

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 13 NOVEMBER 2018

ENFORCEMENT ACTION – MOUNT PLEASANT, LETHAM MILL, ST VIGEANS

REPORT BY SERVICE MANAGER - PLANNING & COMMUNITIES

Abstract:

This report updates Committee on the circumstances relative to the enforcement action in respect of the unauthorised scraping of the surface of the site, deposition of bricks, rubble and other materials and raising of ground levels on land at Mount Pleasant, Letham Mill, St Vigeans. The report seeks authorisation to pursue Direct Action to secure compliance with the terms of the enforcement notice.

1. RECOMMENDATION

It is recommended that Committee: -

- (i) authorise the Planning Service to pursue Direct Action to secure compliance with the terms of the Enforcement Notice, if compliance is not undertaken voluntarily within a period of 2-months from date of approval of this report;
- (ii) authorise the Planning Service to recover costs associated with any Direct Action from the land owner.

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. INTRODUCTION

3.1 Observations were received by the Planning Service in February 2017 regarding the unauthorised use of land for the deposition of material and increase in ground levels.

3.2 Investigation was undertaken and it was established that a breach of planning control had occurred. At that time the council advised that works should stop but further observation of ongoing works were made resulting in the issuing of a Temporary Stop Notice in April 2017.

3.3 A planning application (ref: 17/00161/FULL) for the alteration and raising of ground levels at the site was submitted in February 2017 but subsequently withdrawn in June 2017.

3.4 Given the unauthorised activity that had taken place an Enforcement Notice was served in August 2017. That Notice required amongst other things that the recipients: -

Remove from the land the bricks, rubble and other imported materials and reinstate the ground level to that detailed on A. Craig's drawing 080217 dated February 2017 and reinstate the land to a greenfield condition within 3 calendar months from the date of this Notice becoming effective.

3.5 An appeal against that Notice was submitted to the Scottish Government's Planning and Environmental Appeals Division (DPEA) in September 2017. The Scottish Government Reporter appointed to determine the matter dismissed the appeal and upheld the terms of the Enforcement Notice.

- 3.6 A further planning application (ref: [17/00860/FULL](#)) was submitted in October 2017. That application sought planning permission for the unauthorised works. A review in relation to the deemed refusal of that application was considered by the Development Management Review Committee at its meetings on 3 April and 2 May 2018 (Report [154/18](#) refers). The Development Management Committee dismissed the review and refused planning permission for the development.
- 3.7 The developer was advised of that decision and of the requirement to comply with the terms of the Enforcement Notice. In June 2018 an agent acting on behalf of the developer/land owner advised that works required by the Notice had been completed.
- 3.8 A site visit was undertaken at that time but officers were concerned that the ground levels were higher than those required by the Enforcement Notice. Further investigation was carried out including a survey of the site by the Roads Service. The levels survey undertaken by the Roads Service indicated that the ground levels were elevated in relation to those required by the Enforcement Notice. In addition, the survey indicated that the ground levels exceed 16.0mAOD which is the level that a consulting engineer appointed by the land owner and SEPA both indicated should not be exceeded in order to minimise potential flood risk.

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.
- 4.2 As outlined above survey of site levels undertaken by the Roads Service indicates that current ground levels are not in accordance with the requirements of the Enforcement Notice and exceed the 16.0mAOD level that SEPA previously indicated should be the maximum for any increased levels at the site. SEPA (and the land owners consulting engineer) was concerned that levels in excess of that would potentially result in additional flood risk.
- 4.3 An agent acting on behalf of the land owner has indicated that drawings submitted with previous planning applications at the site illustrated ground levels after original levels had been reduced. On that basis the agent suggests that those drawings should not be relied upon and further suggests that the only person that has full knowledge of the work carried out is the land owner. The agent asserts that the original levels have been reinstated but has not provided any survey information to demonstrate resultant levels.
- 4.4 The terms of the Enforcement Notice are clear and have been confirmed by a government appointed Reporter through the appeal process. Whether the land owner or his agent agrees with the requirements of that Notice is now immaterial; an appeal against the terms of the Notice was dismissed and the land owner must now comply with its requirements. While the land owners agent suggests levels have been restored, discussion with him indicates that no levels survey has been undertaken by or on behalf of the land owner and therefore that position cannot be evidenced. Notwithstanding that, all available evidence through site visit and survey indicates that the current ground levels exceed those that are required by the Enforcement Notice and exceed the 16.0mAOD level that was recommended by Millard Consulting (on behalf of the land owner) and SEPA. Survey information indicates that in areas of the site levels exceed 16.25mAOD and as such broadly correspond with those proposed in the planning application that the Development Management Review Committee found unacceptable and refused.
- 4.5 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.

- 4.6 In this case available evidence indicates that the ground levels exceed those required by the Enforcement Notice and could give rise to increased flood risk. Given the ongoing breach of planning control and the flood risk associated with ground levels in excess of the 16.0mAOD, it is considered necessary and appropriate to take further action to secure compliance with the terms of the Notice.
- 4.7 Specifically Section 135 of the Town and Country Planning (Scotland) Act 1997 makes provision that, if any steps which are required by an Enforcement Notice to be taken, have not been taken within the compliance period, the planning authority may:
- (a) enter the land and take those steps, and
 - (b) recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
- 4.8 Accordingly, it is proposed to allow the land owner a further period of 2-months from date of approval of this report to comply with the terms of the Notice. If compliance is not secured within that period it is recommended the council take Direct Action and recover the associated costs from the land owner.

5. RISKS

- 5.1 Scottish Government Circular 10/2009 states that the integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without an apparent attempt by the planning authority to intervene before serious harm to amenity results from the breach.
- 5.2 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 material referred to in the Notice and the undertaking of physical works to re-profile the land may be reasonably significant and the Town and Country Planning (Act) 1997 makes provision for the planning authority, in certain circumstances, to sell any materials removed by them from the land and pay the proceeds to the owner less any expense recoverable by them from him.

6. FINANCIAL IMPLICATIONS

The normal costs associated with investigating and pursuing enforcement action will be met from the Planning Service budget. In the event that direct action is pursued the costs may be reasonably significant given the nature of the works required and this would be progressed in accordance with Financial Regulations.

7. 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, 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.

EQUALITIES

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

KATE COWEY
SERVICE MANAGER – 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 a material extent in preparing the above report.

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DATE: 2 NOVEMBER 2018