

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 2 JUNE 2015

**ENFORCEMENT NOTICE APPEAL DECISION
SPRINGFIELD HOUSE, COOKSTON ROAD, BRECHIN, DD0 6BU**

REPORT BY HEAD OF PLANNING AND PLACE

Abstract:

This report presents the findings of the Reporter appointed by the Scottish Ministers to determine the appeal against the enforcement notice served by Angus Council on the breach of planning control at Springfield House, Cookston Road, Brechin, DD9 6BU. The appeal was dismissed and the Enforcement Notice confirmed.

1. RECOMMENDATION

It is recommended that the Committee notes the outcome of the above appeal.

2. INTRODUCTION

2.1 The Council received a number of representations expressing concern that fencing had been erected within the curtilage of Springfield House, Cookston Road, Brechin. The matter was investigated and it was identified that the fencing had been erected without the benefit of the necessary permissions. The owner subsequently applied for and was granted permission for the fences subject to amendment to their heights and positions. A period of time was allowed for the fences to be altered in accordance with those permissions. Unfortunately the necessary amendments were not undertaken within requisite timescales and an Enforcement Notice requiring those works was served on 22 January 2015.

2.2 The owner appealed against the terms of the Notice and the Reporter's conclusions and decision are presented below.

2.3 The owner has been advised of the requirement to comply with the terms of the Notice and the situation will be monitored.

3. REPORTER'S DECISION

Reasoning

3.1 The appeal against the enforcement notice was made on the following grounds as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997: That the matters stated in the notice do not constitute a breach of planning control.

3.2 Fencing has been erected on top of the stone wall surrounding the north side of the property, Springfield House, a listed building. Fencing has also been erected along the east garden boundary onto Cookston Road. These two sections of fence are the subject of the two separate requirements of the Notice respectively. Both fences are made from overlapping vertical close boarded wood stained in green. The fences had been placed around the property to improve security on the advice of the local police after a number of incidents involving undesirable incursions into the private garden of the appellant.

3.3 Springfield House is a listed building. Whilst I note that its categorisation has recently been downgraded by Historic Scotland from category 'B' to category 'C', as a listed building it is still subject to provisions of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 wherein the rights of permitted development usually pertaining to garden fences are removed to enable preservation of the important aspects of the historic or architectural significance of the listed building. This includes consideration of the setting of the building and views both of it and from it to the surrounding landscape, in this case nearby housing

developments. In that context neither the fence on top of the wall, nor that fronting onto Cookston Road can be regarded as permitted development under the terms of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

- 3.4 In addition the fence constructed on top of the northern boundary wall is often above 2 metres in height and that fronting Cookston Road is in excess of 1 metre in height directly onto the road frontage. In these circumstances both of these fences constitute development outwith that permitted under the provisions of the above mentioned statutory instrument. The fences as constructed required planning permission and do not have it. They are therefore unauthorised development.
- 3.5 The appellant was made aware of this situation and subsequently applied for permission and listed building consent for the two stretches of fence. Permission was granted subject to certain conditions. The presence of a wooden fence on top of the northern boundary wall was accepted in principle by the council as appropriate for the setting of the listed building. In the case of the northern boundary wall the permission stipulated that the height should be reduced along the whole length of the wall to maintain a consistent height of 1.9 metres. It is the council's contention that this condition was necessary to ensure that the development would not harm the setting of the listed building nor introduce an incongruous element into the street scene contrary to policies S3, S6 and ER15-16 of the Angus Local Plan Review 2009 and the Angus Council Advice Note 24 'Residential Boundary Treatments'.
- 3.6 The council agree that in part this alteration to the northern boundary fence has been complied with. However, due to the increasing height of the stone wall as it nears Cookston Road along the boundary with the footpath from Mountskip Road to Cookston Road the wooden part of the fence would have to be progressively reduced in height making it look distinctly uneven when viewed from the Springfield House side of the fence. The appellant consequently did not reduce the height of this part of the fence but rather engaged in discussions with the council's enforcement officer achieving what he believed to be an amicable settlement of the matter. The appellant's perceived conclusions of this meeting were never confirmed in writing by the council. Therefore as the situation stands the development remains partly unauthorised and legitimately subject to enforcement action. The appellant appealed only on ground (c) 'that the breach of planning control did not take place', not ground (f) 'that the steps necessary to remedy the breach were excessive'. In that context I can only conclude that a breach of planning control has occurred and I have no alternative other than to confirm part (1) of the enforcement order requirements.
- 3.7 The close boarded boundary fence along the eastern, Cookston Road frontage, the subject of the second requirement of the notice, is also unauthorised development. It alters significantly the appearance of the street scene and the aspect of the listed building. I appreciate that permission has been granted for a parade of shops on that frontage which would effectively block the aspect of the listed building from Cookston Road at some point in the future were it to be implemented. That however is speculative and whatever boundary treatment may accompany such a development would have to be the subject of further planning approvals. To remedy the breach of planning control the appellant applied for permission for this northern boundary fence. Permission was given for the planting of a beech hedge to provide for a soft frontage, more appropriate to the street scene, and the temporary (5 years) erection of a close boarded fence further back to maintain security during the period needed for the hedge to become consolidated. The appellant did not appeal against the conditions of this permission.
- 3.8 That permission for the eastern part of the boundary wall has not been implemented. I consider that the existing fence is an incongruous element in the street scene contrary to the policies of the council noted above. I note the appellant's references to other fences in the neighbourhood but I do not consider that these are comparable to the situation at the appeal property. The conditions of the planning permission and the erection of the permitted temporary fencing would achieve both the preservation of the key elements of the street scene and maintain security from incursion into the garden of Springfield House. In that context I consider that the unauthorised fence on the Cookston Road frontage should be removed as specified in part (2) of the requirements section of the Enforcement Notice.
- 3.9 For the reasons given above and having regard to all other matters raised I confirm the enforcement notice to take effect from the date of this decision.

4. FINANCIAL IMPLICATIONS

There are no financial implications.

5. OTHER IMPLICATIONS

Risk

There are no risks associated with the recommendations contained in this report.

Human Rights Implications

There are no Human Rights implications.

Equalities Implications

The issues contained in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

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 a material extent in preparing the above report.

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