

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 13 SEPTEMBER 2016

ENFORCEMENT ACTION – 1 BROOMWELL GARDENS MONIKIE

REPORT BY HEAD OF PLANNING AND PLACE

Abstract:

This report updates Committee on condition of the site and the potential non-compliance with the Amenity Notice previously served under Section 179 of the Town and Country Planning (Scotland) Act on the property at 1 Broomwell Gardens, Monikie.

1. RECOMMENDATION

It is requested that the Committee give consideration to the content of the report and determine a course of action from the options available:-

- (i) take no further action and withdraw the Amenity Notice (where the terms of the Notice have been met or where it is not considered in the public interest to pursue further action).
- (ii) allow a further period of time to achieve compliance with the Amenity Notice.
- (iii) instigate direct action to secure the removal of the material and ensure compliance with the terms of the Amenity Notice.

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 2002 an observation was received that the amenity of the neighbourhood was being badly affected by the volume of material being stored on the land and within the garden surrounding the property.

3.2 On 19 May 2006, as a consequence of the owners refusal to comply with the request from the Council to tidy up the property at 1 Broomfield Gardens, an 'Amenity Notice' was served on the owners/occupiers of the property. This is a Notice served under Section 179 of the Town and Country Planning (Scotland) Act, which a Planning Authority can serve such on the owner, lessee or occupier of land which is adversely affecting the amenity of an area. The Notice sets out the action that is required to be taken to resolve the problem within a specified time. There is a right of appeal against an Amenity Notice. Such a Notice will normally only be used where amenity of the wider area is seriously impacted upon, not for relatively minor instances of untidiness i.e. the condition of the garden of a residential dwellinghouse.

- 3.3 The Notice served on the owners/occupiers of the property required the following steps to be undertaken:-
1. Remove from the land all boats, vehicle parts, tyres, timber, metal, bikes, machinery and other items of scrap or waste material; and
 2. Restore the land to and thereafter maintain the land in a reasonably neat and tidy condition such that it does not adversely affect the amenity of any adjacent residential properties or public areas.
- 3.4 Two phases of direct action were undertaken by the Council in April-May 2007 and August 2008. Committee has previously authorised direct enforcement action to secure the removal of materials from the site and the restoration of the grounds to a neat and tidy condition (Report 601/05 refers). The latter action secured a reasonable neat and tidy condition of the property; however, further periodic deterioration of the condition of the site occurred until 2014. In total to date the combined cost of direct action over the two phases has been slightly in excess of £32,000.
- 3.5 Following sequestration proceedings, ownership of the property transferred to the mortgage holding creditor. The property was advertised for sale in August 2014 and was subsequently acquired by the current owners.
- 3.6 In October 2014 initial contact was made with the new owners seeking to establish the scope of works proposed and timescales, whilst also reminding them of the obligations under the Amenity Notice. Periodic visits of the site and dialogue with the owners continued through to November 2015. The owners at this time agreed to have the garden area to the front of the dwelling at the Broomwell Road side to be cleared by the end of November 2015 and to clear the remainder of the garden by January 2016.
- 3.7 On 16 February 2016 Report 68/16 was presented to Committee advising that the condition of the site had notably improved under the current owners' tenure. However, the owner had not completed work as agreed by the end of January 2016 and it was considered that the site remained in an untidy condition that continued to have an adverse impact on the amenity of the area. The report recommended instigating direct action to remove materials in order to achieve compliance with the terms of the Amenity Notice. Having given consideration to the matter the Committee granted the owners a further period of 6 months to undertake further works to achieve compliance with the Amenity Notice. The revised date for compliance was set as 16 August 2016.

4. DISCUSSION

- 4.1 The site was last visited by an officer on 31 August 2016. As matters stand, the owner has removed a further quantity of materials from the site and carried out further works to tidy the site. Various materials, including slates and stone, have been retained and are stored within the site which the owner has indicated are required for proposed works to the property. Any surplus materials will be removed on completion of the works. The works to date represent progress from the observations prior to Report 68/16 being prepared.
- 4.2 The owner has recently had works undertaken to repair the fabric of the building, including reslating sections of the roof and repairs to the window openings and pointing. The owner has indicated works are to continue on the renovation of the building and anticipates significant progress will be made by the end of 2016.
- 4.3 The options set out in Section 1 above can be determined for the respective reasons:-
- The decision to take no further action and withdraw the Amenity Notice could be taken where committee are satisfied that the terms of the Notice have been met or where it is not considered in the public interest to pursue further action (option i);

- The decision to allow a further period of time to achieve compliance with the Amenity Notice could be taken where it is considered that further work is needed to satisfy the terms of the Notice and it is expedient to allow further time to tidy the site to comply with the notice (option ii); or
- The decision to instigate direct action to secure the removal of the material and ensure compliance with the terms of the Amenity Notice could be taken where the progress made in the interim period since the matter was considered is deemed to be insufficient and the amenity impacts warrant direct action (option iii).

4.4 Not related to the specific requirements of the Notice, the owner has also recently undertaken works to cut back vegetation overhanging the footpath adjacent to the site. As part of the development of the site the owner proposes to replace the existing boundary treatments and is in the process of obtaining quotations in respect of these works. It is understood these works would be timed towards the completion of the renovation works. As matters stand this aspect of the site's condition does not amount to planning breach and any action in respect of the condition of the site boundaries would require a separate amenity notice.

5. 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 in comparison to previous costs given the nature of the works required and this would be progressed in accordance with Financial Regulations.

6. OTHER IMPLICATIONS

HUMAN RIGHTS IMPLICATIONS

If the recommendation is to take enforcement action in relation to a breach of planning control, this 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 material 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 them. It is highlighted however that, while the costs are unlikely to be significant, the sale of materials removed is unlikely to cover much of the costs associated with taking direct action.

EQUALITIES IMPLICATIONS

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

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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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