

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 As Amended

BREACH OF CONDITIONS NOTICE

REFERENCE NUMBER: 22/00057/ENBOC3

To:

Mr Keith Punler & Mrs Denice Punler
Castle Toward
Dunoon
PA23 7UG

Mr Keith Pulner & Mrs 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, under Section 145 of the Town and Country Planning (Scotland) Act 1997 as amended, because it is considered that a condition imposed on the grant of planning permission, relating to the land described below, has not been complied with. It is considered that you are the person(s) who is carrying out or has carried out the development and the person(s) having control of the land affected and as such as are the person responsible for securing compliance with the conditions specified in this notice.

2. THE LAND AFFECTED BY THE NOTICE

The site to which this notice relates (shown edged in red on the attached plan) forms an area of land known as **land south-east of Castle Toward, Toward, Dunoon** (hereinafter referred to as “the Land Affected”).

3. THE RELEVANT PLANNING PERMISSION

The relevant planning permission to which this notice relates is issued by Scottish Ministers in their Decision Notice dated 23rd December 2021 relative to Planning Appeal PPA-130-2080 (Argyll and Bute Planning Authority Reference Number: 19/00447/PP) for the **Erection of 1800mm high deer fence (retrospective) with amendment to Planning Conditions of 17/02052/PP** on the Land Affected (hereinafter referred to as “the Planning Permission”).

4. BREACH OF CONDITION

The following conditions of the Planning Permission have not been complied with:

2. Within three months of the date of this permission, the previously submitted ‘Access Plan’ (1544_L(MP)005) submitted through application ref: 16/02356/MPLAN shall be revised as necessary and 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 the width to be 1.8 m and the finishing materials;
- c) The route of the proposed path linking the east and west driveways within the southern part of the estate below the 'ha-ha' including start and finishing points;
- d) 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 Access Plan will need to show the line of the diversion;
- e) Location and details of public access points to the estate and directional signage to be provided to guide and manage public access on the estate.

Reason: To ensure continued public access around Castle Toward Estate and to meet the requirements of Argyll and Bute Local Development Plan policy LD P11 and supplementary guidance policy SG LDP TRAN 1.

- 3. Within 3 months of the date of this permission details of temporary measures to provide adequate means of access along the southern boundary of the estate prior to or during the implementation of improvement works in the southern area of the estate as detailed in condition 4, shall be submitted for the written approval of the Planning Authority. The temporary measures shall be carried out in accordance with the approved details within one month from the date of approval.

Reason: In order to facilitate continued access to the general estate grounds.

- 4. Within 3 months of the date of approval of the Access Plan, details shall be submitted for the written approval of the Planning Authority of the improvement works for the footpath that will link the east and west driveways within the southern area of the estate, in accordance with the route approved in the Access Plan. Such details shall include but are not limited to:
 - a. Location including start and finishing points and proposed directional signage;
 - b. Construction details that shall include 1.8 m width, details of the eastern entrance access path, sections of the route where footpath drainage is proposed, and sections of the route which require a type 1 finish;
 - c. Timetable of works with the footpath improvements and directional signage to be completed within three months of the approved improvement works details;
 - d. The footpath improvement works shall be carried out in accordance with the approved drainage and surfacing details, and unobstructed public access along the footpath and adequate surface drainage thereafter retained.

Reason: To improve access around Castle Toward Estate, address loss of access resulting from the development hereby approved, and to meet the requirements of Argyll and Bute Local Development Plan policy LDP 11 and supplementary guidance policy SG LDP TRAN1.

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 conditions by taking the following steps:

- 1) Submit a single document Access Plan under the terms of Condition 2 for written approval by the Planning Authority.

TIME FOR COMPLIANCE: Within 2 months from the date on which you receive this Notice by postal delivery

- 2) Submit details of the footpath that will link the Eastern and Western Driveways for the written approval by the Planning Authority. These details will be in accordance with the route approved in the Access Plan and in accordance with the requirements of Condition 4.

TIME FOR COMPLIANCE: Details are to be submitted **within 1 month** of the Access Plan being approved. Once approved in writing by the Planning Authority, the footpath improvement works shall be completed **within 3 months**.

- 3) The access gate at the Eastern Driveway is to remain unlocked to allow adequate access along the southern boundary of the Estate. The gate is to remain unlocked and accessible to the public until the path improvement works are complete to the satisfaction of the Planning Authority.

TIME FOR COMPLIANCE: Within 1 month from the date on which you receive this Notice by postal delivery.


6. TIME FOR COMPLIANCE

You are required to comply with the requirements of this notice within the time stated for each of the above actions listed in section 5, unless otherwise agreed in writing with the Planning Authority.

7. DATE THIS NOTICE TAKES EFFECT

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

Dated: 15th January 2024



Fergus Murray
Head of Development and Economic Growth
Kilmory
Lochgilphead

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

WARNING - THERE IS NO RIGHT OF APPEAL AGAINST THIS NOTICE

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 £5000.00.

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:

Area Team Leader, Planning Services, The Civic Centre, 38 East Clyde Street Helensburgh, Argyll And Bute, G84 7PG

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.

DO NOT LEAVE YOUR RESPONSE TO THE LAST MINUTE

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

SECTIONS 145 AND 145A

145

(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 –

(a) be liable on summary conviction to a fine not exceeding level 5 on the standard scale, and

(b) the court when setting the fine shall have regard to any financial benefit or likely financial benefit that the convicted person may accrue in consequence of the activity which constitutes the offence

(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

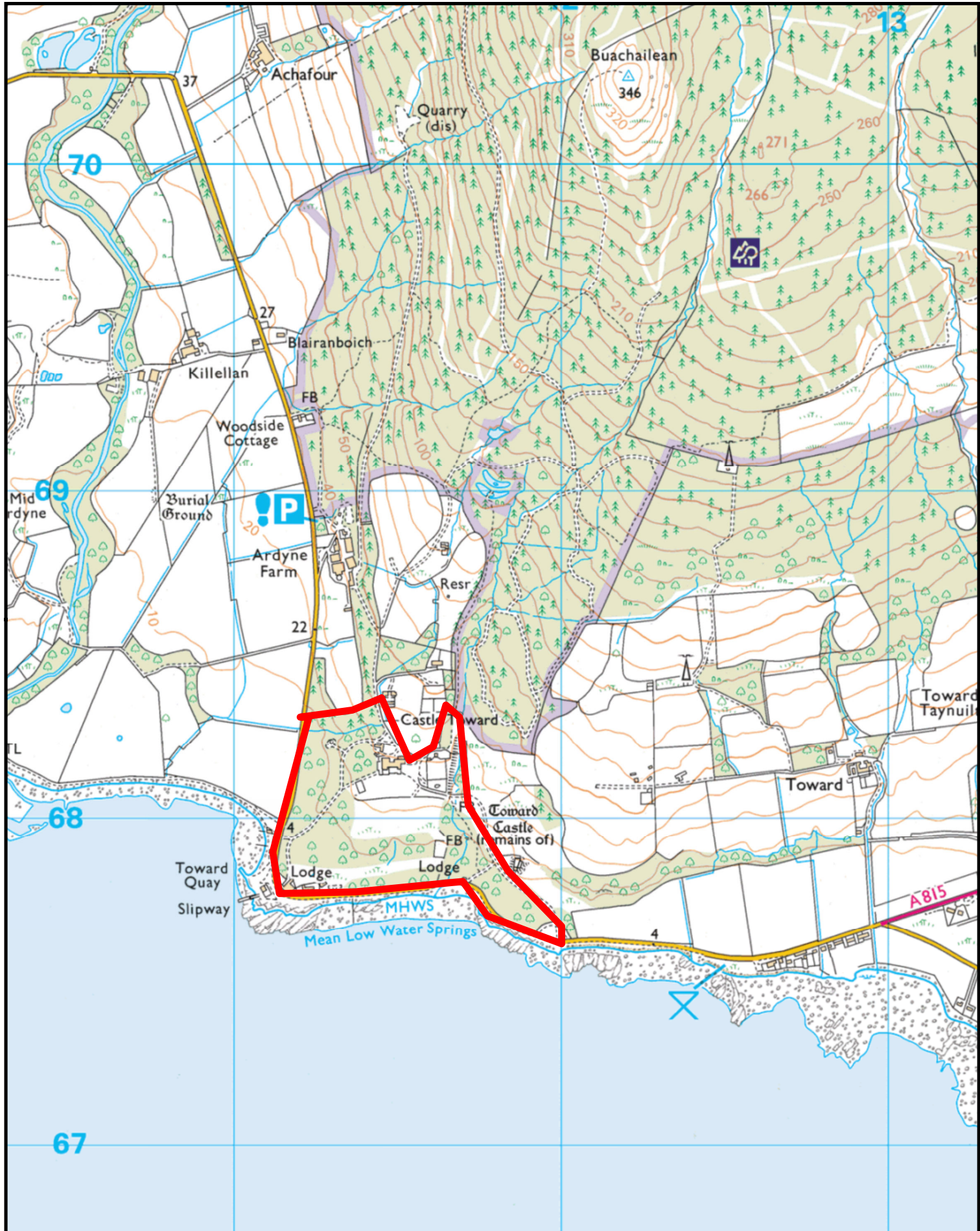
(b) is not served after the person has been charged with an offence under section 145(9) as respects the breach of the breach of condition notice.

(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 Land South of Castle Toward
22/00057/ENBOC3



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