

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

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

LISTED BUILDING ENFORCEMENT NOTICE

REFERENCE NUMBER: 14/00246/ENFLB

To:

JAMES CALLAGHAN and ANGELA CALLAGHAN
Flat 3/1 Glenfaulds,
10 Mountstuart Road,
Rothesay,
Isle of Bute,
PA20 9DY

1. **THIS IS A FORMAL NOTICE** which is issued 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 appears to them that works have been executed to a listed building in its district and that the works are such as to involve a contravention of section 8(1) of the Act. Argyll and Bute Council consider that it is expedient to issue this Notice, having regard to the effect of the works on the character of the Listed Building, as hereinafter defined, as one of special architectural or historic interest.

2. **THE LISTED BUILDING AFFECTED**

Those subjects forming the west most house on the top floor or third floor above ground at 10 MOUNTSTUART ROAD, ROTHESAY, ISLE OF BUTE PA20 9DY of the Tenement Glenfaulds, MOUNTSTUART ROAD, within the land edged red on the plan attached to this notice registered in the Land Register of Scotland under Title Number BUT2208 (hereinafter referred to as 'the Listed Building') and as identified in the enclosed photographs.

3. **THE BREACH OF LISTED BUILDING CONTROL ALLEGED**

In terms of Section 6 and 8(1) of the Act:

Without listed building consent the execution of works for the alternation of the Listed Building in a manner which affects its character as a building of special architectural or historic interest in contravention of the requirement to obtain listed building consent, relative to;

The removal of nine traditional timber sash and case window frames and single glazing and replacement of the same with uPVC tilt and turn window frames and double glazing ('the Work').

4. REASONS FOR ISSUING THIS NOTICE

The Work is a noticeably discordant feature and affects the character of the Listed Building as a building of special architectural or historic interest and the wider character of the Category B listed tenement 9, 10 and 10a Mount Stuart Road, Glenfaulds of which the Listed Building forms part.

The uPVC windows have non-traditional frames, which by virtue of their inappropriate uPVC material and opening mechanism have an unacceptable impact upon the appearance and the architectural and historic interest of this Category B Listed Building. Notwithstanding the presence of other unauthorised uPVC framed replacement windows on the building, their retention would harm the building's special architectural and historic interest. The Development fails to preserve the character of the Listed Building and the architectural features it possesses contrary to the policy position expressed in Scottish Planning Policy and Scottish Historic Environment Policy.

The council's Technical Working Note: 'Rothesay Windows' specifically identifies the said tenement as a prime listed building having regard to its category B listed status and its prominence within the conservation area. The replacement of windows in such a building will only be acceptable if the replacement windows are a 'like for like' replacement of the original windows and/or timber framed windows with traditional sliding sash and case opening mechanism.

5. WHAT YOU ARE REQUIRED TO DO

You are required to:

Remove the unauthorised uPVC window frames and double glazing from the Listed Building and thereafter immediately replace the same with timber sash and case windows to an appearance faithful to the original timber sash and case windows of the Listed Building in accordance with the specification contained in Appendix A of this notice.

Submit details of the proposed windows replication inclusive of proposed finishes and drawings to Argyll and Bute Council for its approval prior to fabrication.

Time period for compliance: **6 months from the date this notice takes effect.**

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on: **24th February 2017** subject to Section 35 (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.

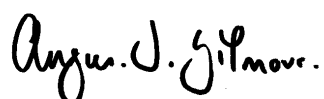
7. YOUR RIGHT OF APPEAL

You can appeal against this notice, but your appeal must be received or posted in time to be received by the Scottish Ministers before **24th February 2017**. 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 23 December 2016 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken with 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: 26th January 2017

A handwritten signature in black ink, reading "Angus J. Gilmore". The signature is written in a cursive style with a large initial 'A'.

Head of Planning and Regulatory Services
Kilmory
Lochgilphead

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

APPENDIX A TO ENFORCEMENT NOTICE 14/00246/ENFLB

Non-original windows to be removed and replaced with traditional timber sash and case windows, the component parts of which will be templated from existing timber framed windows elsewhere in Glenfaulds, in accordance with the following specifications;

1. Sash box – Frame depth, material thicknesses and profiles to be replicated. Inside and outside linings to be sized to provide an offset from the window into to match existing. Frame to have removable pocket piece for access to weights. Timber species to be preservative treated select grade.
2. Beads – Parting bead, inside bead and batten rods to be replicated to match the existing windows. Timber species of external beads to be preservative treated selected grade.
3. Window sill - Profile to be replicated to match existing. Timber to be hardwood suitable for external conditions.
4. Sashes –Top sash and bottom sash profiles to match existing, including meeting rails (plus any counter check), mouldings, moulded horns and drips.
5. Weights – Each sash to be weighted with new lead weights, individually sized to suit weight of sash after installation of glazing to ensure full operation. Ropes or chains to be used, depending on individual weight of sash.
6. Glazing – single or double clear float glass. Glazing to be restrained by pins and putty, not timber beading.
7. Ironmongery – Sash lifts, axle pulley, sash fasteners, sash hooks, batten screw fixings, batten rod hinges, sash hooks and simplex hinges. All to match existing.

New sash and case windows to be fabricated to ensure that they afford effective protection against wind and rain.

Fabrication to be carried out by operatives experienced in the replication and conservation of sash and case windows.

Existing pointing to be fully renewed in burnt sand and boiled linseed oil mastic. Mastic is to be mixed on site with a sand colour to closely match the existing original sandstone colour used elsewhere in Glenfaulds. Alternatively, use suppliers known to provide a colour matching service. New mastic pointing to be commenced after external paintwork is complete. Mastic is NOT to be painted as this accelerates the drying of the mastic and subsequent failure.

APPROVAL OF PROFILES AND FINISHES

Details of proposed windows replication inclusive of proposed finishes to be recorded and drawings submitted for verification by Argyll and Bute Council prior to fabrication.

LISTED BUILDING ENFORCEMENT NOTICE

SCHEDULE 1

EXPLANATORY NOTE FOR THOSE IN RECEIPT OF A LISTED BUILDING ENFORCEMENT NOTICE
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RELEVANT LEGISLATION

Copies of Sections 6 and 8 and 34 to 41 of the Planning (Listed Buildings & Conservation Areas) (Scotland) Act 1997 ('the Act') 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. The Scottish Government, 4 The Courtyard, Callander Business Park, Callendar Road, Falkirk, FK1 1XR. The appeal must be received, or posted in time to be received, before the date specified within the notice. 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 35 of the 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 the Scottish Government

If you lodge an appeal, the Listed Building Enforcement Notice is suspended and will not take effect unless the appeal is withdrawn or dismissed.

Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

6. - Restriction on works affecting listed buildings.

Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.

8.— Offences.

(1) If a person contravenes section 6 he shall be guilty of an offence.

(2) Without prejudice to subsection (1), if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent, he shall be guilty of an offence.

(3) In proceedings for an offence under this section it shall be a defence to prove the following matters—

(a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building.

(b) that 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,

(c) that the works carried out were limited to the minimum measures immediately necessary, and

(d) that notice in writing justifying in detail the carrying out of the works was given to the planning authority as soon as reasonably practicable.

(4) A person guilty of an offence under this section shall be liable—

(a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding £50,000

, or both, or

(b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine, or both.

(5) 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.

34.— Power to issue listed building enforcement notice.

(1) Where it appears to the planning authority—

(a) that any works have been, or are being, executed to a listed building in their district, and

(b) that the works are such as to involve a contravention of section 8(1) or (2),
they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, serve a notice under this section (in this Act referred to as a “listed building enforcement notice”).

(1A) A listed building enforcement notice shall specify the alleged contravention and shall (either or both)—

(a) specify any works falling within subsection (1) which the authority requires to cease,

(b) require steps falling within subsection (2) and specified in the notice to be taken.

(2) Those steps are

(a) for restoring the building to its former state,

(b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider are required to alleviate in a manner acceptable to them the effect of the works which were carried out without listed building consent, or

(c) for bringing the building to the state it would have been in if the terms and conditions of any listed building consent for the works had been complied with.

(3) In considering whether such restoration is undesirable under subsection (2)(b), the authority shall have regard to the desirability of preserving—

(a) the character of the building, or

(b) its features of architectural or historical interest.

(4) Where such further works as are mentioned in subsection (2)(b) have been carried out on a building, listed building consent shall be deemed to have been granted in respect of the works carried out on that building.

(5) A listed building enforcement notice—

(a) shall specify the date upon which it is to take effect and, subject to section 35(3), shall take effect on that date, and

(b) shall specify the period (the “period for compliance”) within which

(i) any works required to cease must cease,

(ii) any steps required to be taken must be taken,

and may specify different periods for different works or steps.

(5A) Where different periods apply to different works or steps, references in this Act to the period for compliance with a listed building enforcement notice, in relation to any works or step, are to the period within which the works are required to cease or the step is required to be taken.

(5B) The date specified in the notice under subsection (5)(a) must be at least 28 days after the date on which the notice is served.

(6) A copy of a listed building enforcement notice shall be served—

(a) on the owner, on the lessee and on the occupier of the building to which it relates, and

(b) on any other person having an interest in the building, being an interest which in the opinion of the authority is materially affected by the notice.

(7) The planning authority may—

(a) withdraw a listed building enforcement notice (without prejudice to their power to issue another), or

(b) waive or relax any requirement of such a notice and, in particular, extend the period specified in accordance with subsection (5),

and the powers conferred by this subsection may be exercised whether or not the notice has taken effect.

(8) The planning authority shall, immediately after exercising the powers conferred by subsection (7), give notice of the exercise to every person who has been served with a copy of the listed building enforcement notice or would, if the notice were reissued, be served with a copy of it.

(9) Every planning authority shall keep available for public inspection free of charge at reasonable hours and at a convenient place a list containing particulars of any building in their district in respect of which a listed building enforcement notice has been served.

35.— Appeal against listed building enforcement notice.

(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;

(ia) that the cessation of any works required by the notice exceeds what is necessary to remedy the contravention of section 8(1) or (2),

(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

(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 ;

(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; or

(c) by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them 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.

36.— Appeals: supplementary provisions.

(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.

37.— Determination of appeals under section 35.

(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) direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to that determination.

(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).

38.— Execution of works required by listed building enforcement notice.

(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.

39.— Offence where listed building enforcement notice not complied with.

(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 or any works required by the notice to cease have not ceased

, 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 that all works required by the notice to cease were ceased,

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.

39A Fixed penalty notice where listed building enforcement notice not complied with

(1) Where a planning authority have reason to believe that, by virtue of subsection (1) of section 39, a person is in breach of a listed building enforcement notice they may, if the conditions in subsection (9) are satisfied, serve on the person a fixed penalty notice as respects that breach.

(2) The fixed penalty notice is to specify (either or both)—

(a) the works specified, under subsection (1A) of section 34, in the listed building enforcement notice which have not ceased,

(b) the step specified, under that subsection, in the listed building enforcement notice which has not been taken.

(3) No more than one fixed penalty notice may be served on a person as respects a breach by the person of a listed building enforcement notice.

(4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging any liability to conviction for an offence under section 39 as respects the breach of the listed building enforcement notice.

(5) The person discharges any such liability by paying to the planning authority, within the relevant period, a penalty of a prescribed amount specified in the fixed penalty notice.

(6) The relevant period mentioned in subsection (5) is the period of 30 days

immediately following the day on which the fixed penalty notice is served.

(7) But if payment is made within the first 15 days of the period mentioned in subsection (6) the amount payable is reduced by 25%.

(8) The fixed penalty notice is to identify the period mentioned in subsection (6) 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%.

(9) The conditions are that the fixed penalty notice—

(a) is served within the period of 6 months which immediately follows the period for compliance with the listed building enforcement notice,

(b) is not served after the person has been charged with an offence under section 39 as respects the breach of the listed building enforcement notice.

(10) During the period mentioned in subsection (6) it is not competent to commence proceedings against the person for an offence under section 39 as respects that breach.

(11) 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 39 as respects that breach.

(12) A penalty received by a planning authority by virtue of subsection (5) is to accrue to that authority.

(13) In prescribing an amount for the purposes of subsection (5), the Scottish Ministers may make different provision for different cases or different classes of case, including provision for different amounts by reference to previous breaches of listed building enforcement notices relating to the same steps or works.

40.— Effect of listed building consent on listed building enforcement notice.

(1) If, after the issue of a listed building enforcement notice, consent is granted under section 7(3)—

(a) for the retention of any work to which the listed building enforcement notice relates, or

(b) permitting the retention of works without complying with some condition subject to which a previous listed building consent was granted,

the listed building enforcement notice shall cease to have effect in so far as such work is or such works are required by the notice to cease, or in so far as

it requires steps to be taken involving the works not being retained or, as the case may be, for complying with that condition.

(2) The fact that such a notice has wholly or partly ceased to have effect under subsection (1) shall not affect the liability of any person for an offence in respect of a previous failure to comply with that notice.



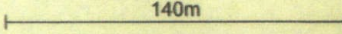
41.— Enforcement by Secretary of State.

(1) If it appears to the Secretary of State that it is expedient that a listed building enforcement notice should be served in respect of any land, he may himself serve such a notice under section 34.

(2) A listed building enforcement notice served by the Secretary of State shall have the same effect as a notice served by the planning authority.

(3) The Secretary of State shall not serve such a notice without consulting the planning authority.

(4) The provisions of this Act relating to listed building enforcement notices apply, so far as relevant, to a listed building enforcement notice served by the Secretary of State as they apply to a listed building enforcement notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Secretary of State, and any other necessary modifications.

 LAND REGISTER OF SCOTLAND	Officer's ID / Date	TITLE NUMBER
	9995 8/7/2010	BUT2434
 ORDNANCE SURVEY NATIONAL GRID REFERENCE	 140m	
	Survey Scale 1/2500	
NS0964 NS0965 NS06SE NS06NE		

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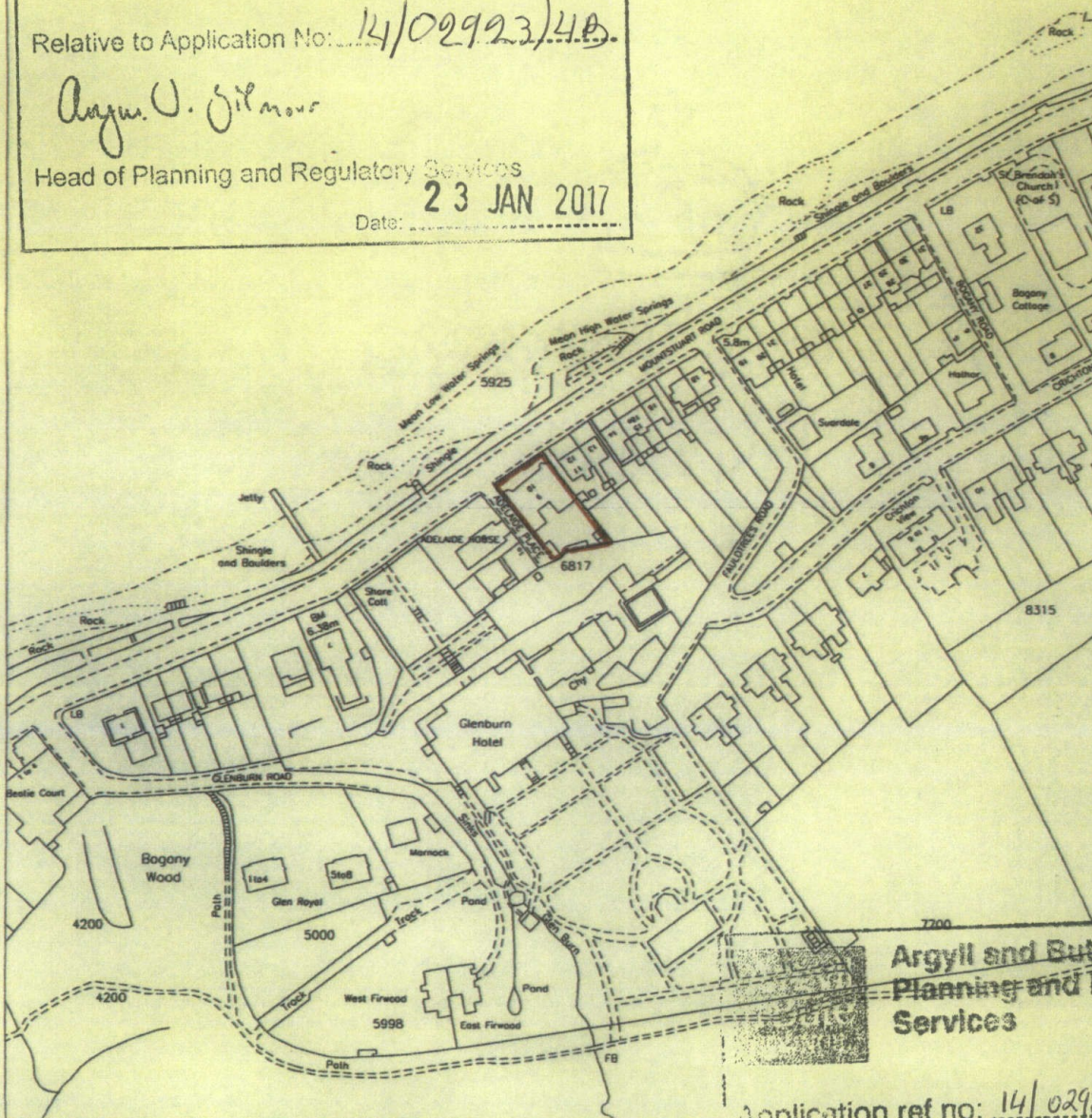
ARGYLL AND BUTE COUNCIL
Refused by PLANNING AUTHORITY

Relative to Application No: 14/02923/4B

Angus V. Gilmore

Head of Planning and Regulatory Services

Date: **23 JAN 2017**



**Argyll and Bute Council
Planning and Regulatory
Services**

Application ref no: 14/02923/L1B

Date received: 29/1/15

Plan no: 1/4

P.O. Initials DL