

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 4 JANUARY 2018

ENFORCEMENT UPDATE

REPORT BY HEAD OF HOUSING, REGULATORY AND PROTECTIVE SERVICES

Abstract:

This report is an update on progress of Enforcement Cases which are of interest to the Development Standards Committee.

1. RECOMMENDATION

It is recommended that the Committee note the contents of this report.

2. BACKGROUND

An update is provided for each meeting of the Committee on enforcement cases where a temporary stop notice, stop notice, or enforcement notice has been served, or where the matter gives rise to potentially significant issues of wider interest. The table format of the current caseload is attached overleaf.

3. DISCUSSION

In the period from 11 November 2017 to 15 December 2017, 16 new enforcement cases were recorded and 18 cases have been closed. There are currently 220 cases that are subject of ongoing investigation.

4. OTHER IMPLICATIONS

There are no financial, human rights or equalities implications arising from this report.

5. CONCLUSION

In order to keep the Committee informed of progress in respect of enforcement case matters an updated report will be prepared for each Development Standards Committee meeting.

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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APPENDIX 1: CURRENT ENFORCEMENT CASES

CURRENT ENFORCEMENT CASES

APPENDIX 1

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
08/00007	Strathmartine Hospital	08.01.2008	Deterioration in condition of listed building.	<p>The most recently fire-damaged building as well as the boiler house and the link buildings adjoining the main listed building have been demolished for safety reasons. The ground floor openings to the listed building, exposed by the demolition of the link buildings, have been built up with concrete blockwork.</p> <p>Council resolved to approve application 13/00268/EIAM (for the redevelopment of the hospital) at its meetings of 18 December 2014 and 12 February 2015. The application was subsequently called-in for determination by Scottish Ministers and on 17 September 2015 they issued a notification of intention to approve the application subject to conclusion of a Planning Obligation (Report No 395/15 refers).</p> <p>Ministers agreed to extend the period for concluding the Section 75 Planning Obligation for application 13/00268/EIAM until the end of September 2016.</p>	<p>The Planning Obligation has not been concluded within the period allowed by Scottish Ministers. It is understood that discussion is ongoing between the owner and NHS Tayside regarding the terms of a clawback – which was agreed at the time of the owners purchase from NHS Tayside and requires further financial payments to the former owner where triggers are met. Resolution of this matter between those parties is required in order to conclude the Section 75.</p> <p>Ministers have indicated that a further extension of time to allow conclusion of negotiations with NHS Tayside has been agreed. Ministers have agreed a further three month extension from July 2017 to allow further work to be carried out on the drafting of the terms of the S75 and Ministers have indicated that a further three months may be granted if it is clear that satisfactory progress is being made.</p> <p>Building Standards continue to regularly visit the site to ensure the buildings remain boarded/ blocked up however the site continues to be targeted by vandals.</p>

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
12/00230	Barry & Downs Caravan Park Barry Carnoustie	18.02.2014	Allegation that the site is not being used as 'Holiday use' and that permanent residential accommodation of caravans may be taking place.	<p>A Planning Contravention Notice (PCN) was served on the owner of the site.</p> <p>The PCN Response Forms were returned on 30 May 2014.</p> <p>A Section 33A Notice was served on the owner of the site requiring the submission of a planning application for the use of the land for the siting of caravans for residential purposes.</p> <p>The site operator submitted an application for a Certificate of Lawful Use to cover the site. The application was refused on 3 April 2015 and the site operator submitted an appeal against the decision to the Scottish Government, which was dismissed on 2 September 2015.</p> <p>The site operator submitted a legal challenge against the decision of the Scottish Ministers to the Court of Session.</p> <p>The legal challenge was dismissed and the Reporter's decision of 2 September 2015 stands.</p> <p>Planning application 15/00506/FULL for the use of land for siting of park homes as a principal or primary or sole residence was submitted in response to the S33A Notice. The application was refused under delegated powers on 18 July 2016.</p>	<p>The site owner submitted a further application for a Certificate of Lawful Use (16/00428/CLU), which was refused on 28 August 2016.</p> <p>The applicant's agent lodged an appeal in respect of the Council's decision with the Directorate for Planning and Environmental Appeals (DPEA).</p> <p>The Reporter's decision on the appeal was issued on 7 February 2017. The Reporter granted a Certificate of Lawfulness for part of the application site.</p> <p>Officers from relevant Services have for some time been attempting to organise a meeting with the site operator to discuss options in relation to the part of the site that remains unauthorised. It is anticipated that a meeting will take place early in 2018 and a further report on this matter will be presented to a subsequent meeting of this Committee pending the outcome of these discussions.</p>

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
14/00176	Kohe Noor 20 - 22 St David Street Brechtin DD9 6EQ	02.08.2016	<p>The erection of an illuminated white shop front fascia with individual red lettering on the principal elevation of a Category C Listed Building within Conservation Area without benefit of Listed Building Consent or Advertisement Consent.</p> <p>The painting white of mortar between stonework of the principal elevation of a Category C Listed Building without the benefit of Planning Permission.</p>	<p>Retrospective applications for Listed Building Consent and Advertisement Consent seeking to regularise the works were refused on the grounds that the works had an adverse impact on the special interest of the listed building, contrary to Policy ER15 of the Angus Local Plan Review 2009. Listed Building Enforcement Notices were served on the owners/ interested parties requiring the removal of the illuminated fascia and making good the wall where it was sited. The notices also required the removal of the mortar at the principal elevation and reinstatement with an acceptable lime mortar.</p> <p>The duration of these notices has now passed without the specified works being undertaken to resolve the breaches of planning control to the listed building and the parties are in breach of the notices.</p> <p>A report relating to the offence created through the non-compliance with the Listed Building Enforcement Notices was submitted to the Procurator Fiscal on 27 September 2016.</p> <p>The site operator was contacted regarding their intentions in relation to the matter but declined to comment.</p>	<p>The developers appeared in Forfar Sheriff Court on 23 February 2017.</p> <p>The case was due to be heard at Forfar Sheriff Court on 04 August 2017.</p> <p>On 03 August 2017 the Procurator Fiscal advised that the case was not proceeding and further clarification on this was requested from the Crown Office and Procurator Fiscal Service (COPFS) on 09 August 2017 and again on 22 September 2017.</p> <p>Further correspondence was received from COPFS on 22 September 2017 advising the request would be dealt with by the relevant office.</p> <p>The Principal Solicitor has now discussed this case with the COPFS. COPFS advised that the case was abandoned as they considered that there was insufficient evidence to link the accused with the offence, and also a lack of corroboration as regards the offence. The Principal Solicitor has requested a meeting with COPFS in order to identify any areas of weakness in our report, and to discuss how these aspects can be remedied for any future submissions.</p>

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
16/00165	Land 125 Metres West of North Mains Croft Logie Kirriemuir	02.08.2016	The site has been cleared of vegetation and the ground levelled with a layer of rubble and crushed stone. 1 static and 1 touring caravan have been brought on to the site.	An Enforcement Notice was served on the landowner on 19 August 2016. The site owner submitted an appeal against the Enforcement Notice to the DPEA and submitted an application for retrospective Planning Permission (ref: 16/00738/FULL). The Reporter's decision on the Enforcement Notice was published on 23 November 2016. The Reporter allowed the appeal and corrected the terms of the notice to show that the earthen bund should be "levelled" rather than "removed" and varied the periods for compliance with the Notice to allow time for the current planning application to be determined and any appeal thereon to be decided (to remove the caravans from the site on or before 3 August 2017 and to complete the remaining steps on or before 3 September 2017).	The retrospective application for Planning Permission (ref: 16/00738/FULL) was refused on 06 January 2017. The applicant sought to review that decision and the Development Management Review Committee has subsequently resolved to grant planning permission for the development at the meeting of 03 July 2017. A decision will be issued following agreement of conditions at the next meeting of the DMRC (08 August 2017). The Enforcement Notice was withdrawn and a new Enforcement Notice served on the landowner on 25 August 2017 for the part of the site detailed on the original Enforcement Notice and not covered by planning application ref: 16/00738/FULL requiring the removal of caravans, trailers and other items, removal of a wooden fence and rubble and hardcore and to level the earth bund. Within 3 months from the date of the Notice becoming effective, that date being the 26 September 2017 unless an appeal is submitted before that date. The Enforcement Notice has not been the subject of an appeal, and is now effective. A site visit on 12 October 2017 confirmed that the landowner had commenced extensive excavation and exportation works to remove and level the earthen bund.

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
16/00165 (contd)	Land 125 Metres West of North Mains Croft Logie Kirriemuir				<p>As a result of further observations a site visit on 07 November 2017 established that further unauthorised development works were being undertaken on the area of land subject to the Enforcement Notice and on 09 November 2017 a Planning Contravention Notice was served on the landowner in order to gather information relative to this further development of the site with a view to potential further enforcement action being taken.</p> <p>It was established that two of the conditions of the approved Planning Permission (ref: 16/00738/FULL) had not been discharged within the specified time period. On 12 December 2017 a Breach of Condition Notice was served on the landowner requiring compliance with Conditions 1. and 2. of the Decision Notice issued on 21 August 2107. The landowner is required to comply with the two conditions by 13 February 2018.</p> <p>The response received from the landowner in relation to the Planning Contravention Notice indicated that an application for Planning Permission would be submitted for the unauthorised development of the area of land subject to the Enforcement Notice.</p> <p>On 12 December 2017 two part retrospective applications for Planning Permission Ref: 17/01017/FULL - Change of Use of Vacant Land to Form a Chalet / Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in part retrospect); and 17/01016/FULL - Change of Use of Vacant Land for Storage of 12 Vehicles, Erection of Fencing and Formation of Hardstanding (in part retrospect), were received and are being processed.</p>

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
16/00202	Field 440M East of Cross Roads Cottage Balnuith Tealing	13.09.2016	Unauthorised use of the site for the siting of a static caravan	<p>A Temporary Stop Notice was served on the owner / occupier of the site preventing the siting of additional caravans or the undertaking of engineering works at the site. At that time one static caravan was present on site.</p> <p>A Planning Contravention Notice was served on the owner / occupier.</p> <p>It was observed on 20 September 2016 that works have been undertaken and the installation of a septic tank is underway at the site.</p> <p>At present, the septic unit is not connected to the caravan or in service. This was in breach of the terms of the Temporary Stop Notice.</p> <p>The Temporary Stop Notice has now expired and no response has been received to the Planning Contravention Notice.</p> <p>There were two static caravans present on the site but this number has reduced to one.</p>	<p>The owner of the caravans was established but there was uncertainty regarding the ownership of the land.</p> <p>A title search was instructed but did not provide land ownership details.</p> <p>Private searchers were appointed to trace the owner/occupier and ownership was established.</p> <p>A Planning Contravention Notice was served on the owner/occupier of the land.</p> <p>An Enforcement Notice has subsequently been served. The Notice took effect on 31 July 2017 and required the removal of the caravan, rubble and spoil and a septic tank from the site within 3 calendar months. No appeal was made and the Enforcement Notice is effective.</p> <p>A site visit was carried out on 14 September 2017 and it was noted that the caravan had been removed from the site. The owner has until 31 October 2017 to remove the septic tank and rubble and spoil in order to achieve compliance with the Notice and has been written to reminding him of the requirements of the Notice.</p> <p>A site visit was carried out on 30 October 2017 and it was noted the septic tank had not been removed.</p> <p>The landowner has been contacted to establish their intentions regarding the outstanding actions from the Enforcement Notice and to establish timescales for compliance and they have advised that they no longer own the site. As the substantive breach of planning control, namely the siting of the caravan, has been resolved through the removal of the caravan the case will be closed.</p>

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
17/00008	Former Hooks Hotel 3 Bank Street Kirriemuir DD8 4BE		There is demonstrable damage to the Category C Listed building caused by water ingress, defective roof membrane, missing / broken windows and inadequate ventilation.	An Urgent Works Notice has been served on the owner notifying Angus Council's intention to instruct the following works no sooner than 13 February 2017: 1. Insert a temporary rainwater disposal system and the front and rear of the building and repair and test drains. 2. Secure a temporary robust membrane to the roof until the roof is re-slatted. 3. Secure all openings at the building currently open to the elements. 4. Provide ventilation throughout the building to comply with the British Standard.	Contractors have undertaken the required works at the site and costs will be recovered from the owner. On 29 November 2017 an update was received from Scottish Government Planning and Environmental Appeals Division that an appeal against the serving of the Notice for Liability for Expenses (LBE0120-2001) for the site had been lodged on 01 November 2017. The Planning Authority response statement is being prepared and is due to be returned by 20 December 2017. A decision is anticipated in January/February 2018.
17/00026	Field 45m SE of 1 Mount Pleasant Letham Mill St Vigeans Arbroath	30.05.2017	Alterations to ground levels and importation of waste material	Temporary Stop Notice served on 27 April 2017.	A planning application (17/00161/FULL) has been withdrawn due to flood risk issues raised by SEPA and the Local Flood Prevention Authority. The owner was written to and requested to remove the waste materials but has not complied with the request. An Enforcement Notice requiring the removal of the waste materials and the reinstatement of the land to the previous levels was served on the landowners on 29 August requiring the removal of the waste materials within three months from the date of the Notice taking effect, that date being 29 September 2017 unless an appeal is made against it beforehand. The owner of the site has submitted an appeal against the Notice to the Directorate for Planning and Environmental Appeals (DPEA) and the Council has provided a response to the appeal to the DPEA. A Reporter has been appointed by the Scottish Government and proposes to undertake a visit to the site and provide a decision thereafter. A further update will be provided once the Reporter's decision has been issued.

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
16/00252	Fraserfield Farm Woodville Arbroath	12.06.2017	Biomass boiler flue installed without planning permission	A retrospective planning application (16/00998/FULL) has been submitted. A processing agreement was implemented in order to allow the submission of necessary assessments. That processing agreement required that the flue was not operated whilst the planning application was under consideration.	The owner has operated the boiler / flue in advance of the determination of the planning application. A Temporary Stop Notice was served on 8 June 2017. Planning application ref: 16/00998/FULL was approved subject to planning conditions on 20 October 2017. A flue of 9 metres in height was required and this has now been installed. The use of a fan attached to the building was not permitted. Also restrictions were placed on the operating hours of the plant; noise levels from the flue and associated plant and also the fuel to be used. The case will be closed with monitoring of the plant to take place as required to ensure compliance with the planning conditions.
16/00276	Muirloch	08.08.2017	Unauthorised operation of a biomass production facility at the site of a storage shed that is authorised for the storage of biomass.	A retrospective planning application (16/00987/FULL) has been submitted. A processing agreement was implemented in order to allow for the submission of various technical assessments including noise and air quality assessments. Following complaints that the site was still being operated in the interim a Temporary Stop Notice was served on 15 June 2017.	Planning application ref: 16/00987/FULL remains under consideration at this time and formal action has not been taken beyond the Temporary Stop Notice served on 15 June 2017 pending the outcome of the planning application. Further reports regarding the use of an unauthorised weighbridge at the site were received on 19 July 2017 however it was confirmed by the applicant's agent that same day that all unauthorised operations have ceased. A further update will be provided upon determination of planning application ref: 16/00987/FULL.

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
17/00109	5 Bonnyton Road Balmirmer	29.08.2017	Extension under construction is not in accordance with that granted planning permission.	Planning permission 17/00153/FULL was granted for a Weather Porch Extension. The extension being constructed is larger and the dormer window is wider than that approved.	A Temporary Stop Notice was posted at the property on 16 August 2017 requiring unauthorised works to cease. A further planning application for the amended design of weather porch extension ref: 17/00689/FULL was approved on 30 November 2017. The case is now closed.
13/00195	Land at Gagie Filters Kellas	03.10.2017	Unauthorised works have been undertaken to the filter beds which are listed and the site is being used for the storage of various items without planning permission.	A Listed Building Enforcement Notice and an Enforcement Notice were served on the landowner on 30 January 2017 requiring the reinstatement of the filter beds and the removal of the various items from the site. An appeal against each Notice was submitted to the DPEA and on 19 July 2017 the Reporter dismissed each appeal and upheld the terms of the Notices with the date for compliance being three months from that date 19 September 2017. The appeal decisions were the subject of previous reports to Committee, ref 254/17 and 255/17.	On 21 September 2017 a site visit was carried out and it was noted that none of the actions required by the Notices had been carried out. Report 367/17 was submitted to the meeting of 21 November 2017 outlining potential courses of action available. Committee agreed the report and authorised further action as necessary. The owner advised that the required actions would be undertaken and a further site visit is proposed and a verbal update will be provided to Committee prior to the instigation of further action in 2018.

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
16/00277	Wester Campsie Farm Cottage Lintrathen Kirriemuir	03.10.2017	The operation of a wood processing/ storage facility on agricultural land without the benefit of planning permission.	Enforcement Notices were served on the occupier of the property and the landowner on 22 September 2017 requiring the unauthorised activity to cease and the removal of wood and machinery from the site. The Notices take effect on 30 October 2017 unless an appeal is lodged beforehand.	No appeal has been lodged and the Notice is effective as of 30 October 2017. To date it appears that the Notice has been complied with and no further observations have been received regarding the continued use of the site. A further site visit will be undertaken in early 2018 to confirm compliance following which the case would be recommended for closure should it be found that unauthorised activity has ceased.
16/00282	Land between Store and Beattie Brae Brechin	21.11.2017	Formation of a Storage Yard with a vehicular access point at the land, sited a Portable Building onto the land, and deposited large amounts of soil, rubble, building and construction waste materials, landfill and other detritus onto the land without the benefit of planning permission.	An Enforcement Notice was served on the developer on 20 October 2017. The Notice becomes effective on 20 November 2017 and requires the developer to undertake the following steps:- 1. Cease using the land as a storage yard and close off the vehicular access point within three (3) months of the date of this Notice becoming effective. 2. Remove the Portable Building from the land within three (3) months of the date of this Notice becoming effective. 3. Remove the large amounts of soil, rubble, building and construction waste materials, landfill and other detritus deposited onto the land, reinstate the land to a level condition, and seed in grass, within three (3) months of the date of this Notice becoming effective.	No appeal has been lodged and the Notice is effective as of 20 November 2017.

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
17/00035	Thornbank Cottage 30 Redford Road Padanaram	21.11.2017	Observation that there are scrap motor vehicles, trailers, vehicle parts, tyres, timber, metal, bikes, machinery, building materials, rubble, electronic equipment, and other items of scrap or waste material, and overgrown areas of hedging grass and weeds, on the land and it is adversely affecting the residential amenity of the area.	An Amenity Notice was served on the occupier on 07.11.2017. The Notice becomes effective on 10 December 2017 and requires the occupier to undertake the following steps:- 1. Remove from the land all scrap motor vehicles, trailers, vehicle parts, tyres, timber, metal, bikes, machinery, building materials, rubble, electronic equipment, and other items of scrap or waste material. 2. Cut back the overgrown areas of hedging, grass and weeds. Apply weed killer to suppress areas of overgrown weeds. 3. 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.	No appeal has been lodged and the Notice is effective as of 10 December 2017. A site visit will be undertaken prior to the meeting and a verbal update will be given as to whether the notice has been complied with.

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
17/00027	Two areas of Land at Keithock, Brechin, DD9 7QD	04.01.2018	Observation received of a material Change of Use of two areas of agricultural land for the large scale rearing of Game Birds - Pheasants, and the construction of associated pens/buildings. The Observers were enquiring if this change of use of the land requires planning permission.	An Enforcement Notice was served on the land owner and the occupier of the areas of land on 11 December 2017. The Notice becomes effective on 12 January 2018 and requires the land owner / occupier to undertake the following steps:- 1. Cease the use of the two areas of land for the rearing of Game Birds for Sporting Purposes, and for the siting and storage of associated buildings, caravans, structures, and pens, on the date that this notice takes effect. 2. Thereafter clear the two areas of land of all associated buildings, caravans, structures, pens, other related equipment and materials, utilised for the rearing of Game Birds for Sporting Purposes, and return the land to agricultural use by 31 March 2018.	Note: As per recommendation (ii) of the Enforcement Report (Number 407/17) agreed by the Development Standards Committee on 21 November 2017 the compliance period for the Enforcement Notice will be extended until 30 September 2018 , subject to the approval, implementation and ongoing compliance with measures to control odour, noise, pollution and vermin emanating from the site in the interests of the residential amenity and environment of the area. The mitigation measures required are: - 1. An odour and waste management plan, including details of minimum separation distances to neighbouring properties and measures for the management and disposal of waste. 2. A noise management plan, including details of minimum separation distances to neighbouring properties and hours of operation. Note: For measures (1.), and (2.), above the content of the odour etc. and noise management plans would require to be informed by a generic noise and air quality assessment (including night and daytime operation). 3. A pollution management plan, including details of minimum separation distances to the Keithock Burn and measures for the management and disposal of waste; 4. A vermin and pest control plan. No additional information has been received in respect of the foregoing mitigation measures at this time.