

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 13 NOVEMBER 2018

ENFORCEMENT ACTION – LAND 125M WEST OF NORTH MAINS CROFT, LOGIE, KIRRIEMUIR

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 for the siting of caravans on land due west of North Mains Croft, Logie, Kirriemuir in direct breach of the terms of an extant Enforcement Notice (Planning Enforcement Case Reference 16/00165/UNDV).

1. RECOMMENDATION

It is recommended that Committee: -

- (i) consider available enforcement options;
- (ii) confirm that direct action can be instigated to secure removal of the caravans that are located on-site in breach of the terms of the extant Enforcement Notice and that costs can be recovered from the owner or lessee of the land in respect of any direct action taken.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

- Safe, secure, vibrant and sustainable communities
- An enhanced, protected and enjoyed natural and built environment

3 BACKGROUND

- 3.1 On 20 June 2016 observation was received that land to the west of North Mains Croft, Logie, Kirriemuir was being used for the siting of caravans and that operational development in connection with the formation of a caravan site had taken place. The matter was investigated and the observation was found to be accurate. Planning enforcement case ref: 16/00165/UNDV in respect of the unauthorised development was opened at that point.
- 3.2 A Temporary Stop Notice which prohibited the carrying out of further works on the site was served on 08 July 2016. The TSN was effective until 08 August 2016. In the interim period, Planning Contravention Notices (PCN) were served on interested parties including the contractor who was concerned with the importation of hardcore to the site in order to gather information in respect of who any subsequent enforcement action could be taken against. Following the receipt of the final PCN response on 16 August 2016, an Enforcement Notice was served on the landowner on 19 August 2016.
- 3.3 The landowner subsequently submitted an appeal against the Enforcement Notice to the Scottish Government Planning and Environmental Appeals Division (DPEA) on 12 September 2016. A retrospective application for planning permission (ref: 16/00738/FULL) was simultaneously submitted for the siting of a chalet (static caravan) and two touring caravans and the erection of an amenity block and ancillary works on an area of land measuring 1350 sq m at the southernmost part of the site that was subject of the Enforcement Notice.
- 3.4 The appeal that was submitted to the DPEA (DPEA ref: ENA-120-2007) was upheld on 23 November 2016. Although the appeal was upheld the Enforcement Notice was not quashed.

Instead, the Reporter extended the timescales for compliance and supplanted the requirement to remove rubble, hardcore and an earthen bund with the requirement to remove rubble and hardcore from the site and level the earthen bund, the result was that an Enforcement Notice remained effective on the site that required the removal of caravans from the site on or before 03 August 2017 and the completion of the remaining steps on or before 03 September 2017.

- 3.5 Planning application ref: 16/00738/FULL was subsequently refused under delegated powers on 06 January 2017. An appeal for review of the decision by the Development Management Review Committee (DMRC) was submitted on 13 March 2017. The application was considered by the DMRC at the meetings of 20 June 2017, 03 July 2017 (site visit) and 08 August 2017. The DMRC upheld the review and granted planning permission subject to conditions on 21 August 2017.
- 3.6 In light of the decision by the DMRC on 21 August 2017, the Enforcement Notice was withdrawn as it covered the area of the site that was now covered by planning permission ref: 16/00738/FULL. A new Enforcement Notice covering the balance of the site not covered by planning permission ref: 16/00738/FULL was subsequently served on the landowner on 25 August 2017. The amended notice reflected the terms imposed by the Reporter in reaching a decision on Enforcement Notice Appeal ref: ENA-120-2007. The notice required the removal of caravans and associated reinstatement works to be undertaken on or before 26 December 2017. No appeal was submitted against the Enforcement Notice and the landowner indicated their intention to comply with the notice at that stage.
- 3.7 On 12 December 2017, a Breach of Condition Notice was served on the landowner in relation to the non-compliance with Conditions 1 and 2 of the planning permission issued by the DMRC which required them to achieve a connection to the public sewer for foul drainage and to submit further details of surface water drainage arrangements for further written approval all within 3 months of the planning permission. The BCN required submission of the requisite details by 13 February 2018. At this time Condition 1 remains undischarged although an application for connection to the public sewer has now been submitted to Scottish Water.
- 3.8 On 12 December 2017 two planning applications were submitted one of which sought the change of use of a 1196 sq m site for the storage of 12 vehicles, the erection of fencing and the formation of hardstanding (ref: 17/01016/FULL). This application related to land that was located roughly centrally within the area that is subject of the Enforcement Notice. The second planning application (ref: 17/01017/FULL) was for change of use of land to form caravan pitches for two caravans (one static and one touring caravan). The formation of hardstanding and the erection of fences and an amenity block. The 1205 sq m site that was subject of the application is the land directly adjacent to the site approved under the provisions of planning permission ref: 16/00738/FULL. This land is also part of the site that is subject of the Enforcement Notice.
- 3.9 On 04 April 2018 planning application ref: 17/01016/FULL was withdrawn. Planning application ref 17/01017/FULL was refused on 13 April 2018 and an appeal for review of the decision was subsequently submitted to the DMRC. At the meeting of 11 September 2018 the DMRC refused the application for planning permission and a decision notice to that effect was issued 18 September 2018. Despite this caravans have been moved onto the site and are being occupied as a place of residence.
- 3.10 The site owner was advised through their agent on 24 September 2018 that the siting of caravans at the site was unauthorised and that an Enforcement Notice remains in effect on the site that requires the removal of caravans from the land and the removal of other ancillary works and the reinstatement of the site to a greenfield condition.
- 3.11 In response the land owner's agent has indicated that the effect of the refusal of planning application ref: 17/01017/FULL is to make the occupants of the caravans currently unlawfully occupying the site homeless as there is no suitable alternative site available.

4. DISCUSSION

- 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. The continued use of the land at Logie, Kirriemuir as a caravan site with associated works and the failure to reinstate other areas of the site to a

greenfield condition as required by the notice is in clear breach of the terms of the Planning Enforcement Notice that is effective on the site. The Notice that is currently effective reflects the terms of a previous notice that was amended by a Scottish Government Reporter following an appeal. The land owner is aware of the requirements of the Notice and although an attempt has been made to secure a planning permission for the unauthorised development, the use has been instigated without the necessary planning permission despite that fact that the landowner could be in no doubt that planning permission was required. The continued use of the land as a caravan site and the failure of the land owner to reinstate the balance of the site to a greenfield condition as required by the Enforcement Notice is a wilful and deliberate breach of the Notice and planning control generally.

- 4.2 It is an offence for owners of land to be in breach of an enforcement notice. It is also an offence for anyone other than the owner who has control or who has an interest in the land to carry out an activity which is required to cease, or cause or permit such an activity to be carried on. All enforcement offences are subject to a six month time limit for commencing summary court proceedings. This time period runs from the occurrence of the contravention. In the case of a continuing contravention of a notice that requires an activity to cease, the time period is likely to run from the last date of the contravention. In that respect, the option to pursue a conviction against the site owner and occupants potentially remains available as a continuing contravention is occurring at the site. Previous attempts to bring such a prosecution in similar circumstances have been unsuccessful as a result of the decision not to pursue the case by the Procurator Fiscal despite earlier indications that proceedings would commence (Enforcement Case Ref; 12/00155/UNDV: Site East of The Knowe, Kinnaber Road, Hillside) and considerable officer time being expended on the preparation of the Council's case. In this respect it is considered that the pursuit of a conviction at this time would not be expedient and would be likely to bring about a significant delay in achieving compliance with the Enforcement Notice. This would not prejudice the right of the Council to reconsider this issue in the future if all other options have been exhausted and have proven unsuccessful however prosecution would not necessarily result in compliance with the enforcement notice in any case.
- 4.3 Where a person does not fully comply with an enforcement notice, planning authorities also have powers to enter the land and carry out any unfulfilled requirements themselves. The powers enable planning authorities to carry out any steps required by an enforcement notice to bring about the discontinuance of the use of land or to remove or alleviate any injury that has been caused by the development.
- 4.4 In deciding whether to authorise such action, it is appropriate for Committee to consider the relevant planning context in giving consideration to the enforcement options that remain available in respect of the breach of planning control.
- 4.5 The Angus Local Development Plan (ALDP) was adopted by Council on 23 September 2016. And it provides a policy that deals specifically with proposals for new sites for Gypsies and Travellers and Travelling Show People. It also contains a policy that deals with proposals for residential caravans and mobile homes. Those policies state: -

Policy TC6 Gypsies and Travellers and Travelling Showpeople

Gypsies and Travellers and Travelling Showpeople will be encouraged to stay at authorised sites (publicly or privately owned and managed). Existing authorised Gypsies and Travellers and Travelling Showpeople sites will be protected and there will be a presumption against their redevelopment or conversion to other uses unless it can be demonstrated to the satisfaction of Angus Council that there is a surplus of accommodation to meet identified needs.

Proposals for new or extended permanent sites and temporary "short stay" sites for Gypsies and Travellers will only be supported where:

- the site will contribute to satisfying a local need identified in the Local Housing Strategy and is consistent with Angus Council's strategy for meeting the accommodation needs of these client groups;*
- the development is designed and located to minimise adverse effects on the landscape, established amenity, character and built or natural heritage interests of the surrounding area;*
- the proposed site will provide a good residential amenity for residents and has adequate access to community, education and health services and facilities; and*

- *the proposed development would not set a precedent or open up other areas for similar development.*

Policy TC7 Residential Caravans and Mobile Homes

Proposals to site a residential caravan or mobile home will only be acceptable where it is required to provide temporary accommodation to allow a permanent dwelling to be renovated or built in accordance with the housing policies of the Angus Local Development Plan. Planning permission will be granted for a maximum of 2 years. Residential caravans or mobile homes must be removed when the need for them ceases or the planning permission expires, whichever is sooner.

Proposals for the development of sites for individual, or groups of residential caravans and/or mobile homes for permanent occupation will not be supported.

- 4.6 It is necessary for Committee to have regard to the terms of the ALDP in considering the expediency of pursuing enforcement action. In particular it is necessary for Committee to consider whether planning permission would now be granted for the use of the land as a Gypsy or Traveller site or as an acceptable site for residential caravans and/or mobile homes.
- 4.7 Policy TC6 clearly indicates that Gypsies and Travellers will be encouraged to stay at authorised sites (publicly or privately owned and managed). In Angus there are existing sites at St Christopher's, Montrose (18 pitches) and Balmuir Wood by Tealing (19 pitches). At this point in time it is understood that the Montrose site is generally fully occupied but there are pitches available at the Tealing site which has an average occupancy of around 65%.
- 4.8 Angus Council is entitled to nominate travelling people and their families for allocation of pitches at the Tealing site, provided vacant pitches are available. There are vacant pitches available at the Tealing site and on this basis and in accordance with the above policy, the applicant would be directed to this existing site. The applicants agent has made reference to the Reporter's decision in respect of the above referenced appeal against the original Enforcement Notice that was served on the site. The agent has stated that the Reporter in respect of that appeal stated that the site at Tealing is substandard and is not fit for permanent use. This is not strictly the case. The Reporter in respect of that appeal stated:
- 'the Balmuir Wood Gypsy/Traveller site which, with its concrete pitches, bathroom blocks and location next to the busy A90, gave an impression more of a transit site'*
- At no point did the Reporter state that site was substandard.
- 4.9 The policy goes on to indicate that Proposals for new or extended permanent sites and temporary "short stay" sites for Gypsies and Travellers will only be supported where amongst other things, the site will contribute to satisfying a local need identified in the Local Housing Strategy and is consistent with Angus Council's strategy for meeting the accommodation needs of these client groups.
- 4.10 Angus Council's current Local Housing Strategy (2017-2022) (LHS) as approved in January 2017 indicates that taking account of accommodation provision at the time of the LHS, a small shortfall in permanent provision may emerge in Angus over the LHS period attributed to demand in the north east and to a lesser extent, the west of Angus. The LHS states that the projected shortfall is not considered significant enough to justify provision of additional sites. The LHS does however go on to state that private sites could contribute to meeting the projected shortfall in projected demand for permanent accommodation and that all applications will be considered in the context of Angus LDP Policy TC6.
- 4.11 As indicated above the Council's policy seeks to direct Gypsies and Travellers to existing sites. In this case there is currently capacity at the Tealing site. The current Local Housing Strategy does not identify a local need for small private sites in the West Angus area and does not promote the formation of small sites for private use unless applications for such sites have been duly considered in terms of Angus LDP Policy TC6. The use of land at the site as a residential caravan has already been considered in that context and an application for planning permission has been refused and a subsequent appeal for a review of the decision by the DMRC has been dismissed. Accordingly, the current occupation of the site is contrary to Policies TC6 and TC7. However, it is relevant to have regard to other material considerations.

- 4.12 It is relevant to note that in the period since the LHS was finalised, a caravan site licence has been granted (11th of April 2017) for 16 pitches at the Thrums site in Maryton, located 0.75 miles from the site. The supporting statement submitted in support of planning application ref: 17/01017/FULL indicates that the current occupiers of the site have previously resided there. The Maryton site was not included in the LHS but offers potential to supplement supply and contribute towards addressing any need.
- 4.13 In December 2016 TAYplan Partners (including Angus Council) published a report on the 'Accommodation Needs of Gypsy/Travellers and Travelling Showpeople in the TAYplan area'. That report indicates that across the TAYplan area there is a projected surplus of Gypsy and Traveller accommodation over the next five years. The report identifies that there is projected to be a small shortfall in Angus, particularly attributed to demand in the North area and to a smaller extent the West but this does not take account of capacity at the Tealing site (as it is operated by Dundee City Council). The Maryton site was also not taken into consideration. The findings of the report do not indicate a significant requirement for additional provision in Angus.
- 4.14 The personal circumstances of an applicant are not normally a planning consideration. However, personal circumstances may be taken into account in exceptional circumstances where refusal of planning permission would cause an applicant great hardship. The Council also must comply with its human rights and equality duties. In this case the caravans are occupied by the land owner's daughter and son in law. The occupiers belong to a recognised ethnic minority group. Any decision to refuse planning permission for the use of land for the siting of caravans, and any subsequent decision to pursue enforcement action, particularly direct action, would render that family homeless. The site owner's agent has suggested an option could be to allow the daughter and son in law to occupy the site authorised under the provisions of planning permission ref: 16/00738/FULL. No application to vary the terms of that planning permission has been received.
- 4.15 There can be no doubt that the decision not to grant planning permission for the continued use of the land as a caravan site (and to pursue enforcement action) has potentially significant impacts for the family, not least through the loss of their accommodation. However, the occupants of the site have had a considerable period of time to make alternative arrangements since their planning application was refused. In fact the occupants moved onto the site in direct contravention of an effective Enforcement Notice that prevented them from doing so in full knowledge that planning permission would be required before they could lawfully occupy the site as borne out by their attempt to obtain planning permission retrospectively. Their continuing occupation of the site is a continuing breach of planning control and runs directly contrary to the terms of the Enforcement Notice and the occupants have continued to enjoy the beneficial use of the site in the interim period in clear contravention of the planning requirements and in direct breach of the Enforcement Notice.
- 4.16 An appeal in relation to the initial Enforcement Notice served by the Council was considered by a Reporter appointed by Scottish Ministers and although the terms of that Notice were altered, the requirement to cease the use of the land as a caravan site was not altered. A subsequent amended Notice reflected the terms laid down by the Reporter. There is alternative accommodation available in the wider area as there are pitches available at the authorised Tealing site and potentially at Maryton.
- 4.17 As noted above the use of the land as a caravan site has been determined as being contrary to policies of the Angus Local Development Plan and an appeal against the decision to refuse a retrospective planning application has been dismissed by the DMRC.
- 4.18 In these circumstances and where there is existing capacity available at an established, authorised site in Angus, a further application for the continued use of the site would not be supported by officers. It is anticipated that an application would not be supported by the Development Management Review Committee. However, if Committee considers that there is some potential for an application to be supported by the Development Management Review Committee it would be appropriate to delay further enforcement action and invite a further planning application.
- 4.19 It remains the case that an Enforcement Notice has been served that requires the cessation of the use of the land for the siting of caravans amongst other things. The occupants of the site are in breach of the terms of that Notice and it is appropriate to consider the options available to the Council.

- 4.20 Planning enforcement action is discretionary and any action taken should always be commensurate with the breach of planning control to which it relates. It is open to a planning authority to tolerate a breach and take no further action. However, previous legal decisions have recognised that there is a clear public interest in the need to maintain public respect or confidence in the planning system (and the proper enforcement of the criminal law) to avoid it being brought into disrepute, effectively suspended or dispensed with in favour of particular persons or groups. 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.
- 4.21 The continued use of the land at Logie, Kirriemuir for the siting of caravans is in clear breach of the terms of the Enforcement Notice, the terms of which in relation to the occupation of the site for such purposes were not altered on appeal to Scottish Ministers. The occupants of the site are aware of the requirements of the Enforcement Notice and the continued use of the land for the siting of caravans is a wilful and deliberate breach of the Notice. The continued siting of caravans on the site is a matter of concern for the local community.
- 4.22 As discussed above, Section 136 of the Town and Country Planning (Scotland) Act 1997 (as amended) makes it an offence for owners of land to be in breach of an enforcement notice. As highlighted above, any case, any criminal proceedings would not necessarily result in compliance with the enforcement notice.
- 4.23 As also discussed above, where a person does not fully comply with an enforcement notice, planning authorities have powers under Section 135 of the Act to enter the land and carry out any unfulfilled requirements of the notice themselves. The Act also makes provision for the authority to recover from the person who is then the owner or lessee of the land any expenses reasonably incurred in undertaking the works necessary to secure compliance with the notice.
- 4.24 In this case direct action would involve removing the caravans fences and other structures from the site and the removal of rubble and hardcore. The requirement to flatten an earthen bund has previously been complied with. The caravans would thereafter be placed in storage for the requisite period of time and thereafter sold as appropriate and the Council's expenses would be recovered from any proceeds. Members should be aware that the caravans are occupied and therefore, as discussed above, this action would render the occupants homeless. If direct action is confirmed, officers from the Housing Service will make contact with the occupants in order to arrange a housing options appraisal. As indicated elsewhere in this report there are pitches available on the site at Tealing and the occupants would be afforded opportunity to voluntarily vacate the land before any direct action was instigated. This would give them the opportunity to relocate the caravans to an authorised site.
- 4.25 There are other options available to the Committee in respect of breach of planning control to which the enforcement notice relates. Criminal proceedings have been considered above. The Committee could determine to tolerate the breach of planning control. Committee could also determine to interdict the occupants from failing to comply with the terms of the enforcement notice. Even if an interdict is sought and obtained, it will not necessarily secure compliance with the enforcement notice. Failure to comply with an interdict can be a contempt of court punishable by a fine or imprisonment. Lastly, the Committee could determine to make a compulsory purchase order to acquire the land for a planning purpose. If a compulsory purchase order is made and confirmed it would be open to the occupiers to refuse to leave the land requiring them to be removed against their will.
- 4.26 If Committee is minded to pursue direct action, such action will be coordinated with colleagues in Housing and Legal Services so as to minimise, so far as possible, the impact of the action on the occupants.

5. CONSULTATION

Legal & Democratic Services, have been consulted in the preparation of this report.

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 are

unlikely to be significant given the nature of the works required and this would be progressed in accordance with Financial Regulations.

7. 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, one which has failed to 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 caravans 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 it from him.

EQUALITIES IMPLICATIONS

The issues dealt with in this Report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment has been completed.

**KATE COWEY
SERVICE LEADER – PLANNING & COMMUNITIES**

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: KATE COWEY
EMAIL DETAILS: planning@angus.gov.uk

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