

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 As Amended**

## **BREACH OF CONDITIONS NOTICE**

**REFERENCE NUMBER: 23/00172/ENBOC1**

To:

**Mr Frank Phipps**  
Portkill Seaview Estates  
The Old Boatyard  
Fort Road  
Kilcreggan  
G84 0JL

### **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 who is carrying out or has carried out the development) (the person 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 North of West Shore Cottage, Fort Road, Kilcreggan, Argyll and Bute** (hereinafter referred to as “the Land Affected”)

### **3. THE RELEVANT PLANNING PERMISSION**

The relevant planning permission to which this notice relates is the permission granted by Argyll and Bute Council (Reference Number **21/00066/PP** on the **20.08.2021** for the erection of 8 dwellinghouses, realignment of junction between Fort Road and B833 Rosneath Road, realignment and widening of Fort Road and installation of private waste water drainage system with connection to existing outfall on the Land Affected (hereinafter referred to as “the Planning permission”).

### **4. BREACH OF CONDITION**

The following condition of the Planning Permission has/have not been complied with:

**Condition 4:** Prior to commencement of development a scheme of boundary treatment, surface treatment and landscaping shall be submitted to and approved in writing by the Planning Authority. The scheme shall include details of:

- i) Location, design and materials of proposed walls, fences and gates;
- ii) Surface treatment of proposed means of access and hardstanding areas;
- iii) Any proposed re-contouring of the site by means of existing and proposed ground levels.
- iv) Proposed hard and soft landscape works.

The development shall not be occupied until such time as the boundary treatment, surface treatment and any re-contouring works have been completed in accordance with the duly approved scheme.

All of the hard and soft landscaping works shall be carried out in accordance with the approved scheme during the first planting season following the commencement of the development, unless otherwise agreed in writing by the Planning Authority.

Any trees or plants which within a period of ten years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species, unless otherwise agreed in writing with the Planning Authority.

**Reason:** To assist with the integration of the proposal with its surroundings in the interest of amenity.

## **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 with the stated condition by taking the following steps:

- 1) Erect 1.8m high 'hit-and-miss' boundary fencing to the dwellinghouses Nos 1-8 Willhouston Drive and to the easternmost boundary of the Land Affected in accordance with drawing P(S)011 'Core Path/ Landscaping Plan as Proposed' [Revision C], received by the Planning Authority on 14.02.2024. The drawing showing the approved regarding fencing and planting is appended in this Notice.
- 2) Plant no. 8 trees (mixture of Scots Pine, Sessile Oak, and Common Oak) in accordance with drawing P(S)011 'Core Path/ Landscaping Plan as Proposed' [Revision C], received by the Planning Authority on 14.02.2024. The drawing showing the approved regarding fencing and planting is appended in this Notice.

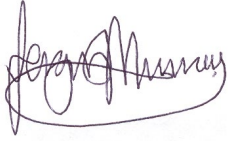
## **6. TIME FOR COMPLIANCE**

You are required to comply with the requirements of this notice **within 6 weeks** from the date on which you receive this notice by postal delivery.

## **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: 20<sup>th</sup> March 2024

A handwritten signature in black ink, appearing to read 'Fergus Murray', written in a cursive style.

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, Helensburgh and Lomond

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 Enforcement Case**

23/00172/ENBOC1 BREACH OF CONDITIONS - LANDSCAPING (FENCING & PLANTING)



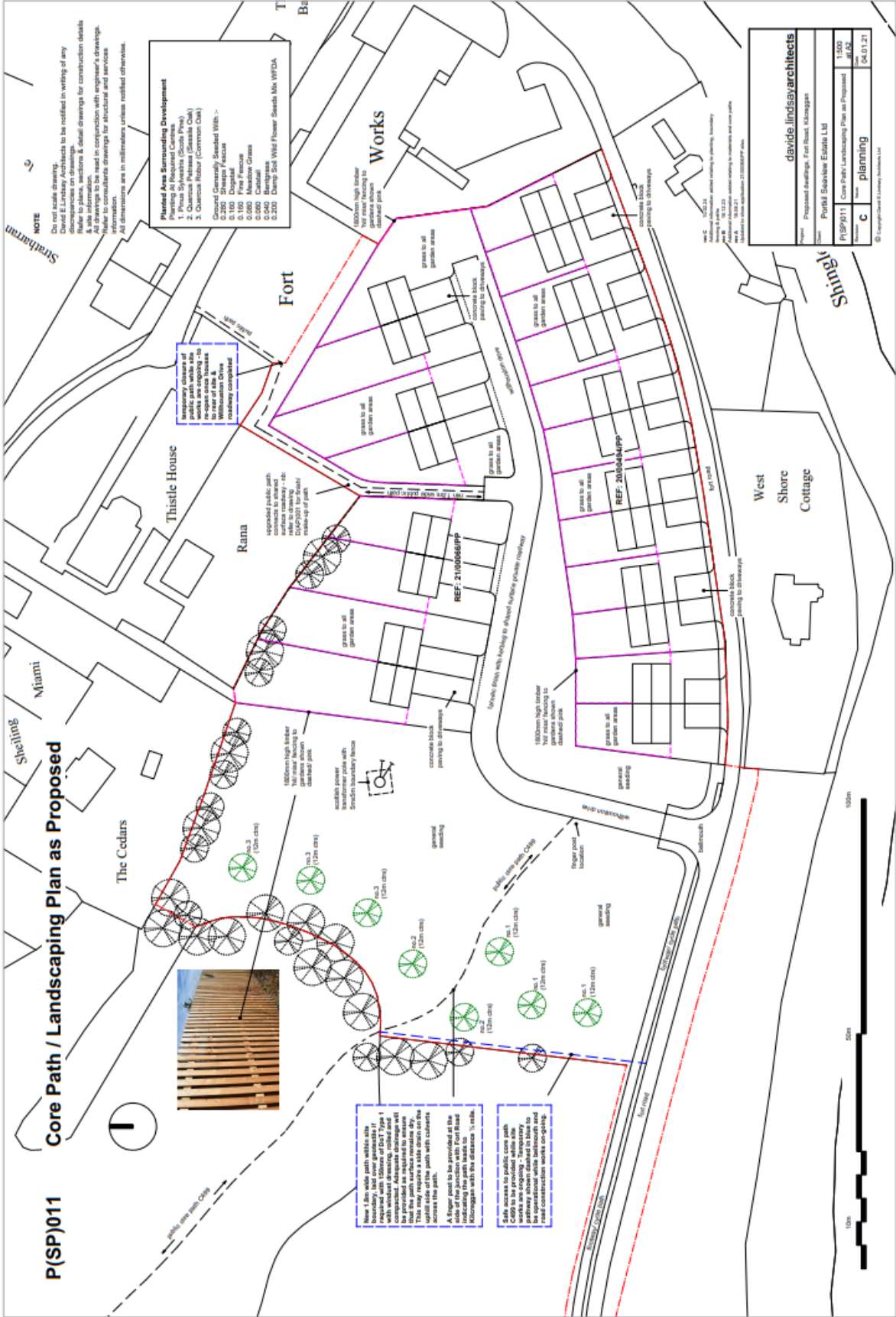
1:6,000

Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (C) Crown Copyright 2005  
 Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or Civil Proceedings.  
 OS License No. XYZ123ABC



# P(SP)011

## Core Path / Landscaping Plan as Proposed



**NOTE**  
Do not scale drawing.  
Annotations to be notified in writing of any  
discrepancies on drawings.  
Refer to plans, sections & detail drawings for construction details.  
All drawings to be used in conjunction with engineer's drawings.  
Refer to consultants drawings for structural and services information.  
All dimensions are in millimetres unless notified otherwise.

- Planted Area Surrounding Development**
1. Pinus Sylvatica (Scotch Pine)
  2. Quercus Petraea (Sessile Oak)
  3. Quercus Ilex (Common Oak)
- Ground Generally Suggested With ->**
- 0.100 Dresser Fescue
  - 0.150 Dresser Fescue
  - 0.160 Meadow Grass
  - 0.200 Meadow Grass
  - 0.200 Meadow Grass
  - 0.200 Dump Soil Wild Flower Seeds Mix WFDA



There is a red core path within the boundary, but cover protection is required with 1800mm of 12m Type 1 compacted aggregate drainage will be provided. This may require a side drain on the path. This requires a side drain on the path with culverts across the path.

A fence post to be provided at the side of the junction with Fort Road with 1800mm high timber garden screen with the distance 1/2 m.

Side access to public core path through the site. Temporary works are ongoing. Temporary pathway shown shall be used to road construction works on-going.

**davide.lindsayarchitects**  
Proposed drawings, Fort Road, Kilmeggin  
Project: P(SP)011 Core Path Landscaping Plan as Proposed  
Scale: 1:500  
Date: 08/12/21  
Author: C planning  
Date: 04/01/21  
© Copyright David Lindsay Architects Ltd