

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 5 FEBRUARY 2019

ENFORCEMENT UPDATE

REPORT BY SERVICE LEADER – PLANNING & COMMUNITIES

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 30 November 2018 to 29 January 2019, 26 new enforcement cases were recorded and 34 cases have been closed. There are currently 209 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.

**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.

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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>Several fire damaged buildings at the site have been demolished for safety reasons. The ground floor openings to the listed building, exposed by the demolition of 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 and they issued a notification of intention to approve the application subject to conclusion of a Planning Obligation (Report No 395/15 refers). As a result of a failure by the developer to enter into a Planning Obligation within timescales prescribed by the Scottish Government, Ministers have now issued planning permission in principle subject to conditions including a condition requiring a Planning Obligation to be entered into prior to the commencement of development. Notice was received that Ministers had issued planning permission on 25 April 2018.</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> <p>The case remains open at this time until progress is made in respect of the redevelopment of the site.</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) that 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>The site operator has indicated that he may be in a position to demonstrate that the activities at the site are lawful on the basis it has operated in a particular manner for a continuous period of time. Officers have provided information in relation to the planning history of the site and have suggested that an application for a certificate of lawfulness of existing use should be submitted for those areas of the site where it is considered that lawfulness can be demonstrated.</p> <p>The operator's legal representatives have indicated that an application for a Certificate of Lawful Use is currently being prepared and will be submitted in the near future.</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).	Committee authorised the use of direct action to bring the site into compliance with the outstanding actions from the Enforcement Notice that is effective on the site at the meeting of 13 November 2018. The recovery of any expenses incurred from the site owner and/or other interested parties was also authorised. A further planning application has now been submitted and this identifies that amongst other things, the personal circumstances of the occupant have changed. That application will be determined in due course but preparation for direct action will continue meantime.

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. An appeal against the serving of the Notice for Liability for Expenses (LBE0120-2001) for the site was lodged on 01 November 2017. A report and recommendations from a DPEA Reporter were submitted to Scottish Ministers for consideration. A report and recommendations from a DPEA Reporter were submitted to Scottish Ministers for consideration. On 1 August 2018 the Scottish Ministers agreed with the Reporters conclusions and recommendation that the full amount claimed by Angus Council is recoverable. A letter has been sent to the site owner's solicitor requesting payment but no response had been received at the time of writing. An appropriate notice has been registered with the Land Registry. This will be triggered in the event that the site owner attempts to sell the property without paying the costs. This item will remain on the update until costs have been recovered.

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
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	<p>Temporary Stop Notice served on 27 April 2017.</p> <p>An Enforcement Notice was served requiring the removal of the waste materials and the reinstatement of the land to the previous levels. The Notice took effect on 29 September 2019 and had a three month compliance period. The notice required the removal of imported waste materials, the reinstatement of original ground levels and the reinstatement of the land to a greenfield condition.</p>	<p>An Enforcement Notice was served and an appeal against that Notice was dismissed and the developer was given 3 months from the date of the Reporter's decision to comply with the Notice. Planning application 17/00860/FULL for the levelling of land was refused and a subsequent review was dismissed by the DMRC.</p> <p>A site survey was undertaken in order to verify site levels. The survey indicated that levels within the site remain approximately 0.5m higher than the pre-development site level indicated in information submitted by the applicant in support of planning application ref: 17/00860/FULL.</p>
					<p>Authorisation to commence with direct action to bring the site into compliance with the Enforcement Notice that is effective against the site was sought at the meeting of 13 November 2018. Committee declined to authorise the use of direct action. The Land Owner's Agent was contacted and it was requested that he provided up-to date information on the nature and extent of flood risk that he had indicated was SEPA approved at the Development Standards Committee meeting of 13 December 2018 in order that his claims regarding the lack of negative impact of the works on flooding and drainage in the area could be verified</p>

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					<p>No information has been provided and no response has been received to this request. SEPA have been contacted and they indicate that they are unaware of any updated flood risk assessment and that their position has not changed in respect of recommended maximum site levels.</p> <p>Notwithstanding all of this, the decision of Committee on 13 November 2018 leaves limited enforcement options available. The case will be closed however the Enforcement Notice will remain effective against the site.</p>
16/00276	Storage Shed Muirloch Liff	08.08.2017	<p>Unauthorised operation of a biomass production facility at the site of a storage shed that is authorised for the storage of biomass.</p> <p>Subsequent complaint received on 23 July 2018 alleging chipping operations have taken place outside of the approved hours.</p>	<p>Planning application ref: 16/00987/FULL was approved by the Development Standards Committee on 24 April 2018 subject to conditions.</p>	<p>The applicant submitted information to discharge conditions relating to the management of noise, artificial light and vehicles crossing the national grid pipeline.</p> <p>A revised Noise Management Plan (NMP) was submitted on 19 October 2018 and was subject of consultation with Environmental Health in order to determine its acceptability. The applicant's consultant was written to on 02 November regarding minor amendments that were required to the NMP following that consultation. The scheme to mitigate artificial light is acceptable. Confirmation has been sought from the applicant's consultant that the agreed scheme of mitigation has been implemented.</p>

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
					<p>The information regarding the pipeline crossing was sent to National Grid who has indicated that the proposal is acceptable.</p> <p>The temporary fencing has been moved in order to improve public access over the track and details of the proposed permanent fencing have been provided and are considered to be acceptable. An updated NMP has been submitted. The developer indicates that materials for the formation of the acoustic fence were delivered during the week commencing 14 January 2019 and that the fence is due to be completed before the end of March 2019. It is further indicated that a contractor has been nominated to undertake pipeline crossing works and that he is in the process of arranging National Grid supervision for the work to form the pipeline crossing.</p>
13/00195	Land at Gagie Filters Kellas	03.10.2017	<p>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.</p>	<p>Listed Building and Planning Enforcement Notices were served on 30 January 2017 requiring the reinstatement of the filter beds and the removal of the various items from the site.</p> <p>An appeal against each Notice was dismissed by the DPEA 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.</p>	<p>An update was provided to Committee on 07 August 2018 by means of a separate report (Report No 226/18) and Committee approved the use of direct action as necessary in order to bring the site into compliance with the terms of the Enforcement Notice.</p> <p>The owner has now undertaken works to level the sand bund over Filter Bed 3 and has been progressively removing unauthorised items from the site.</p>

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				<p>The owner did not undertake the required works within the specified timescales. A fixed penalty notice was issued but no payment was made.</p>	<p>Direct action will not be pursued whilst there is evidence of satisfactory progress. A monitoring site visit undertaken on 08 November 2018 confirmed that satisfactory progress continues to be made. The site owner indicated on 28 January 2019 that he is in the process of making a planning application to attempt to regularise the presence of the remaining sheds on the site</p>
18/00016	Field 440M East of Cross Roads Cottage Balnuith Tealing	13.02.2018	Observation received regarding the alteration to ground levels and the laying of crushed aggregates at the site	<p>A Temporary Stop Notice was posted at the site on 29 January 2018 requiring the cessation of the importation of crushed aggregates and alteration of ground levels within the site. The Notice expired on 28 February 2018.</p> <p>An Enforcement Notice served under enforcement case ref: 16/00202/UNDV remains effective on the land. The notice prevents the storage of caravans at the site.</p>	<p>An attempt was made to serve an Enforcement Notice by sending it to the site owner's last known address but the Notice was returned unopened.</p> <p>Planning application ref. 18/00626/FULL for Change of Use of Land to Form Two Pitch Caravan Park (One Principal Chalet, Two Tourers and an Amenity Block on Each Pitch) to include Formation of Access Road, Hardstanding and Earth Bunds was submitted in an attempt to regularise the situation but the application has been withdrawn. The applicant's agent indicated on 29 January 2019 that a new planning application will be submitted following the preparation of technical reports relating to drainage and traffic impact.</p>

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
18/00025	Field North of 10 Hillhead Road Monikie	06.03.2018	Observation received regarding the siting of plant and machinery at the site.	<p>The site was the subject of a previous enforcement case ref 16/00286/UNDV where a large quantity of rubble had been spread over the site and the site was being used as a storage area for plant and machinery. An Enforcement Notice was served requiring the removal of the rubble, restoration of the land and removal of the plant and machinery. That case was closed when the notice was substantively complied with.</p>	<p>Plant and machinery had been brought back on to the land and was being stored on an area of hardstanding. A further Enforcement Notice was served on 16 February 2018 requiring the removal of the hardstanding and plant and machinery within 1 month of the Notice becoming effective. The Notice became effective on 19 March 2018. A further site visit was undertaken on 10 April 2018 and it was noted that the plant and machinery had been removed from the site but the hardstanding remained. A Fixed Penalty Notice was served but the time period for payment has lapsed and it has not been paid. The Planning Service met with the owner who gave an undertaking that he would remove the hardstanding from the site and reinstate the land to a greenfield condition in order to bring the site into compliance with the enforcement notice.</p> <p>The site owner has been written to several times, the latest of which was 19 January 2019 in order to remind him of the undertaking that he has given and further requesting that he provides a definitive timescales for the completion of necessary remedial works. No response has been received.</p> <p>The Planning Service now intends to investigate options with a view to undertaking the requisite works and recovering the costs from the site owner. A further update will be provided to Committee outlining the implications of such action once the details have been established.</p>

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
17/00099	Plot Five and The Pond Over Ascreavie Kingoldrum	24.04.2018	Observation received regarding the alterations to ground levels and the area of land at the Pond being infilled, and that the house at Plot Five was not being built in accordance with the approved planning permission reference: 08/01539/FUL.	<p>Two Enforcement Notices were served on the landowners and developers on 20 March 2018. The Notices became effective on 21 April 2018 and required the land owners and developers to undertake the following steps:-</p> <p>Plot Five:</p> <ol style="list-style-type: none"> 1. Remove the 1.8 – 2.0 metre high wooden close boarded fence that has been erected to the west of the house approved under the terms of planning permission reference 08/01539/FUL, within one (1) month of the date of this Notice becoming effective. 2. Provide the landscaping and form the curtilage of the house approved under the terms of planning permission reference 08/01539/FUL in accordance with the approved site plan/location plan by A B Roger & Young dated Dec 2008, within six (6) months of the date of this Notice becoming effective. 	<p>Appeals against both Notices were submitted to the DPEA by one of the interested parties. The appeals were lodged with the DPEA on 11 April 2018.</p> <p>On 24 September 2018 the Reporter issued their decision on the Enforcement Notice for Plot Five. The Reporter upheld the notice subject to minor variation which included what actions were required deleting the wording “Provide the landscaping and” from paragraph 2.</p> <p>On 04 October 2018 the Reporter issued their decision on the Enforcement Notice for the Pond. The Reporter upheld the Notice subject to minor variation changing the action required to: Remove the recently deposited soil, rubble, building and construction materials, landfill and other detritus deposited onto the area of land at The Pond, and reinstate the area of land to its grassed condition prior to the recent deposition, within two (2) months of the date of this Notice becoming effective.</p>

Reference Number	Address	Date of Development Standards Committee	Details of Breach/ Complaint	Summary of Action	Future Action/Update
				<p>The Pond: Remove the soil, rubble, building and construction materials, landfill and other detritus deposited onto the area of land at The Pond, and reinstate the area of land to its former condition, within one (1) month of the date of this Notice becoming effective</p>	<p>Interested parties have been contacted with regard to the timescales set out by the Reporter for compliance with the notices. The situation will continue to be monitored to ensure that compliance is achieved.</p> <p>Compliance has been achieved with actions required to be undertaken to date as follows:</p> <p>Plot Five</p> <ol style="list-style-type: none"> 1. Has been complied with. 2. To achieve compliance with the Notice, the landscaping has to be provided by 24 March 2019. <p>The Pond Has been complied with.</p> <p>Once all of the requisite actions are complied with, the case will be closed.</p>
18/00072	Former NOSWA Sewage Pumping Station Yard, Craig O'Loch Road, Forfar	07.08.2018	Importation of soil, rubble, hard core, building materials and other detritus etc., compaction of these materials and altering of ground levels at a vacant yard without the benefit of planning permission.	<p>A Temporary Stop Notice (TSN) was served on 15 May 2018 requiring that the importation of materials into the site cease with immediate effect.</p> <p>An Enforcement Notice was served by Sherriff Officers. The notice took effect on 14 December 2018 and required that all non-inert material be removed from the site and that all remaining inert material be capped with a membrane and topsoil by 14 January 2019.</p>	The importation of materials and the alteration of ground levels continued at the site in breach of the TSN. Previous recorded correspondence to the land owner was been returned undelivered but the address of who is understood to be the current land owner has been identified. An Enforcement Notice was served by Sherriff Officers. The notice took effect on 14 December 2018 and the timescale for compliance expired on 14 January 2019.

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					The notice required that all non-inert materials be removed from the site and that all remaining inert material be capped with a membrane and topsoil. The Planning Service is currently investigating options with a view to undertaking the requisite works and recovering the costs from the site owner. A further update will be provided to Committee outlining the implications of such action once the details have been established.
18/00078	Site at Carlogie, Carnoustie	13.11.2018	Agricultural land is being used to site storage containers without planning permission.	An Enforcement Notice was served on interested parties on 15 October 2018. The notice requires the removal of the containers and associated hardstanding and the reinstatement of the land to a greenfield condition and the ceasing of the use of the land as a storage facility.	The Enforcement Notice took effect on 14 November 2018 and requires the removal of the containers and the associated hardstanding and the restoration of the site by 14 February 2019. The site owner has indicated that he is making arrangements for the removal of the containers. A monitoring site visit will be undertaken following the expiry of the compliance period and an update will be provided to Committee.
18/00114	3A South Kinloch Street, Carnoustie	13.11.2018	Extension under construction is not being built in accordance with that granted planning permission Ref 16/00678/FULL. No alternative planning permission has been sought or granted and consequently the development does not benefit from planning permission.	An Enforcement Notice was served on the property owners on 30 October 2018. The notice requires that either any unauthorised development that does not accord with the provisions of planning permission ref: 16/00678/FULL is removed and any works to be retained is reconfigured to bring them into compliance with the planning permission; or that all unauthorised works are removed in their entirety and the dwelling is reinstated to its pre-development condition.	The Enforcement Notice took effect on 30 November 2018. There is a six month time period for compliance. The Developer's Agent has been in contact with the Planning Service and has agreed an acceptable alternative proposal that will be subject of a new planning application. The applicant's agent indicated on 21 January 2019 that he has been instructed to progress with the preparation and submission of a new planning application.