
Report to: Planning Committee

Date of Meeting: 4th November 2021

**Subject: Scottish Ministers' Decision on Completion Notice -
Erection of House - Modification to Approved House Type
"C" (10 Gannel Hill View) (Planning Permission Ref No.
05/00241/FULL) at 10 Gannel Hill View, Devon Village.
Clackmannanshire**

Report by: Grant Baxter, Principal Planner

1.0 Purpose

- 1.1. The purpose of this report is to advise Members of the recent decision made by Scottish Ministers on the Completion Notice served by the Council on the owner of 10 Gannel Hill View, in connection with the construction of a house on that site. The report is for noting only and a further report will be brought to a future Planning Committee setting out options to secure completion of the house and removal of the static caravan from the site.

2.0 Recommendations

- 2.1. It is recommended that Members note the decision of Scottish Ministers in respect of the Completion Notice, and the intention of officers to bring a report to a future meeting of the Planning Committee once the decision, and the recommendations of the Reporter to Scottish Ministers in respect of it, have been fully considered.

3.0 Considerations

- 3.1. Members will be aware of the lengthy history in connection with both the incomplete house and the siting and occupation of a static caravan within this plot at 10 Gannel Hill View, Devon Village.
- 3.2. At its meeting of 24th January 2019, the Committee voted to delegate authority to the Development Services Manager and Legal Services Manager to serve a Completion Notice on the owner of the site, as the Committee was of the view that it would not be completed within a reasonable timescale. The Committee decided that the period for completion of the house specified in the Completion Notice would be two years.
- 3.3. The Council subsequently served a Completion Notice on the owner of the property (Mr Steve Smith), on 7th January 2020, requiring the works to build

the house to be completed by 9th January 2022 (two years from the Planning Committee's decision). The effect of the Notice would be that the planning permission would cease to have effect at the expiration of the specified period, and only that part of the construction completed would be deemed to be lawful.

- 3.4. A Completion Notice cannot take effect until it has been confirmed by Scottish Ministers, who may also vary the time period specified in the Notice. In this case, Scottish Ministers appointed a Reporter from the Planning and Environmental Appeals Division (DPEA) to provide a report on the case, and this report was completed and submitted to Scottish Ministers on 20th July 2020.
- 3.5. The Reporter recommended that Scottish Ministers decline to confirm the Completion Notice, and the Scottish Government subsequently advised the Council in writing on 12th October 2021 that Ministers agreed with the Reporter's overall conclusions and have declined to confirm the Completion Notice.
- 3.6. The Reporter's recommendation to not confirm the Completion Notice is based on his view that the development on the site does not relate to Planning Permission 11/00020/FULL - Erection of House - Modification to Approved House Type "C" (10 Gannel Hill View) (Planning Permission Ref No. 05/00241/FULL) and that the structure on site is a breach of planning control which materially differs from that approved by the Council in 2011. Specifically, the Reporter considers that there is no evidence that the planning permission for the house, granted in 2011 was lawfully begun within the statutory three years from the date of consent.
- 3.7. The Reporter's makes comments and arrives at conclusions on a number of other matters, such as consideration of non-material variations, discharge of planning conditions and the Council's responses to requests for information during his consideration of the case. Officers of the Planning and Legal Services have concerns about these comments and conclusions, as they differ significantly from those arrived at by officers, and collectively appear to be given considerable weight in the Reporter's conclusion that the Completion Notice should not be confirmed by Scottish Ministers.
- 3.8. Set out below are notable examples of areas of concern with the Reporter's assessment and conclusions:
- 3.9. Lawfulness of the dwellinghouse at 10 Gannel Hill View
- 3.10. The Reporter acknowledges that the Council, as Planning Authority, is empowered by legislation to determine the lawfulness of development, however, arrives at his own conclusion that the dwellinghouse at 10 Gannel Hill View is not lawful (on the basis that planning permission 11/00020/FULL has lapsed) without seeking any clarification from the Council as to its view on this critical point.
- 3.11. The Reporter refers to the previous DPEA Reporter's decision to quash the Council's enforcement notice on the residential caravan at 10 Gannel Hill View, but fails to acknowledge that in quashing the enforcement notice, the previous Reporter concluded that the residential caravan was permitted

development on the basis that the dwellinghouse at 10 Gannel Hill View **was lawful**.

- 3.12. Officers are therefore concerned that in arriving at his conclusion that the house is not lawful, the Reporter has failed to take into account either the Council's view on this matter or that of the previous Reporter. A conclusion upon which the Reporter's recommendation not to confirm the Completion Notice mainly rests.
- 3.13. The Reporter's conclusions on the lawfulness of the existing house being built on site are fundamental to his recommendation not to confirm the Completion Notice and appear to officers to be based on a narrow assessment of evidence and without full consideration of the Council's or previous Reporter's views.
- 3.14. Notification of Development Commencement and Compliance with Planning Conditions
- 3.15. The Reporter has concluded that the failure of the applicant to notify the Council of the initiation of development is an indication that development did not commence. The Council has noted the failure of the applicant to submit such notification, however, Members should note in respect of the above, there is no provision in legislation to deem that a planning permission would fall or be revoked simply by the failure of the applicant to submit a Notification of Initiation of Development.
- 3.16. The Reporter has also concluded that the breach of planning conditions of planning permission 11/00020/FULL are an indication that planning permission 11/00020/FULL was not lawfully implemented. This view has been arrived at despite the Council providing the Reporter with reasoned justification for reaching a contrary conclusion.
- 3.17. Material variation from planning permission 11/00020/FULL
- 3.18. The Reporter acknowledges that the Council, as Planning Authority, is empowered by legislation to determine whether amendments to planning permission are material variations requiring further planning permission.
- 3.19. In contradiction to the above the Reporter has arrived at the conclusion that material variations to the approved dwellinghouse at 10 Gannel Hill View have been undertaken despite the Council confirming otherwise and without seeking clarification of the reasons for the Council's conclusions.
- 3.20. Criticism of the Council's response to requests for information
- 3.21. The Reporter is critical of the Council in stating that responses to all procedure notices were not provided and that not all requested information was supplied. Officers can confirm to Members that this is not the case and documented evidence to the contrary exists both on the Council's planning application file and on DPEA's case file.
- 3.22. Next Steps
- 3.23. On the basis of the above points, Members are advised that it is the intention of officers to seek external legal advice on the above matters and write to

Scottish Ministers seeking clarification of the considerations of the Reporter. These actions are considered necessary for the Council to have confidence or otherwise in the Reporter's conclusions in the best interests of all parties. Officers will update Planning Committee following conclusion of this process.

4.0 Sustainability Implications

4.1. None

5.0 Resource Implications

5.1. Financial Details

5.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes

5.3. Finance have been consulted and have agreed the financial implications as set out in the report. Yes

6.0 Exempt Reports

6.1. Is this report exempt? Yes (please detail the reasons for exemption below) No

7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) **Our Priorities** (Please double click on the check box)

Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all

Our families; children and young people will have the best possible start in life

Women and girls will be confident and aspirational, and achieve their full potential

Our communities will be resilient and empowered so that they can thrive and flourish

(2) **Council Policies** (Please detail)

8.0 Equalities Impact

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?
 Yes No

9.0 Legality

9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

10.0 Appendices

10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

None

11.0 Background Papers

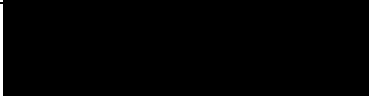
11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

Yes (please list the documents below) No

Author(s)

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Approved by

NAME	DESIGNATION	SIGNATURE
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