

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 07 AUGUST 2018

ENFORCEMENT ACTION – GAGIE FILTERS, KELLAS

REPORT BY SERVICE LEADER – PLANNING & COMMUNITIES

Abstract:

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

1. RECOMMENDATION

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

- (i) instigate direct action to secure removal of the various items of plant, equipment, containers, caravans and other structures and materials, and re-profiling of one of the filter beds at Gagie Filters, Kellas in breach of the terms of the extant Enforcement Notice and Listed Building Enforcement Notice;
- (ii) recover costs associated with the direct action authorised above from the owner or lessee of the land.

2 BACKGROUND

- 2.1 Gagie Filters, Kellas formed part of the aqueduct system from Monikie to Stobsmuir formed in 1845 to provide an adequate water supply for the expanding population of Dundee. Gagie Filters which includes the Gagie Well, 3 filter beds, gate piers and boundary wall are Category B Listed.
- 2.2 In November 2013 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 the listed structures had occurred.
- 2.3 Investigation 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 further, that an unauthorised fence had been attached to the listed filter bed structure and that the filter medium of one of the filter beds had been scraped back in breach of listed building control. In these respects, the observations received were considered to be accurate.
- 2.4 In March 2014 a Planning Contravention Notice was served on the land owner but was subsequently returned as undelivered. A further copy of the Planning Contravention Notice was delivered to an alternative address for the land owner but no response was received.
- 2.5 In August 2016 a further Planning Contravention Notice was served on the land owner by delivering it to the site. The owner subsequently completed and returned the Response Form to the Planning Service.
- 2.6 A Planning Enforcement Notice and a Listed Building Enforcement Notice were duly served in January 2017 requiring respectively the removal of the building materials, plant, equipment and other structures and the removal of an unauthorised fence that was attached to the listed filter bed structure, and the removal of the fence and re-profiling of the filter bed. That Notices were subject of appeal to the Planning and Environmental Appeals Division of the Scottish Government. Both appeals were dismissed and the Notices upheld (Reports 254/17 and 255/17 refer). The Notices required the relevant actions to be undertaken by 19 September 2017.

- 2.7 A site visit was undertaken on 21 September 2017 and it was noted none of the remedial actions specified in the Notices had been carried out and Committee was advised accordingly at its meeting on 21 November 2017 (Report 367/17 refers). At that time Committee authorised the Planning Service, in conjunction with Legal and Democratic Services, to instigate further enforcement action (which might include but not be limited to direct action, service of a Fixed Penalty Notice or prosecution) to secure the cessation of the use of the land for the storage of building materials, plant, machinery and equipment, caravans and other structures, removal of the unauthorised fence and re-profiling of the filter bed.
- 2.8 The site owner was advised on 8 January 2018 that further action would be taken if the actions required by the Notices were not completed by the 31 January 2018. The actions were not completed by that date and a Fixed Penalty Notice was served on the site owner. No payment was received. No communication has been received from the site owner to explain the reason for the continued noncompliance with the notices.
- 2.9 The site was visited on 27 July 2018 and the outstanding actions from both the Planning Enforcement Notice and the Listed Building Enforcement Notice had not been undertaken at that time.

3. DISCUSSION

- 3.1 Committee has previously authorised enforcement action to secure removal of the building materials, plant, machinery and equipment, caravans and other structures, removal of the unauthorised fence and re-profiling of the filter bed.
- 3.2 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. The continued use of the land at Gagie Filters for the storage of various items, the erection of the fence and works to the filter bed are in clear breach of the terms of the Planning Enforcement Notice and Listed Building Enforcement Notice. Both Notices have been upheld following appeals to the Scottish Government. 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, and the unauthorised works to the listed filter bed are a wilful and deliberate breach of the Notices.
- 3.3 The use of the land at Gagie Filters for the siting of plant, machinery and other items should cease, the fence should be removed from the filter bed and re-profiling of the filter bed should be undertaken. That decision has been upheld following an appeal of the Enforcement Notice and Listed Building Enforcement Notice to the Scottish Government. The land owner has failed to ensure compliance with the terms of the Enforcement Notice and the Listed Building Enforcement Notice and is now in wilful breach of the Notices.
- 3.4 It is considered appropriate and necessary to instigate direct enforcement action to secure the removal of the items specified in the Notices and the re-profiling 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. The Council will seek to recover costs associated with any direct action from the land owner.

4. RISKS

- 4.1 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.
- 4.2 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.

5. 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.

6. 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.

7. EQUALITIES IMPLICATIONS

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

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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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