

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 25 AUGUST 2015

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 authorise the Planning Service to: -

- (i) instigate direct action to secure removal of the caravans that are located on-site in breach of the terms of the extant Enforcement Notice;
- (ii) recover costs associated with the direct action authorised above from the owner or lessee of the land.

2. ALIGNMENT TO THE ANGUS COMMUNITY PLAN/SINGLE OUTCOME AGREEMENT/ CORPORATE 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 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 Whilst a planning application was submitted to allow the siting of a residential caravan on the land, it was withdrawn prior to determination on 17 January 2013.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 Enforcement Notice was duly 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.
- 3.6 The caravans and septic tank were subsequently removed from the site.

- 3.7 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.
- 3.8 Following further dialogue and correspondence with the site owners agent, the caravans were again removed from the site on or around 12 January 2014.
- 3.9 However, caravans were returned to the site sometime 3 and 10 April 2014.
- 3.10 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.
- 3.11 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.
- 3.12 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.
- 3.13 The Council was recently been advised that the Procurator Fiscal is now not pursuing the case.

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 has advised that the case is not to be pursued.
- 4.2 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. 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. That Enforcement Notice has been upheld on appeal. The land owner is 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.
- 4.3 Accordingly, the remaining enforcement option available to the Council is to take direct action. This would involve removing the caravans from the site. It is understood that the caravans are occupied and therefore this action may render the occupants homeless.

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

**VIVIEN SMITH
HEAD OF PLANNING AND PLACE**

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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