

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 7 MARCH 2017

ENFORCEMENT ACTION – SITE DUE EAST OF THE KNOWE, KINNABER ROAD, HILLSIDE

REPORT BY HEAD OF PLANNING AND PLACE

Abstract:

This report updates Committee on the circumstances relative to the enforcement action in respect of the unauthorised use of land for the siting of caravans on land due east of The Knowe, Kinnaber Road, Hillside.

1. RECOMMENDATION

It is recommended that Committee: -

- (i) consider material changes that have occurred in the period since the matter was last before Committee;
- (ii) consider available enforcement options;
- (iii) confirm that direct action should be instigated to secure removal of the caravans that are located on-site in breach of the terms of the extant Enforcement Notice.

2. ALIGNMENT TO THE ANGUS COMMUNITY PLAN/SINGLE OUTCOME AGREEMENT/COPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Community Plan and Single Outcome Agreement 2013-2016:

- Angus is a good place to live in, work in and visit
- Our natural and built environment is protected and enjoyed

3 BACKGROUND

- 3.1 In July 2004 complaint was received that land to the east of The Knowe was being used for the siting of caravans. The matter was investigated and the caravans were removed.
- 3.2 Similar complaints were received in April 2006, May 2010 and April 2012. On each occasion the matter was investigated and the caravans subsequently removed after a period of some weeks.
- 3.3 In September 2012 a further complaint was received indicating that caravans had been returned to the site. At that time it was also identified that a septic tank had been installed. Whilst a planning application was submitted to allow the siting of a residential caravan on the land, it was withdrawn prior to determination on 17 January 2013.
- 3.4 In February 2013 the matter was reported to Committee (Report 130/13 refers). Committee authorised officers to instigate appropriate enforcement action to secure the cessation of use of the land for the siting of a residential caravan and other structures and the removal of a septic tank.
- 3.5 A planning application for the change of use of land to form a static holiday caravan site (2 single unit caravans) was submitted in March 2013. That application was determined on 21 May 2013 and planning permission was refused.
- 3.6 A planning Enforcement Notice was served in April 2013 requiring the cessation of the use and the removal of the septic tank. That Notice was subject of appeal to the Directorate for Planning and Environmental Appeals but that appeal was dismissed and the Enforcement

Notice upheld (Report 493/13 refers). The Notice required the cessation of the unauthorised use of the land and the removal of the septic tank by 1 November 2013.

- 3.7 The caravans and septic tank were subsequently removed from the site.
- 3.8 However, during subsequent routine monitoring it was identified that caravans had been returned to the site and Committee was advised accordingly at its meeting on 26 November 2013 (Report 648/13 refers). At that time Committee authorised the Planning Service, in conjunction with Legal and Democratic Services, to instigate further enforcement action (which might include but not be limited to direct action, service of a Fixed Penalty Notice or prosecution) to secure the cessation of the use of the land for the siting of caravans.
- 3.9 Following further dialogue and correspondence with the site owners agent, the caravans were again removed from the site on or around 12 January 2014.
- 3.10 A planning application for use of the land as a permanent pitch for two caravans (one family) and associated services was submitted on 16 January 2014. That application was determined on 10 April 2014 and planning permission was refused. The decision to refuse planning permission was upheld by the Council's Development Management Review Committee on 29 August 2014.
- 3.11 Caravans were returned to the site sometime between 3 and 10 April 2014.
- 3.12 The site owner was advised on 10 April 2014 that further action would be taken if the caravans were not removed within 7 days. The caravans were not removed and a Fixed Penalty Notice was prepared by officers and served by Sheriff Officers on 24 April 2014. That Notice allowed a period of 30 days for payment. No payment was received.
- 3.13 As no payment in respect of the Fixed Penalty Notice was made a report on the breach of the Enforcement Notice was prepared in conjunction with officers from Legal & Democratic Services and this was submitted to the Procurator Fiscal on 31 July 2014.
- 3.14 In November 2014 the Procurator Fiscal's Office confirmed that it was in a position to commence proceedings against the site owner. Statements were subsequently requested and from and provided by a number of Council officers. Those officers were duly advised that the case would be called on 8 June 2015.
- 3.15 In August 2015 the Council was advised that the Procurator Fiscal was not pursuing the case.
- 3.16 Subsequently Committee authorised officers to pursue direct action to secure removal of the caravans from the site (Report No 330/15).
- 3.17 Officers undertook a procurement exercise over subsequent months to secure operatives to remove the caravans from the site and to store them for the requisite period thereafter. That exercise proved unsuccessful.
- 3.18 Sherriff Officers have now been identified to undertake the removal of the caravans and a location for storage of the caravans has been secured.

4. DISCUSSION

- 4.1 Committee has previously authorised enforcement action to secure cessation of use of the land for the siting of caravans. In that respect the matter was reported to the Procurator Fiscal and it appeared that the matter would be progressed through the Courts with the party responsible for the breach of the Enforcement Notice prosecuted. However, the Procurator Fiscal advised that the case would not be pursued.
- 4.2 The implementation of the subsequent decision to pursue direct action has been delayed due to difficulties in securing operatives to remove the caravans and facilities for their storage. However, after some effort, Sherriff Officers who are willing to execute the direct action have been identified and a secure location for the storage of the caravans following their removal has also been identified.
- 4.3 In the period since the matter was last considered by Committee a number of material factors have changed. These include the adoption of the Angus Local Development Plan, the

publication of a TAYplan Partners report on the Accommodation Needs of Gypsy/Travellers and Travelling Showpeople in the Tayplan area, and the publication of a Consultative Draft Local Housing Strategy. It is appropriate for Committee to consider those matters and to reconsider the enforcement options that are available in respect of the breach of planning control.

- 4.4 The Angus Local Development Plan (ALDP) was adopted by Council on 23 September 2016. That plan now forms part of the statutory development plan. It replaces the previous Angus Local Plan Review which provided the main policy basis for determination of the recent applications that sought permission to site caravans on the land.
- 4.5 The ALDP provides a policy that deals specifically with proposals for new sites for Gypsies and Travellers and Travelling Show People. It also contains a policy that deals with proposals for residential caravans and mobile homes. Those policies state: -

Policy TC6 Gypsies and Travellers and Travelling Showpeople

Gypsies and Travellers and Travelling Showpeople will be encouraged to stay at authorised sites (publicly or privately owned and managed). Existing authorised Gypsies and Travellers and Travelling Showpeople sites will be protected and there will be a presumption against their redevelopment or conversion to other uses unless it can be demonstrated to the satisfaction of Angus Council that there is a surplus of accommodation to meet identified needs.

Proposals for new or extended permanent sites and temporary “short stay” sites for Gypsies and Travellers will only be supported where:

- *the site will contribute to satisfying a local need identified in the Local Housing Strategy and is consistent with Angus Council’s strategy for meeting the accommodation needs of these client groups;*
- *the development is designed and located to minimise adverse effects on the landscape, established amenity, character and built or natural heritage interests of the surrounding area;*
- *the proposed site will provide a good residential amenity for residents and has adequate access to community, education and health services and facilities; and*
- *the proposed development would not set a precedent or open up other areas for similar development.*

Policy TC7 Residential Caravans and Mobile Homes

Proposals to site a residential caravan or mobile home will only be acceptable where it is required to provide temporary accommodation to allow a permanent dwelling to be renovated or built in accordance with the housing policies of the Angus Local Development Plan. Planning permission will be granted for a maximum of 2 years. Residential caravans or mobile homes must be removed when the need for them ceases or the planning permission expires, whichever is sooner.

Proposals for the development of sites for individual, or groups of residential caravans and/or mobile homes for permanent occupation will not be supported.

- 4.6 It is necessary for Committee to have regard to the terms of the ALDP in considering the expediency of pursuing enforcement action. In particular it is necessary for Committee to consider whether planning permission would now be granted for the use of the land as a Gypsy or Traveller site or as an acceptable site for residential caravans and/or mobile homes.
- 4.7 Policy TC6 clearly indicates that Gypsies and Travellers will be encouraged to stay at authorised sites (publicly or privately owned and managed). In Angus there are existing sites at St Christopher’s, Montrose (18 pitches) and Balmuirwood by Tealing (19 pitches). At this point in time it is understood that the Montrose site is fully occupied but there are pitches available at the Tealing site.
- 4.8 Angus Council is entitled to nominate travelling people and their families for allocation of pitches at the Tealing site, provided vacant pitches are available. There are vacant pitches available at the Tealing site and on this basis and in accordance with the above policy, the applicant would be directed to this existing site.

- 4.9 The policy goes on to indicate that Proposals for new or extended permanent sites and temporary “short stay” sites for Gypsies and Travellers will only be supported where amongst other things, the site will contribute to satisfying a local need identified in the Local Housing Strategy and is consistent with Angus Council’s strategy for meeting the accommodation needs of these client groups.
- 4.9 Angus Council’s current Local Housing Strategy (2012 – 2017) indicates amongst other things that additional research is required in the mid to long term to identify housing need of a range of minority groups including Gypsies and Travellers. The Local Housing Strategy does not identify a local need for additional Gypsy and Traveller accommodation in or around the Montrose area and it does not advocate the formation of small sites for private use of individual families.
- 4.10 As indicated above the Council’s policy seek to direct Gypsies and Travellers to existing sites. In this case there is currently capacity at the Tealing site. The current Local Housing Strategy does not identify a local need for small private sites in the Montrose area and does not promote the formation of small sites for private use. The use of land at the site as a residential caravan site does not attract any support from Policy TC7. Accordingly, the site at The Knowe is contrary to Policies TC6 and TC7. However, it is relevant to have regard to other material considerations.
- 4.11 Previous proposals for development on this site, including proposals for use as a caravan site have been refused planning permission. On each occasion it has been identified that the visibility sightlines required by Roads Standards cannot be provided on land within the control of the occupants of the site. As recently as August 2014 the Development Management Review Committee confirmed that it found the access arrangements to the site unacceptable as they would be detrimental to road traffic and pedestrian safety. Those access arrangements have not changed. The Development Management Review Committee also identified that the proposal would extend ribbon development and found this pattern of development undesirable and unacceptable. The physical characteristics of the site have not changed materially since that date and the site continues to extend ribbon development.
- 4.12 In December 2016 TAYplan Partners (including Angus Council) published a report on the ‘Accommodation Needs of Gypsy/Travellers and Travelling Showpeople in the Tayplan area’. That report indicates that across the TAYplan area there is a projected surplus of Gypsy and Traveller accommodation over the next five years. The report identifies that there is projected to be a small shortfall in Angus, particularly attributed to demand in the North area and to a smaller extent the West but this does not take account of capacity at the Tealing site (as it is operated by Dundee City Council). The findings do not indicate a significant requirement for additional provision in Angus.
- 4.13 In January 2017 Angus Council approved a Consultative Draft Local Housing Strategy (2017 – 2022). That document reports the draft findings of the Gypsy Traveller and Travelling Showpeople Needs Assessment. It indicates that there is not a significant requirement for additional provision in Angus. It suggests that private sites may enable some households to meet their individual needs as and when it arises and indicates that proposals for private sites will be considered in the context of planning policy. It indicates that the section that deals with Gypsy and Traveller accommodation will be updated in the context of the finalised TAYplan Needs Assessment. However, in recognition of the projected surplus in provision over the TAYplan area the document indicates that the Council will work with neighbouring authorities to ensure the availability of appropriate sites and improve existing provision.
- 4.14 The personal circumstances of an applicant are not normally a planning consideration. However, personal circumstances may be taken into account in exceptional circumstances where refusal of planning permission would cause an applicant great hardship. The Council also must comply with its human rights and equality duties. In this case the caravans are occupied by a family, including two young children, that belong to a recognised ethnic minority group. Any decision to refuse planning permission for the use of land for the siting of caravans, and any subsequent decision to pursue enforcement action, particularly direct action, would render that family homeless. Officers have met with the family and discussed the implications of enforcement action. The family has indicated a desire to stay at the site with the children associated with the local school. The family has suggested that a temporary planning permission could be considered.

- 4.15 There can be no doubt that any decision not to grant planning permission for the continued use of the land as a caravan site (and to pursue enforcement action) would have potentially significant impacts for the family, not least through the loss of their accommodation and disruption to the children. However, the occupants of the site have had a considerable period of time to make alternative arrangements in the knowledge that the Council has previously determined to pursue enforcement action. An appeal in relation to the Enforcement Notice served by the Council was considered by a Reporter appointed by Scottish Ministers and the terms of that Notice, which required cessation of use of the land as a caravan site were upheld. There is alternative accommodation available in the wider area as there are pitches available at the authorised Tealing site. Officers from the Planning Service have met with colleagues from the Education and Housing Services and have discussed possible means of minimising impact on the family.
- 4.16 As noted above the use of the land as a caravan site is contrary to policies of the Angus Local Development Plan. The access arrangements to the site and the resultant form of development have been found to be unacceptable by officers and by the Council's Development Management Review Committee. In these circumstances and where there is existing capacity available at an established, authorised site in Angus an application for the continued use of the site would not be supported by officers. It is anticipated that an application would not be supported by the Development Management Review Committee. However, if Committee considers that there is some potential for an application to be supported by the Development Management Review Committee it would be appropriate to delay further enforcement action and invite a further planning application.
- 4.17 It remains the case that an Enforcement Notice has been served that requires the cessation of the use of the land for the siting of caravans. The occupants of the site are in breach of the terms of that Notice and it is appropriate to consider the options available to the Council.
- 4.18 Planning enforcement action is discretionary and any action taken should always be commensurate with the breach of planning control to which it relates. It is open to a planning authority to tolerate a breach and take no further action. However, previous legal decisions have recognised that there is a clear public interest in the need to maintain public respect or confidence in the planning system (and the proper enforcement of the criminal law) to avoid it being brought into disrepute, effectively suspended or dispensed with in favour of particular persons or groups. Scottish Government Circular 10/2009 states that the integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action when necessary.
- 4.19 The continued use of the land adjacent to The Knowe for the siting of caravans is in clear breach of the terms of the Enforcement Notice, the terms of which have been upheld on appeal to Scottish Ministers. The occupants of the site are aware of the requirements of the Enforcement Notice and the continued use of the land for the siting of caravans is a wilful and deliberate breach of the Notice. The continued siting of caravans on the site is a matter of concern for the local community.
- 4.20 Section 136 of the Town and Country Planning (Scotland) Act 1997 makes it an offence for owners of land to be in breach of an enforcement notice.
- 4.21 In this respect the matter was reported to the Procurator Fiscal in 2014. Whilst the case was initially taken up by the Fiscal it was subsequently dropped due to issues regarding the availability of witnesses. In any case, any criminal proceedings would not necessarily result in compliance with the enforcement notice.
- 4.22 Where a person does not fully comply with an enforcement notice, planning authorities have powers under Section 135 of the Act to enter the land and carry out any unfulfilled requirements of the notice themselves. The Act also makes provision for the authority to recover from the person who is then the owner or lessee of the land any expenses reasonably incurred in undertaking the works necessary to secure compliance with the notice.
- 4.23 In this case direct action would involve removing the caravans from the site. The caravans would thereafter be placed in storage for the requisite period of time and thereafter sold as appropriate to recover the Council's expenses. Members should be aware that the caravans are occupied and therefore, as discussed above, this action would render the occupants, including their children homeless. If direct action is confirmed, officers from the Housing Service will make contact with the occupants in order to arrange a housing options appraisal.

As indicated elsewhere in this report there are pitches available on the site at Tealing and the occupants would be afforded opportunity to voluntarily vacate the land before any direct action was instigated. This would give them the opportunity to relocate the caravans to an authorised site.

- 4.24 There are other options available to the Committee in respect of breach of planning control to which the enforcement notice relates. Criminal proceedings have been considered above. The Committee could determine to tolerate the breach of planning control. Committee could also determine to interdict the occupants from failing to comply with the terms of the enforcement notice. Even if an interdict is sought and obtained, it will not necessarily secure compliance with the enforcement notice. Failure to comply with an interdict can be a contempt of court punishable by a fine or imprisonment which may only result in adult occupiers being separated from their families. Lastly, the Committee could determine to make a compulsory purchase order to acquire the land for a planning purpose. If a compulsory purchase order is made and confirmed it would be open to the occupiers to refuse to leave the land requiring them to be removed against their will.
- 4.25 The Committee is also legally required to treat the best interests of any children affected by a decision as a “primary consideration” having regard to the UN Convention on the Rights of the Child. Case law advises that identifying best interests does not inexorably lead to a decision in conformity with those interests. Provided the Committee does not treat any other consideration as inherently more significant than the best interests of children affected, it can conclude that the strength of other considerations outweigh them. In addition, where the best interests of a child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them.
- 4.26 If Committee is minded to pursue direct action, such action will be coordinated with colleagues in Housing, Education, and Children’s Services so as to minimise, so far as possible, the impact of the action on the occupants.

5. CONSULTATION

The Chief Executive, Head of Legal & Democratic Services, and Head of Corporate Improvement & Finance have been consulted in the preparation of this report.

6. FINANCIAL IMPLICATIONS

The normal costs associated with investigating and pursuing enforcement action will be met from the Planning Service budget. In the event that direct action is pursued the costs are unlikely to be significant given the nature of the works required and this would be progressed in accordance with Financial Regulations.

7. OTHER IMPLICATIONS

HUMAN RIGHTS IMPLICATIONS

The recommendation to take enforcement action in relation to a breach of planning control has potential implications for the subject of the enforcement action in terms of the proprietors entitlement to free enjoyment of their possessions (First Protocol, Article 1) and/or in terms of alleged interference with home or family life (Article 8). It is considered that any such actual or potential infringement of such Convention rights is justified. Any actual or alleged infringement is in accordance with the Council’s legal powers under the Planning Acts and is necessary in the general interest for the proper control of land use and development in Angus. It is also necessary for the protection of the right and freedom of others to freely enjoy their property without the restriction of their enjoyment and detriment of their amenity caused by the present breach of planning control. The interference is also proportionate given that the breach of planning control is, on the information available, not considered to be one which would attract the granting of planning permission. Further, the interference will be the minimum required to achieve the objective of remedying the breach of planning control in question.

RISKS

There is a risk that if the Council takes direct action it may not be able to recover the costs associated with that action. The costs associated with the removal of caravans from the site is unlikely to be significant but the Town and Country Planning (Scotland) Act 1997 makes

provision for the planning authority, in certain circumstances, to sell any materials removed from the land and pay the proceeds to the owner less any expense recoverable by it from him.

EQUALITIES IMPLICATIONS

The issues dealt with in this Report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment has been completed.

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NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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DATE: 28 FEBRUARY 2017