council, in terms of Section 34 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ("the Act"), because it is considered that there has been a breach of listed building control, in that works have been, or are being, executed to a listed building in Argyll and Bute in contravention of Section 6 ,7 and 8 (1) or (2) of the Act at the land/building described below.

Argyll and Bute Council consider it expedient to issue this Notice having regard to the effect of the works on the character of the listed building as one of special architectural or historic interest, and having regard to the Development Plans and to other material considerations.

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

The site to which this notice related is shown edged in red on the attached plan and forms an area of land/property known as **Flat 8B Union Street, Campbeltown**

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

Unauthorised installation of UPVC windows

4. REASONS FOR ISSUING THIS NOTICE

1. The replacement UPVC windows by virtue of their inappropriate construction, design, materials and method of opening, give rise to a disruptive and detrimental impact on the character and appearance of this Grade B listed tenement buildings, where traditional sliding wooden sash and case windows are appropriate and where there is a policy presumption that replacement windows should match originals in all aspects of the design, appearance and method of opening. Therefore the development is contrary to the provisions of STRAT DC9 of the Argyll and Bute Structure Plan 2002 and Policy LP ENV 13 of the 'Argyll and Bute Local Plan' Adopted 2009 together with the Council's Design Guide which collectively seek to prevent inappropriate development that would have an adverse affect on the character, appearance and setting of a listed building.
2. The replacement UPVC windows by virtue of their inappropriate construction, design, materials and method of opening affect the character, setting and appearance of Campbeltown Conservation Area and therefore contrary to policy LP ENV 14 of the 'Argyll and Bute Local Plan' adopted 2009 together with Appendix A and the Council's Design Guide.

5. WHAT YOU ARE REQUIRED TO DO

- (i) Remove the currently installed UPVC windows and replace with the original windows; or,
- (ii) If the original windows are unavailable for reuse the upvc windows shall be replaced with white painted timber windows. The replacement windows must be of sliding sash and casement movement comprised of 12 individual panes (6 over 6) with astragals physically dividing the panes (rather than mock glazing bars) Listed Building consent would be required for the installation of new replacement windows

6 TIME FOR COMPLIANCE

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

7 DATE THIS NOTICE TAKES EFFECT

This notice takes effect on the **23rd July 2010** unless an appeal is made to Scottish Ministers before the date the notice takes effect.

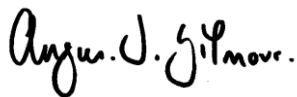
8. YOUR RIGHT OF APPEAL

You can appeal against this notice, but your appeal must be received by Scottish Ministers before 23rd July 2010. Schedule 1 of this Notice gives information on your rights of appeal - **READ IT CAREFULLY.**

9. WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Notice, it will take effect on 23rd July 2010 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the time period(s) specified in the Notice. Failure to comply with a Listed Building Enforcement Notice which has taken effect can result in prosecution and/or remedial action by the Council.

Dated: 21 June 2010



Head of Planning & Regulatory Services
Kilmory
Lochgilphead

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

<p style="text-align: center;">SCHEDULE 1 EXPLANATORY NOTE FOR THOSE IN RECEIPT OF A LISTED BUILDING ENFORCEMENT NOTICE</p>
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RELEVANT LEGISLATION

A copy of Sections 35 to 39 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 is attached. You may wish to note in particular to points referred to 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 3rd August 2009. Scottish Ministers have no power to consider an appeal lodged out of time.

The appeal, which must be made in writing, must be on one or more of the grounds set out in Sections 35 of the 1997 Act, and you should state the facts on which you propose to rely in support of each of the grounds of 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 Scottish Ministers.

PENALTIES FOR NON-COMPLAINE 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 indication to an unlimited fine**. Further more, if the use is continued after conviction the person may be convicted of a second or subsequent offence.

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.

Relevant Sections of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997

Appeal against listed building enforcement notice.

35. - (1) A person on whom a listed building enforcement notice is served or any other person having an interest in the building to which it 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 the building is not of special architectural or historic interest;
- (b) that the matters alleged to constitute a contravention of section 8(1) or (2) have not occurred;
- (c) that those matters (if they occurred) do not constitute such a contravention;
- (d) that-
 - (i) works to the building were urgently necessary in the interests of safety or health, or for the preservation of the building,
 - (ii) it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and
 - (iii) the works carried out were limited to the minimum measures immediately necessary;
- (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- (f) that copies of the notice were not served as required by section 34(6);
- (g) except in relation to such a requirement as is mentioned in section 34(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- (h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
- (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
- (j) that steps required to be taken by virtue of section 34(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building;
- (k) that steps required to be taken by virtue of section 34(2)(c) exceed what may reasonably be required to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.

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

(4) A person who gives notice of appeal under this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed, a statement in writing-

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

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

(5) Schedule 3 (which makes provision regarding the determination of certain appeals by a person appointed by the Secretary of State) applies in relation to appeals under this section.

Appeals: supplementary provisions.

36. - (1) The Secretary of State may prescribe the procedure to be followed on appeals under section 35, and may in particular-

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

(b) specify the matters to be included in such a statement,

(c) require the authority or the appellant to give such notice of such an appeal as may be prescribed to such persons as may be prescribed, and

(d) 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 prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.

(2) Subject to section 37(3), the Secretary of State shall, if either the planning authority or the appellant so requires, give each of them an opportunity of appearing before and being heard by a person appointed by him for the purpose.

Determination of appeals under section 35.

37. - (1) On the determination of an appeal under section 35 the Secretary of State shall give directions for giving effect to the determination, including where appropriate directions for quashing the listed building enforcement notice.

(2) On such an appeal the Secretary of State-

(a) may-

(i) correct any defect, error or misdescription in the listed building enforcement notice, or

(ii) vary the terms of the listed building enforcement notice,

if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority, and

(b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 34(6) to be served with a copy of the notice was not served, may disregard that fact if he is satisfied that the person has not been substantially prejudiced by the failure to serve him.

(3) The Secretary of State may-

(a) dismiss such an appeal if the appellant fails to comply with section 35(4) within the prescribed time;

(b) allow such an appeal or quash the listed building enforcement notice if the planning authority fail to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 36(1)(a), (b) or (d).

(4) On the determination of an appeal under section 35 the Secretary of State may-

(a) grant listed building consent for the works to which the listed building enforcement notice relates,

(b) discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous, or

(c) if he thinks fit, exercise his power under section 1 to amend any list compiled or approved under that section by removing from it the building to

which the appeal relates.

(5) Any listed building consent granted by the Secretary of State under subsection (4) shall be treated as granted on an application for the same consent under section 9.

(6) The validity of a listed building enforcement notice shall not, except by way of appeal under section 35, be questioned in any proceedings whatsoever on the grounds specified in section 35(1)(b) and (f).

Execution of works
required by listed
building enforcement
notice.

38. - (1) If any of the steps specified in the listed building enforcement notice have not been taken within the period for compliance with the notice, the authority may-

(a) enter on 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) Where a listed building enforcement notice has been served in respect of a building-

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

(b) any sums paid by the owner or lessee of a building under subsection (1) in respect of expenses incurred by the planning authority in taking steps required by it,

shall be deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.

(3) 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 a listed building enforcement notice, the sheriff may by warrant authorise the owner to go on the land and carry out that work.

(4) 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.

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

(6) 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.

(7) A planning authority who by reason of subsection (6) 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.

(8) 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.

Offence where listed
building enforcement
notice not complied with.

39. - (1) Where, after the end of the period for compliance with the notice, any step required by a listed building enforcement notice to be taken has not been taken, the person who is for the time being owner of the land is in breach of the notice.

(2) If at any time the owner of the land is in breach of a listed building enforcement notice he shall be guilty of an offence.

(3) An offence under this section 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 this section by reference to any period of time following the preceding conviction for such an offence.

(4) In proceedings against any person for an offence under this section, it shall be a defence for him to show-

(a) that he did everything he could be expected to do to secure that all the steps required by the notice were taken, or

(b) that he was not served with a copy of the listed building enforcement notice and was not aware of its existence.

(5) A person guilty of an offence under this section shall be liable-

(a) on summary conviction, to a fine not exceeding £20,000, and

(b) on conviction on indictment, to a fine.

(6) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

