

**ANGUS COUNCIL**

**DEVELOPMENT STANDARDS COMMITTEE – 16 FEBRUARY 2016**

**ENFORCEMENT ACTION – 1 BROOMWELL GARDENS MONIKIE**

**REPORT BY HEAD OF PLANNING AND PLACE**

**Abstract:**

This report updates Committee on the non-compliance with the Amenity Notice served under Section 179 of the Town and Country Planning (Scotland) Act 1997 previously served on the property at 1 Broomwell Gardens, Monikie.

**1. RECOMMENDATION**

It is recommended that Committee authorise the Planning Service to:-

- (i) instigate direct action to secure the removal of the material and ensure compliance with the terms of the Amenity Notice; and
- (ii) recover costs associated with the direct action authorised above from the owner or lessee of the dwellinghouse.

**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.

#### **4. DISCUSSION**

- 4.1 As matters stand, the condition of the site has notably improved under the current owners' tenure. However, the owner has not completed work as agreed by the end of January 2016 and it is considered that the site remains in an untidy condition that continues to have an adverse impact on the amenity of the area.
- 4.2 Scottish Government Circular 10/2009 states that the integrity of the development management process depends on the Planning Authority's readiness to take effective enforcement action when necessary. The lack of progress with clearance works and continued presence of materials on the site at 1 Broomwell Gardens, Monikie is in breach of the terms of the Amenity Notice. The land owner(s) is aware of the requirements of the Notice and in spite of continual dialogue and informal actions seeking to achieve compliance, the failure to remove materials is a continuance of this breach.
- 4.3 Accordingly, the remaining enforcement option available to the Council is to take direct action. It is now considered to be proportionate and in the public interest to undertake this action. Taking direct action would involve undertaking a procurement process to appoint an agent to remove all offending materials from the site. The procurement process will likely take a period of time to complete and during this time the Planning Service would simultaneously seek voluntary compliance with the terms of the Notice by the owners/occupiers.

#### **5. FINANCIAL IMPLICATIONS**

The normal costs associated with investigating and perusing 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**

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 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.

**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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