

**ANGUS COUNCIL**

**DEVELOPMENT STANDARDS COMMITTEE – 25 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 447/14.

**1. RECOMMENDATION**

It is recommended that the Committee: -

- (i) notes the current position in respect of site and the applications submitted.

**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. However, at the meeting of 4 November 2014, Committee was advised that in the period since publication of that report a number of applications pertaining to the site had been submitted.

3.4 Committee requested an update report on the matter.

**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 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.

- 4.4 As indicated in Report 447/14, a more recent complaint was received regarding the operation of a forklift/digger in this area. However, it is understood that the activities were associated with the use of the owners stables which take access over the car park area. Accordingly there was no breach of planning control.

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

- 4.5 A Section 33A Notice has been served requiring the submission of a planning application in relation to the canopy extension to the partially built block building. However, the owners agent has suggested that this is lawful and has submitted an application for a Certificate of Lawful Development. That application (ref: 14/00916/CLU) is under consideration and no further action will be taken in advance of its determination.
- 4.6 A Section 33A Notice has also been served requiring the submission of a planning application in relation to the scaffold storage building. Again the owners agent has suggested that this structure is lawful and has submitted an application for a Certificate of Lawful Development. That application (ref: 14/00915/CLU) is under consideration and no further action will be taken in advance of its determination.

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

- 4.7 In addition, an application for a Certificate of Lawful Use (ref. 14/00914/CLU) has been submitted for the use of the land associated with the scaffold store in conjunction with the adjacent joiners and building use. That application is under consideration and no further action will be taken in advance of its determination.
- 4.8 A Section 33A Notice has been served requiring the submission of a planning application for the building alterations and for the continued use of the building for the storage of machinery. A planning application (ref: 14/00917/FULL) has now been submitted for external alterations to building/roof including addition of flue and use of building for storage of biomass plant, equipment and materials. That application is under consideration and no further action will be taken in advance of its determination.
- 4.9 A Section 33A Notice has been served requiring the submission of a planning application in relation to the use of the land in the forecourt of these buildings for the storage of plant, machinery and other materials. The owners agent has suggested that the area benefits from lawful use in association with the neighbouring builders yard and has submitted an application for a Certificate of Lawful Use. That application (ref: 14/00914/CLU) is under consideration and no further action will be taken in advance of its determination.

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

- 4.10 A Planning application (ref 14/00764/PPPL) for Proposed Offices (Two Storey), Stores and Car Park using existing access has been received and registered as valid. The application site is the north part of Area 5 and a small area, adjoining a section of Area 3. That application is under consideration.
- 4.11 An application for a Certificate of Lawful Use (ref: 14/00914/CLU) has been submitted in relation to a small section of this area in conjunction with the adjacent joiners and building use. That application is under consideration.
- 4.12 An application for a Certificate of Lawful Development (ref: 14/00943/CLU) has been submitted in relation to land raising within the northern section of the paddock area. That application is in the process of being validated.
- 4.13 It is not proposed to take any further action in relation to this area until such time as the above applications are determined.
- 4.14 However, the submitted applications relate only to the northern section of the paddock. The southern section, whilst substantially cleared, contains a sizeable mound of material. The composition of material forming the mound is not known. A Section 33A Notice is in the process of being served requiring the submission of an application for planning permission for the use of the land for the storage of the material present. A period of 21 days has been specified in this Notice; this constitutes the taking of formal enforcement action.

## **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 Those activities that caused the most direct harm to amenity in the area have now ceased. A number of Notices have been issued that constitute the taking of enforcement action and a further Notice is in the process of being served. In addition, a number of applications for planning permission and for certificates of lawful use/development have now been submitted. The planning applications are subject of statutory publicity and consultation and that process is underway. The applications for certificates of lawful use/development are not subject to any statutory publicity or consultation requirements: the determining issue in relation to such an application is whether the use or development is lawful, not whether it is acceptable. However, in order to help it determine lawfulness, a planning authority is entitled to canvass parties that it considers may have relevant information. The evidence submitted by the applicant is in the process of being considered in the context of information held by the Council but evidence is likely to be sought from other parties, including neighbours.

**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.

**REPORT AUTHOR: Robert Parry**  
**EMAIL DETAILS: [planning@angus.gov.uk](mailto:planning@angus.gov.uk)**

**Appendix 1: Site Plan**

