

**ANGUS COUNCIL**

**DEVELOPMENT STANDARDS COMMITTEE – 21 NOVEMBER 2017**

**ENFORCEMENT ACTION - GAGIE FILTERS, KELLAS**

**REPORT BY HEAD OF HOUSING, REGULATORY AND PROTECTIVE SERVICES**

**Abstract:**

This report updates Committee on the circumstances relative to the enforcement action in respect of the unauthorised use of land at Gagie Filter Beds, Kellas, Angus. Enforcement Case Ref: 13/00195/UNUSE

**1. RECOMMENDATION**

It is recommended that Committee authorise the Planning Service, in conjunction with the Head of Legal & Democratic Services as necessary, to instigate further enforcement action (which may include but not be limited to Direct Action, service of a Fixed Penalty Notice or seeking Prosecution) to secure the cessation of the use of the land for the storage of building materials, plant, machinery and equipment, sheds, storage containers, motor vehicles, trailers, boats and caravan and the removal of an unauthorised fence attached to the listed filter bed structure and reprofiling of one of the filter beds at Gagie Filters, Kellas.

**2. INTRODUCTION**

2.1 Observations were received by the Planning Service regarding the unauthorised use of the site as a builders yard. A further observation was received that unauthorised alterations to listed structures at the site had occurred.

2.2 It was established that the site was being used for the storage of building materials, plant, machinery and equipment, caravans and other structures in breach of planning control and that an unauthorised fence had been attached to the listed filter bed structure and the filler material of one of the filter beds had been scraped back in breach of listed building control.

2.3 A planning Enforcement Notice was duly served in January 2017 requiring the removal of the building materials, plant, equipment and other structures and the removal of the fence. That Notice was subject of appeal to the Directorate for Planning and Environmental Appeals but that appeal was dismissed and the Enforcement Notice upheld (Report 255/17 refers). The Notice required the removal of the various items by 19 September 2017.

2.4 A Listed Building Enforcement Notice was duly served in January 2017 requiring the removal of the fence and reprofiling of the filter bed. That Notice was subject of appeal to the Directorate for Planning and Environmental Appeals but that appeal was dismissed and the Enforcement Notice upheld (Report 254/17 refers). The Notice required the removal of the fence and reprofiling of the filter bed by 19 September 2017.

2.5 A site visit was undertaken on 21 September 2017 and it was noted that none of the remedial actions specified in the Notices had been carried out.

**3. DISCUSSION**

3.1 Scottish Government Circular 10/2009 states that the integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action when necessary.

3.2 The continued use of the land at Gagie Filters for the storage of the various items and the erection of the fence and works to the filter bed are in clear breach of the terms of the Enforcement Notice and Listed Buildings Enforcement Notice. Both Notices have been upheld

on appeal. The land owner is aware of the requirements of the Notices and the continued use of the land for the storage of the various items, the unauthorised fence and works to the filter bed are a wilful and deliberate breach of the Notices.

- 3.3 In these circumstances it is considered appropriate to take further action to secure compliance with the terms of the Enforcement Notice and Listed Building Enforcement Notice. Planning legislation provides planning authorities with a number of powers in this respect.

#### **Enforcement Notice**

- 3.4 Specifically Section 135 of the Town and Country Planning (Scotland) Act 1997 makes provision that if any steps which are required by an Enforcement Notice to be taken have not been taken within the compliance period, the planning authority may:

- (a) enter the land and take those steps, and
- (b) recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.

- 3.5 Section 136 of the 1997 Act makes it an offence for owners of land to be in breach of an enforcement notice. It is also an offence for those (other than the owners) who control, or have an interest in, the land to carry on any activity which is required to cease, or cause or permit such an activity to be carried on. Where a person is prosecuted for an offence they may be charged by reference to any day or longer period, and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction. A person guilty of an offence under this section is liable:

- on summary conviction, to a fine not exceeding £20,000;
- or on conviction on indictment to an unlimited fine.

- 3.6 Section 136A of the Act also provides authorities with the power to issue a Fixed Penalty Notice (as an alternative to prosecution) for breaching the terms of an Enforcement Notice. The Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009 set out that the penalty for breach of an Enforcement Notice is to be £2,000 although that amount would be reduced by 25% if payment was made within the first 15 days of the date of service of the Notice. Where a Fixed Penalty Notice is issued for a particular breach of an Enforcement Notice, it is possible that the penalty might be paid but the breach remains uncorrected. By paying the fixed penalty the person discharges any liability for prosecution. Payment of the fixed penalty does **not** however discharge the requirement to comply with the requirements of the original Enforcement Notice and the planning authority retains the power to take direct action to remedy the breach and recover any costs associated with such work.

#### **Listed Building Enforcement Notice**

- 3.7 Specifically Section 39 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 makes provision that if any steps which are required by a Listed Building Enforcement Notice to be taken have not been taken within the compliance period, the planning authority may:

- (a) enter the land and take those steps, and
- (b) recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.

- 3.8 Section 136 of the 1997 Listed Buildings Act makes it an offence for owners of land to be in breach of an enforcement notice. Where a person is prosecuted for an offence they may be charged by reference to any day or longer period, and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction. A person guilty of an offence under this section is liable:

- on summary conviction, to a fine not exceeding £20,000;
- or on conviction on indictment to an unlimited fine.

- 3.9 There are advantages and disadvantages with each of the options identified above and a final decision on the most appropriate course of action will be taken in consultation with the Head of Legal & Democratic Services having regard to effectiveness, timescales for securing compliance and likelihood of successful prosecution.

#### **4. CONSULTATION**

No consultation has been undertaken in the preparation of this report however consultation would be undertaken with Legal & Democratic Services, and Corporate Improvement & Finance prior to progressing with further action.

#### **5. RISKS**

- 5.1 Scottish Government Circular 10/2009 states that the integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without an apparent attempt by the planning authority to intervene before serious harm to amenity results from the breach.

There is a further risk however 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 the items referred to in the Notices and the undertaking of physical works to re-profile the filter bed may be reasonably significant and the Town and Country Planning (Act) 1997 makes provision for the planning authority, in certain circumstances, to sell any materials removed by them from the land and pay the proceeds to the owner less any expense recoverable by them from him.

#### **6. 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 may be reasonably significant given the nature of the works required and this would be progressed in accordance with Financial Regulations.

#### **7. 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.

#### **8. EQUALITIES IMPLICATIONS**

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

#### **9. CONCLUSION**

- 9.1 The use of the land at Gagie Filters for the siting of plant, machinery and other items should cease, the unauthorised fence be removed and reprofiling of the filter bed carried out. That decision has been upheld following an appeal of the Enforcement Notice and Listed Building Enforcement Notice to Scottish Ministers. The land owner has failed to ensure compliance with the terms of the Enforcement Notice and Listed Building Enforcement Notice and is now in wilful breach of the Notices.

- 9.2 It is considered appropriate and necessary to instigate enforcement action to secure the removal of the items specified in the Notices and the removal of the fence and reprofiling of the filter bed. The precise detail of the further enforcement action to be taken to secure compliance with the terms of the Enforcement Notice and Listed Building Enforcement Notice

will be determined by the Planning Service in consultation with the Head of Legal & Democratic Services.

**STEWART BALL  
HEAD OF HOUSING, REGULATORY AND PROTECTIVE SERVICES**

**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 a material extent in preparing the above report.

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