

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 27 JANUARY 2015

**ENFORCEMENT CASE – LAND AT BUILDER’S YARD, SCROGGERFIELD, DOUGLASTOWN,
NEAR FORFAR**

REPORT BY HEAD OF PLANNING AND PLACE

Abstract:

This report provides an update to the enforcement circumstances relating to the land and buildings at Scroggerfield, Douglastown.

1. RECOMMENDATION

It is recommended that the Committee: -

- (i) notes the current position in respect of site and progress with determination of applications;
- (ii) authorise the service of an enforcement notice in relation to Area 4 in order to provide appropriate amenity and environmental controls;
- (iii) authorise the service of an enforcement notice in relation to the southern section of Area 5 to require restoration of original ground levels; and
- (iv) authorise the service of an enforcement notice in relation to the northern section of Area 5 to require restoration of original ground levels in the event that the existing ground levels are found not to be lawful.

**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 INTRODUCTION

3.1 Report 141/14 was put before the Development Standards Committee on 11 March 2014 and presented the circumstances and lawful planning history for all of the land and buildings at Scroggerfield, Douglastown. Of the four recommendations agreed by Committee, the fourth authorised the Planning Service to issue Enforcement Notices as required in order to cease breaches of planning control and to restore the site as required.

3.2 As previously reported to Committee those uses and activities that were causing the most direct amenity impacts have ceased. In addition, as previously reported, significant progress has been made in clearing the Paddock area of materials associated with the unauthorised use for biomass production.

3.3 Report 447/14 provided a further update in respect of the site. Report 488/14 advised that a number of applications for planning permission and for certificates of lawful use or development had been submitted and were in the process of being determined.

3.4 Committee agreed that an update report on the matter should be provided at every second meeting.

4. DISCUSSION

4.1 The site is discussed in the context of the areas identified in the plan that forms Appendix 1.

Area 1 – Original Site

4.2 There are no issues relating to this area of the site and no further action is required.

Area 2 – Site to the East of ‘The Row’

4.3 There are no issues relating to this area of the site and no further action is required.

Area 3 – Approved Builders Yard to the West of the Kerbet Water

4.4 An application for a certificate of lawful use (ref: 14/00914/CLU) was submitted. That application covers a number of different areas within the wider site and these are discussed below. However, in relation to Area 3 the application sought to confirm the lawful use of the scaffold store for the storage of scaffold in association with the builders yard. In this respect the scaffold store lies within the area previously granted planning permission for use as a builders yard. The use of the land for the storage of scaffold and associated equipment would fall within the terms of those permissions. A certificate has been issued confirming that the use of the scaffold store for the storage of scaffold is lawful.

4.5 An application for a certificate of lawful development (ref: 14/00915/CLU) was submitted and this relates to the erection of the scaffold storage building. Available information, including aerial photography, indicates that this building has been in situ for a period in excess of 4-years. On this basis a certificate has been issued confirming that the scaffold building is lawful.

4.6 An application for a certificate of lawful development (ref: 14/00916/CLU) was submitted and this relates to a canopy that has been erected on a partially constructed building within the site. Available evidence suggests that the canopy was not substantially complete for a period of 4 years or more prior to the date of application. In addition, the canopy did not benefit from any permitted development rights at time of erection. On this basis a certificate has been issued indicating that the canopy is not lawful. The applicant has a right to appeal that decision to Scottish Ministers.

4.7 No further action is necessary in relation to the scaffold storage building or use as they are lawful. In relation to the canopy structure a notice was issued requiring the submission of a retrospective planning application for the works that had been undertaken. Instead of following that route the applicant chose to submit an application for a certificate of lawful development. As indicated above it has been determined that the canopy is not lawful. In these circumstances it is necessary to consider whether further enforcement action is expedient and this is discussed below.

Area 4 – Other Buildings to the West of the Kerbet Water

4.8 An application for planning application (ref: 14/00917/FULL) was submitted for the building alterations and for the continued use of the building for storage of biomass plant, equipment and materials. That application is subject of a separate report to this Committee.

4.9 The certificate of lawful use application (ref: 14/00914/CLU) referenced above also related to this area. It identified two particular sub-areas comprising part of the building complex and the adjacent yard area. In relation to part of the building complex it sought to confirm that the lawful use was for storage, servicing, repair and manufacturing purposes all related to the adjacent joinery and builders contractors business. In relation to the yard it sought to confirm that the lawful use was for storage and parking purposes again related to the adjacent joinery and builders contractors business. It has been determined that such use has not been undertaken continuously for a period of 10-years or more. On this basis such use is not lawful. The applicant has a right to appeal that decision to Scottish Ministers.

4.10 The enforcement position in relation to this area will be reviewed in the context of any decision taken on the above planning application. However, in relation to the section of building and yard covered by application 14/00914/CLU a notice was issued requiring the submission of a retrospective planning application for the storage use being undertaken.

Instead of following that route the applicant chose to submit an application for a certificate of lawful use. As indicated above it has been determined that this use is not lawful. In these circumstances it is necessary to consider whether further enforcement action is expedient and this is discussed below.

Area 5 – Other Land to the West of the Kerbet Water – ‘The Paddock’

- 4.11 A planning application (ref 14/00764/PPPL) for Proposed Offices (Two Storey), Stores and Car Park using existing access was submitted. The application site is the north part of Area 5 and a small area, adjoining a section of Area 3. That application is in the process of being determined. Committee will be provided with a verbal update.
- 4.12 The certificate of lawful use application (ref: 14/00914/CLU) referenced above also related to this area. It identified a small section adjacent to the private bridge over the Kerbet Water and sought to confirm the lawful use of that area for the storage of two containers related to the adjacent joinery and builders contractors business. Available information, including aerial photography, indicates that this area has been used for the siting of containers for a period in excess of 10-years. On this basis a certificate has been issued confirming that the use of this area for the siting of two storage containers is lawful.
- 4.13 An application for a certificate of lawful development (ref: 14/00943/CLU) was submitted in relation to land raising within the northern section of the paddock area. Available information, including aerial photography, indicates that whilst material may have been deposited on this area for a period in excess of 4-years, the levelling of the site and the land raising as exists at present has occurred within the last 4-year period. Whilst that application has yet to be determined it appears that the land raising is not lawful. Committee will be provided with a verbal update.
- 4.14 A Section 33A Notice requiring the submission of a retrospective planning application for the use of the land for the storage of the material in a mound was served on the owner. No application was submitted but the material contained within the mound was spread over an area within the southern section of the site. The Roads Service, in its capacity as Flood Prevention Authority, has indicated that any increase to ground levels within a flood plain can increase flood risk in the surrounding area. In the absence of detailed information it is not possible to quantify the extent of any increased risk of flooding.
- 4.15 The enforcement position in relation to this area will be reviewed in the context of decisions taken on the above applications for planning permission and certificate of lawful development. However, it is clear that unauthorised land raising has occurred in the southern area of the paddock. In these circumstances it is necessary to consider whether further enforcement action is expedient and this is discussed below.

Further Action

- 4.16 Government Circular 10/2009 deals specifically with planning enforcement. It recognises that authorities have a wide choice of available options for taking enforcement action, whenever they consider appropriate.
- 4.17 The Circular indicates that in circumstances where development has been carried out without permission but in the authority's assessment is acceptable or can be made acceptable by the imposition of conditions, the correct enforcement approach is to issue a notice requiring the application for planning permission for development already carried out. It goes on to state that where an owner or occupier of land refuses to submit a planning application, thereby enabling the planning authority to grant planning permission subject to conditions or limitations, the authority would be justified in issuing an enforcement notice if they consider that the unauthorised development has resulted in injury to amenity, or damage to a statutorily designated site, which can be removed or alleviated by imposing restrictions on the development.
- 4.18 As indicated above no further action is necessary in relation to Areas 1 and 2.
- 4.19 In relation to Area 3, the canopy on the partially constructed building is unauthorised and is not lawful. A notice requiring the submission of a retrospective planning application has been served but no planning application has been submitted; instead an application for a certificate of lawful development was submitted. It has been determined that the canopy is not lawful

and consideration must be given as to whether it is expedient to take further enforcement action in relation to this particular breach of planning control. In this respect, and having regard to the guidance in Circular 10/2009, it is appropriate to consider whether the canopy has/could result in materially adverse planning implications such as injury to amenity or to the environment.

- 4.20 The canopy is relatively small and is located some distance from the public road or neighbouring property. It is relatively discreet and is reasonably well screened from outwith the site and it does not give rise to any significant issues in terms of relevant development plan policy. It does not give rise to any material adverse planning implications. In these circumstances it is considered that further enforcement action in relation to the canopy would not be expedient.
- 4.21 In relation to Area 4, a building and the yard area are currently being used for the storage of material in association with the adjacent builders yard business. A notice requiring the submission of a retrospective planning application for such use has been served but no planning application has been submitted; instead an application for a certificate of lawful use was submitted. It has been determined that such use is not lawful and consideration must be given as to whether it is expedient to take further enforcement action in relation to this particular breach of planning control. In this respect, and having regard to the guidance in Circular 10/2009, it is appropriate to consider whether such use has/could result in materially adverse planning implications such as injury to amenity or to the environment. It is also appropriate to consider whether any such injury can be removed or alleviated by imposing restrictions on the development.
- 4.22 The yard area is reasonably close to residential property, sharing a boundary with the dwelling known as Scroggerfield Cottage and within 100 metres of other properties to the east of the Kerbet Water. Uncontrolled activity in this area associated with the storage or processing of the material that is currently stored there could give rise to potential amenity impacts on occupants of residential property as a consequence of noise or other disturbance. In addition this area has an access gate that leads on to the roadway to the south of the site that runs through Douglstown and although there is no indication that this access has been used in association with current activity, that possibility exists, and such use could adversely affect the amenity of residents in the area. A notice has been served requiring the submission of a retrospective planning application for the use but as noted above such application has not been submitted. Government guidance indicates that in such circumstances further enforcement action is appropriate and consideration should be given to the service of an enforcement notice that provides specific restrictions on the use of the area to remove or alleviate any injury to amenity or to the environment.
- 4.23 The buildings and yard have clearly been in agricultural use in the past and such use could recommence without the requirement for planning permission. It is also clear that the area has been used in association with the adjacent builders yard in the past and although a certificate of lawful use has not been issued, this is because such use was interrupted or supplanted by the unauthorised biomass production use. Notwithstanding this, it is considered that the properly controlled use of the area for storage of material, equipment and plant associated with the builders yard use would be acceptable. It is recommended that an enforcement notice is issued that amongst other things restricts the use of the building and yard to storage, loading and unloading of material, equipment and plant associated with the neighbouring builders yard use; restricting hours of use to 0700 - 1900 Monday – Friday, 0700 - 1300 Saturday, with no use on a Sunday; restricting the height of material stockpiles to no more than 2 metres; and requiring vehicular access/egress to be taken from the existing A94 access only whilst preventing use of the vehicular access to the south. Such action is considered proportionate to the breach and provides the controls necessary to address amenity and environmental issues associated with the breach.
- 4.24 In relation to Area 5, land forming the northern section of the paddock area has been raised by approximately 500mm over an area of approximately 0.3 hectares. More recently land forming the southern section of the paddock has also been raised in height. As indicated above, whilst an application for a certificate of lawful development has been submitted in relation to the land raising undertaken on the northern section of the paddock, available evidence suggests that this development was not substantially complete for a period of 4 years or more prior to the date of application and as such would not be lawful. The land raising in the southern section of the paddock is recent and is not lawful. In these circumstances consideration must be given as to whether it is expedient to take further

enforcement action in relation to this particular breach of planning control. In this respect, and having regard to the guidance in Circular 10/2009, it is appropriate to consider whether such use has/could result in materially adverse planning implications such as injury to amenity or to the environment. It is also appropriate to consider whether any such injury can be removed or alleviated by imposing restrictions on the development.

- 4.25 The Roads Service has indicated that land raising in this area has potential to increase flood risk. The owner of the land has submitted a Flood Risk Assessment however that does not deal with the alteration to ground levels within the paddock area. Accordingly the impact of the altered ground levels on flood risk in the area has not been determined. In the absence of information demonstrating that the increased ground levels do not significantly increase flood risk outwith the site it is considered appropriate to issue an enforcement notice requiring ground levels in the southern section of the paddock to be restored to the levels shown on the flood risk assessment drawing submitted with the planning application for the biomass production operation. Similarly, in the event that the ground levels in the northern section of the paddock are found not to be lawful (Committee will be updated verbally on this matter), it would be appropriate to issue an enforcement notice requiring restoration of the previous levels which would essentially require a reduction in the region of 500mm over that part of the site. Any such notices would require the owner to implement appropriate mitigation to address potential impacts on the Kerbet Water which forms part of the River Tay Special Area of Conservation. Committee will be provided with a verbal update in relation to this matter having regard to the determination of the planning application and application for certificate of lawful development.

5. FINANCIAL IMPLICATIONS

The normal costs associated with investigating and pursuing enforcement action will be met from the Planning Service budget. However, should direct action be considered necessary there would be financial implications and a further report would be brought to committee.

6. 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 materials and/or restoration of the site could potentially 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.

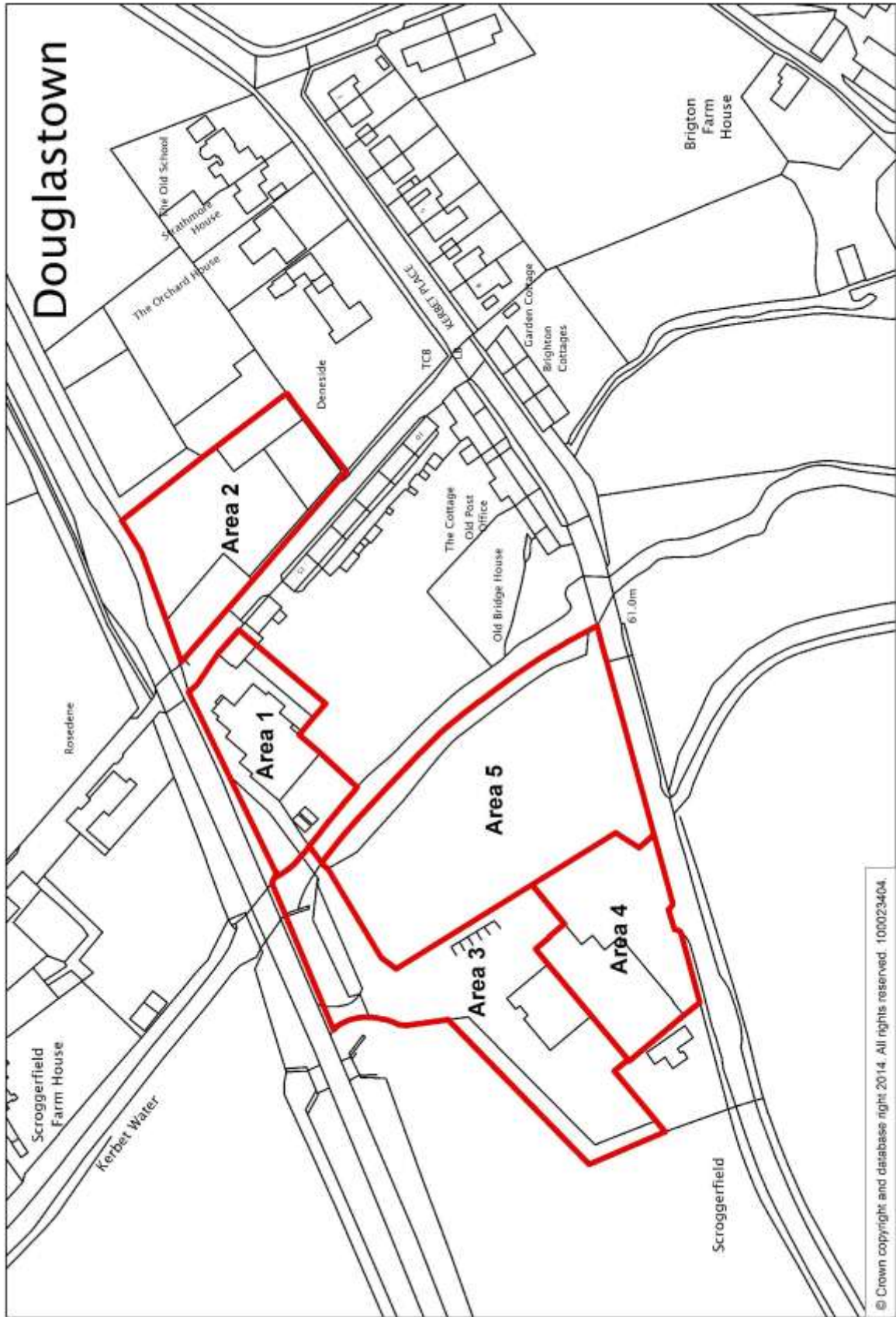
NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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List of Appendices: Appendix 1: Site Plan



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