

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

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

ENFORCEMENT NOTICE

REFERENCE NUMBER: 18/00042/ENOTH1

To: Ms Barbara Smith
19 Lochan Avenue
Kirn
Dunoon PA23 8HT

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, because it appears to them that there has been a breach of planning control, under Section 127 of the Town and Country Planning (Scotland) Act 1997 ('the Act'), at the Land Affected 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**

19 Lochan Avenue, Kirn, Dunoon PA23 8HT as shown on the attached plan (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 upon the Land Affected without the required planning permission relative to:

The unauthorised material change of use of the Land Affected from a dwellinghouse (Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997) to use as an wildlife rescue ('the Development')

4. **REASONS FOR ISSUING THIS NOTICE**

The use of the Land Affected for a wildlife rescue centre is a material change of use that constitutes development as defined in section 26 of the Act. The use as a wildlife rescue centre does not benefit from any deemed planning permission granted under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

A planning application reference 21/00514/PP for planning permission for "*Temporary change of use of dwellinghouse and curtilage to wildlife rescue centre (retrospective)*" was refused by the planning authority on 23rd November 2021. A deemed assessment of the unauthorised use has been carried out in relation to this

application for planning permission. Notice of Refusal of this Application for Planning Permission, dated 7th December 2021, has been issued.

The Land Affected comprises a residential dwellinghouse (bungalow) within its curtilage and with a frontage onto a residential cul-de-sac street within a residential area. It is bounded to either side by similar residential properties and to the rear by an area of woodland.

The use of the Land Affected for a wildlife rescue centre and associated accommodation of wild animals conflicts with policies LDP DM1 – Development within the Development Management Zones; LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment; LDP 8 – Supporting the Strength of Our Communities; and SG LDP BAD 1 - Bad Neighbour Development of the Argyll and Bute Local Development Plan adopted March 2015. These policies presume against development which does not protect, conserve or where possible enhance the established character of the built environment in terms of its location, scale, form and design. Policies LDP 8 and SG LDP BAD 1 provide that there should be no unacceptable adverse effects on the amenity of neighbouring residents.

In this case, having regard to the scale, intensity and nature of the Development in conjunction with the proximity of dwellinghouses within a uniformly residential area, the use of the Land Affected as a wildlife rescue centre with associated accommodation of wild animals is considered to be out of keeping with the residential character of the area and materially detrimental to residential amenities of nearby residents by virtue of noise, general disturbance and smells. As such, the Development has been assessed as being contrary to the relevant policy provisions of the Local Development Plan, with specific reference to the provisions of policy LDP 1, LDP 3, 8 and associated Supplementary Guidance LDP SG BAD 1.

It appears to Argyll and Bute Council that there has been a breach of planning control, and upon refusal of the associated planning application ref. 21/00514/PP, it is expedient to issue this notice, having regard to the provisions of the development plan and to any other material considerations.

5. WHAT YOU ARE REQUIRED TO DO

You are required to;

- i. Cease the use of the Land Affected as a wildlife rescue centre and revert to the authorised use as a single dwellinghouse occupied in accordance with the provisions of Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1991.
- ii. Remove all animals from the Land Affected with the exception of any animals that are kept permanently as ancillary to the enjoyment of the dwellinghouse.
- iii. Remove all structures, pens, aviaries or other enclosures not required for accommodation of permanent resident animals ancillary to the enjoyment of the dwellinghouse from the Land Affected.

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

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on **8th March 2022** 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 **8th March 2022**. 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 **8th March 2022** 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: 11th January 2022

A handwritten signature in purple ink, appearing to be 'John Murray', written over a faint circular stamp.

Head of Development and Economic Growth
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 AN ENFORCEMENT NOTICE</p>

RELEVANT LEGISLATION

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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 8th March 2022. 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.

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 in 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

