

**ANGUS COUNCIL**

**DEVELOPMENT STANDARDS COMMITTEE – 4 NOVEMBER 2014**

**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 and as such is an update on the content of Report 141/14.

**1. RECOMMENDATION**

It is recommended that the Committee: -

- (i) notes the current position in respect of site and the course of action taken by the Planning Service to address/regularise the unauthorised use of land and buildings at the site.

**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 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, and as detailed below, significant progress has been made in clearing the Paddock area of materials associated with the unauthorised use for biomass production. However, a number of breaches of planning control remain and applications to regularise outstanding breaches have not been submitted.

3.3 This report provides an updated summary of the site circumstances having regard to the breaches of planning control previously identified. It also provides an assessment of outstanding breaches and details what action, including formal action through Enforcement Notices, has now been taken.

**4. DISCUSSION**

4.1 In order to establish the planning and enforcement status of the site it is, again, considered necessary to identify the relevant areas and their planning histories in turn. An overall site plan with the respective areas referred to herein is provided as Appendix 1.

4.2 The Scottish Government Circular 10/2009 Planning Enforcement states that Planning Authorities have a general discretion to take enforcement action against any breach of planning control if they consider it expedient, having regard to the development plan and other

material considerations. It indicates that in reaching any conclusion consideration should be given to matters including whether the breach of control would affect unacceptably either public amenity or the use of land and buildings meriting protection in the public interest. It is further indicated that enforcement action should always be commensurate with the breach of planning control to which it relates. In relation to small businesses the Circular indicates that planning authorities should have regard to the substantial financial burden that may be experienced in deciding how to handle a case. The Circular states that before taking formal enforcement action, unless it is urgently needed, the planning authority should seek to resolve the problem through informal discussion about possible means of minimising harm to local amenity.

- 4.3 Section 33 of the Town and Country Planning (Scotland) Act 1997 (as amended) (hereafter referred to as 'the Act') provides that an application for planning permission may be made retrospectively for a use of land instituted, before the date of the application. Furthermore Section 33A allows a planning authority to issue a notice requiring the submission of such an application; such a notice amounts to a formal enforcement notice.
- 4.4 Further to the above, the power for a planning authority to issue an Enforcement Notice is provided for within Section 127 of the Act. These powers can be used where it appears to them that there has been a breach in planning control and that it is expedient to issue the notice, having regard to the provisions of the development plan and other material considerations.
- 4.5 Provision exists within Section 150 of the Act to make such breaches lawful through an application for a Certificate of Lawfulness of Existing Use or Development. The Act states that a ten year limit applies to unauthorised changes of uses, after which the development would become immune from enforcement action. This is known as the "ten year rule". For all operational development a four year limit applies; known as the "four year rule".
- 4.6 Having regard to these powers the circumstances of the various areas of the site will now be assessed.

#### **Area 1 – Original Site**

- 4.7 There are no issues relating to this area of the site and no further action is required. A small advertisement is present on one of the buildings which would require advertising consent but there is no public interest in pursuing this as the size and location of the advertisement does not give rise to any significant amenity or public safety issues.

#### **Area 2 – Site to the East of 'The Row'**

- 4.8 This area has planning permission for use as a car park. A small quantity of construction material was recently being stored near the entrance to this area of the site but the owner has now removed this. However, a more recent complaint has been received regarding the operation of a forklift/digger in this area over the weekend of 25/26 October 2014. That matter is subject of ongoing investigation.

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

- 4.9 The canopy extension to the partially built block building remains in place and would require planning permission; however, this structure is generally of an acceptable design and scale. The owners agent has suggested that this may be lawful as it has been in situ for a period in excess of four years. However, the four year period commences 'with the date on which the operations were substantially completed'. The canopy is attached to a partially constructed building and as such works cannot be considered to be substantially completed and therefore the works are not considered to be lawful. The building to the west of this area, which is identified in the Planning Contravention Notice (PCN) Response Form as the "Scaffolding Area", is used for storage. Storage of building related materials/equipment in this area is compatible with the existing planning permission for the site but there is no record of a planning permission for the structure. It has been suggested in the PCN response and more recently that this scaffold store structure was erected in 2007 and may be lawful. An application for a Certificate of Lawful Use of Development was requested but no application has been submitted and no evidence in that respect has been provided.
- 4.10 In the absence of applications for planning permission or for certificates of lawfulness notices under Section 33A that require submission of applications for these two structures are in the

process of being served. A period of 21 days has been specified in these Notices; this constitutes the taking of formal enforcement action. If application/s are submitted that seek to confirm lawfulness these will be progressed as appropriate.

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

- 4.11 The physical alterations to the building, including the provision of an extract flue, and the use of the building for the storage of the biomass plant and machinery are both unauthorised and would require planning permission to be lawful.
- 4.12 A Notice under Section 33A of the Act requiring the submission of a planning application for retrospective permission for the building alterations and for the continued use of the building for the storing of machinery is in the process of being served. For the avoidance of doubt no application is being invited for the biomass production use. A period of 21 days has been specified in this Notice; this constitutes the taking of formal enforcement action.
- 4.13 The use of the land in the forecourt of these buildings for the storage of plant, machinery, timber and other materials does not benefit from planning permission and as such is unauthorised. The owner has suggested that such use may be lawful as it has been undertaken for a period in excess of 10 years. However, any such use must be continuous and it is clear that this area was used for purposes in association with the biomass production operation. Accordingly, and as previously indicated, this area is not considered to benefit from lawful use.
- 4.14 I am concerned that the unregulated and uncontrolled continued use of this area of land could impact on the amenity of the area. Notwithstanding that, the area sits adjacent to an area of land that benefits from planning permission for use as a builders yard. Accordingly, I consider that appropriately controlled use of the land in conjunction with the adjacent builders yard may be acceptable. In this respect a Notice under Section 33A of the Act requiring the submission of a planning application for the use of the land as an extension to the adjacent builders yard is in the process of being served. A period of 21 days has been specified in this Notice; this constitutes the taking of formal enforcement action. This course of action will allow consideration of any application submitted and, if approved, the imposition of any conditions considered necessary to regulate the use of the land in the interests of the amenity of the area.

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

- 4.15 It is noted that substantial progress has been made on clearing this area of the site. The area to the south has been entirely cleared and appears to have been seeded in grass. The timber previously stored in the northern portion of the area has been removed entirely. The two lorry trailers also previously located to the north have also been removed from this area and are now located within Area 3; which is permissible in terms of the authorised builders yard use.
- 4.16 The hardcore laid within this area of the site is still in place and as previously reported does not have planning permission. A stockpile of material that appears to comprise soil is present in the central area of the site and two storage containers are located within the north of this area and again these do not have planning permission. The owner has indicated an intention to submit an application/s for a Certificate of Lawful Use or Development however no applications have been received. As matters stand there is no evidence to suggest that the hardcore, stockpile of soil or use of the land for the siting of two containers is lawful.
- 4.17 A Planning application ref 14/00764/PPPL for Proposed Offices (Two Storey), Stores and Car Park using existing access has been received. The application site is the north part of Area 5 and a small area, adjoining a section of Area 3. That application will be progressed as appropriate.
- 4.18 Notwithstanding this application, the applicant has been provided opportunity to submit applications to demonstrate the lawfulness of any use or development within the site and no applications have been forthcoming. In these circumstances it is considered appropriate to serve an enforcement notice to ensure the use of this area for the storage of building materials, timber, vehicles etc is ceased and that the remediation of the site to its former paddock status, which would include the removal of the laid hardcore areas. This approach will either assist in securing the desired objective or result in an appeal which will allow issues

relating to the lawfulness of any use or development in this area of the site to be resolved. An Enforcement Notice in this respect is in the process of being served.

## **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.

## **7. CONCLUSION**

- 7.1 The land and buildings at Scroggerfield, Douglstown are being used as a builders yard, beyond the boundaries of the two planning permissions in place. Alterations have been made to buildings without the benefit of planning permission, land is currently being used for the storage of materials/timber in association with the builders yard and the storage of machinery related to the previous unauthorised biomass production activities remain and storage uses and operational development on other land remains.
- 7.2 It is considered appropriate to seek to regularise the various planning breaches by the serving of formal Notices and the consideration of planning applications and/or applications for Certificates of Lawful Use of Development.

**VIVIEN SMITH  
HEAD OF PLANNING & 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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