
Report to: **Planning Committee**

Date of Meeting: **3rd November 2022**

Subject: **10 Gannel Hill View, Devon Village, FK10 3GN – Further Update Report**

Report by: **Grant Baxter, Principal Placemaking Officer**

1.0 Purpose

- 1.1. This report has been prepared to provide the Planning Committee with an update on matters in relation to both the incomplete house and residential caravan at 10 Gannel Hill View, Devon Village (“Property”), following the last report to Committee on this matter, on 4th November 2021.

2.0 Recommendations

- 2.1. It is recommended that the Planning Committee:
- 2.1.1 Note the contents of this report in relation to the Completion Notice;
 - 2.1.2 Note the options available to the Planning Committee contained in paragraph 3.12; and
 - 2.1.2 Agree and delegate to the Senior Manager for Development the preferred option and/or options the Planning Committee wish to take forward in terms of paragraph 3.12 in respect of the Property

3 Considerations

- 3.1 As provided for in the Planning Committee Report dated 4 November 2021 (Appendix 1) it was agreed that officers would bring back a report to Planning Committee once the decision, and the recommendations of the Reporter to Scottish Ministers in respect of it, have been fully considered.
- 3.2 It was agreed at the November 2021 Planning Committee that the Council obtain legal advice in respect of the decision of the Scottish Ministers wherein they declined to confirm the Completion Notice served by the Council on the owner of the Property on 7th January 2020. The effect of Scottish Ministers’ decision in respect of the Completion Notice was to deem that the house currently under construction on the Property was not a lawful development.
- 3.3 The Planning Committee are reminded of an earlier decision of a Reporter on behalf of Scottish Ministers (for which a report went to the Planning

Committee on 8 November 2018 (see Appendix 2)) deeming the siting and occupation of the static caravan on the Property to be permitted development in association with construction of the house. On that basis, the Reporter quashed the Enforcement Notice served by the Council on the owner in respect of the caravan.

- 3.4 In line with the legal advice obtained by the Council (a copy of which has been circulated to the Planning Committee) and in accordance with Scottish Government's guidance on planning enforcement together with the Council's Enforcement Charter, the Planning Service served a Section 33(a) Notice ("Notice") (such Notice can be used where the Council considers that a development, which does not have planning permission, may be acceptable) on the owner of the Property, which required submission of a planning application for the construction on the Property.
- 3.5 In response to the Notice, the owner of the Property submitted an application for a Certificate of Lawfulness of Proposed Use or Development (CLPUD) for the erection of a house on the Property received by the Council on 29 August 2022.
- 3.6 The owner of the Property under the Notice was required to submit a planning application the owner submitted an application for CLPUD which in itself is competent because it is an application that seeks regularise the development on the Property. Therefore the owner of the Property has complied with the intention of the Notice.
- 3.7 Applications for CLPUD require to be assessed, not on the basis of the planning merits of the proposal, but whether the planning authority are provided with information satisfying them that the development is lawful. Consequently, such applications are not subject to the same publicity and notification procedures as planning applications and are determined by officers under delegated powers both in law and the Council's Scheme of Delegation. The assessment is an evidenced based examination of information (see below in paragraph 3.8) provided in terms of the application for CLPUD.
- 3.8 The application for a CLPUD was accompanied by:
 - 3.8.1 A covering letter stating that material operations were carried out on construction of the house between 29th March 2011 and 29th March 2014.
 - 3.8.2 A set of 14 date and time stamped photographs showing the house at various stages of construction and with people (including the applicant and his wife) undertaking construction activity. The photographs are from a time period 25/09/2012 to 17/09/2013, and variously show house and garage foundations and concrete slabs, structural steel and timber panels.
 - 3.8.3 Three separate signed letters by individuals (including the applicant's wife) stating that they can be seen working on house construction at the site in referenced photographs referred to above.

3.8.4 An email from the Council's Principal Building Standards Surveyor to the applicant confirming that open track drain testing was carried out at the site on 28th and 29th August 2013 and a closed track drain test was carried out on 9th September 2013.

3.9 In assessing the application, the Planning Service was satisfied, based on the evidence submitted (as detailed above) that the erection of a house, based on the planning permission approved in 2011 (11/00020/FULL) would be lawful, as it demonstrated that material operations on construction of the house were commenced within three years of the date of planning permission being granted. It should be noted that none of the evidence submitted by the owner of the Property with the CLPUD application had been put before the Reporter when the Reporter was considering the Completion Notice.

3.10 The effect of the decision on the CLPUD:-

3.10.1 that the house approved in terms of the planning permission approved in 2011(11/00020/FULL) is a lawful development, and can be completed, subject to the owner regularising outstanding matters in relation to approval of finishing details as required by the conditions of the Planning Permission and regularising minor changes to the approved plans; and

3.10.2 the siting and occupation of the caravan on the Property is permitted development in accordance with the decision of the Reporter on the Enforcement Notice Appeal in 2018 (Appendix 2).

3.11 Essentially, the current circumstances are now as they were in January 2019, when the Committee determined that a Completion Notice should be served on the owner, requiring completion of the development of the house on the Property within 2 years, insofar as the proposed house is lawful, but remains incomplete.

3.12 Options available for completion of dwellinghouse:

Planning powers that the Council has at its disposal in order to achieve completion of the house are as set out below. These were previously presented to the Planning Committee in January 2019, wherein the Planning Committee agreed the route of the Completion Notice:-

3.12.1 Notice Requiring Proper Maintenance of Land (Amenity Notice)

It is unlikely that this power is specifically aimed at this type of situation, but more typically where a site has been left in a very poor condition, and where the actions required to comply with the notice would be to tidy it up, or to remove waste material for example, rather than to complete the construction of a house. It should be noted that failure to comply with such a notice is not an offence, and the only action the Council can take in respect of non-compliance is to enter the land itself and take the steps necessary to comply with the notice. This would incur costs to the Council and it may be that material removed from the site include items that would be required for the house build itself.

3.12.2 Completion Notice

The issuing of the CLPUD now confirms that the proposed house is a lawful development and as such, the Planning Committee could again consider serving a Completion Notice requiring completion of the approved development within a specified timescale.

Subject to validation of the Completion Notice by the Scottish Ministers, once the period specified in the Completion Notice has expired, no development carried thereafter will be competent/authorised by the owner of the Property. This could therefore mean that the house remains incomplete at the expiry of the compliance period, but that further works on it would then not be permitted or lawful and require further a further planning permission.

If it is the intention of the Planning Committee is to achieve a completed dwellinghouse on the Property then the Committee needs to be aware that failure to comply with the Completion Notice means there is no longer a planning permission for completion of the dwellinghouse. Only the construction that is in existence at the time of expiry of the Completion Notice would be lawful. At that point no further construction can take place whether by the owner or any party to complete the dwellinghouse. A further planning application would need to be made for any further constructions works.

Therefore we recommend that, before serving another Completion Notice, the Planning Committee give consideration to what it can or should do in the event that such a Notice is not complied with.

3.12.3 Compulsory Purchase Order (CPO)

This power allows public authorities to acquire land without the owner's permission subject to a number of conditions including public interest. CPO powers exist in various Acts of Parliament, including the Planning Acts.

This is a complex area of legislation, with the process involving several stages, including potentially a public local inquiry together with an impact on time and cost for the Council. It is not therefore possible to fully illustrate the process and possible scenarios that a CPO may involve in this report, however key elements of that process are described below.

The Council would normally be expected to engage with the people affected by a CPO and attempt to buy land by agreement, where this is at all possible. The Council would also have to consider alternative ways to achieve its objective, which in this case, is principally the completion of the approved house.

The Council would have to properly assess the wider public interest and impact on people affected before embarking on a CPO process.

CPO powers cannot be used where they would breach the European Convention of Human Rights (ECHR), and must be proportionate and

demonstrably in the public interest. This reinforces the requirement to only use the powers where it is a proportionate response to the circumstances and there is a strong enough case in the public interest.

CPO under planning powers may be used for a number of purposes, and should accord with planning policies; such as to assemble land for regeneration or to acquire a single property that needs redevelopment or improvement, such as a derelict or abandoned property or empty home. This property would not necessarily fall into any of these categories, as it is an active construction site, rather than a site that has been abandoned or a complete house left vacant.

The Council would have to be satisfied that it can secure the funds to acquire land and if necessary to complete a development on it. These costs would include an estimate of likely levels of compensation.

A CPO can be undertaken with a third party, and indeed can be requested by a third party. Such an arrangement may involve a “back to back” agreement where the authority purchases the land and disposes it to the third party, who would then carry out the development. The third party would normally indemnify the authority against costs incurred. The Planning Committee should note that the Council has had no formal approach from any 3rd party proposing such an arrangement.

In all cases, the authority must weigh the public interest and be satisfied that this over-rides the interests of the people affected if it decides to proceed with a CPO. A decision to authorise a CPO would require to be made by full Council, budget found to deal with the acquisition, compensation, professional costs and alternative accommodation and thereafter be authorised by Scottish Ministers before it could be served.

The Council would require to engage with the affected parties throughout the process and where the CPO is opposed by the affected parties, a public local inquiry may be held.

Compensation to the affected parties may include:

- the open market value of the property;
- compensation for severance and/or injurious affection;
- compensation for disturbance and other losses not directly based on the value of the property (including professional fees; and
- a home loss payment may also be made.

The option of CPO carries with it potential costs, many of which are at this stage unknown. As such before any recommendation can be put to the Council for a CPO, as confirmed above, budget would need to be found in advance of such recommendation

The CPO process is a long, complex, and potentially costly process, which could be successfully challenged. Any decision to proceed with

this process would fundamentally need to be based on the weight of public interest, and that this outweighed the interests of the affected parties. Officers cannot say, with confidence, that in this case involving an incomplete, but under construction house within an approved residential development, that this test would be met in this case.

3.13 Conclusions

3.14 In conclusion, the Planning Committee is being asked to note the foregoing assessment of options in respect of both completion of the house and siting and occupation of the static caravan on the site, in light of the above. above.

4 Sustainability Implications

4.13 There are no sustainability implications in respect of this report.

5 Resource Implications

5.13 *Financial Details*

5.14 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

5.15 Finance has been consulted and has agreed the financial implications as set out in the report. Yes

5.16 *Staffing*

6 Exempt Reports

6.13 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)

- The area has a positive image and attracts people and businesses
- Our communities are more cohesive and inclusive
- People are better skilled, trained and ready for learning and employment
- Our communities are safer
- Vulnerable people and families are supported
- Substance misuse and its effects are reduced
- Health is improving and health inequalities are reducing
- The environment is protected and enhanced for all

The Council is effective, efficient and recognised for excellence

(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".

Appendix 1 – Planning Committee Report dated 4 November 2021

Appendix 2 – Planning Committee Report dated 8 November 2018

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

- Report to Planning Committee of 24th January 2019
- The Reporters Appeal Decision on the Enforcement Notice

Author(s)

NAME	DESIGNATION	TEL NO / EXTENSION
Grant Baxter	Principal Placemaking Officer	2615

Approved by

NAME	DESIGNATION	SIGNATURE
Allan Finlayson	Planning & Building Standards Team Leader	
Emma Fyvie	Senior Manager, Development	

CLACKMANNANSHIRE COUNCIL

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

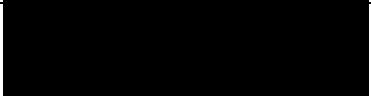
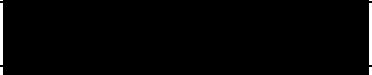
11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

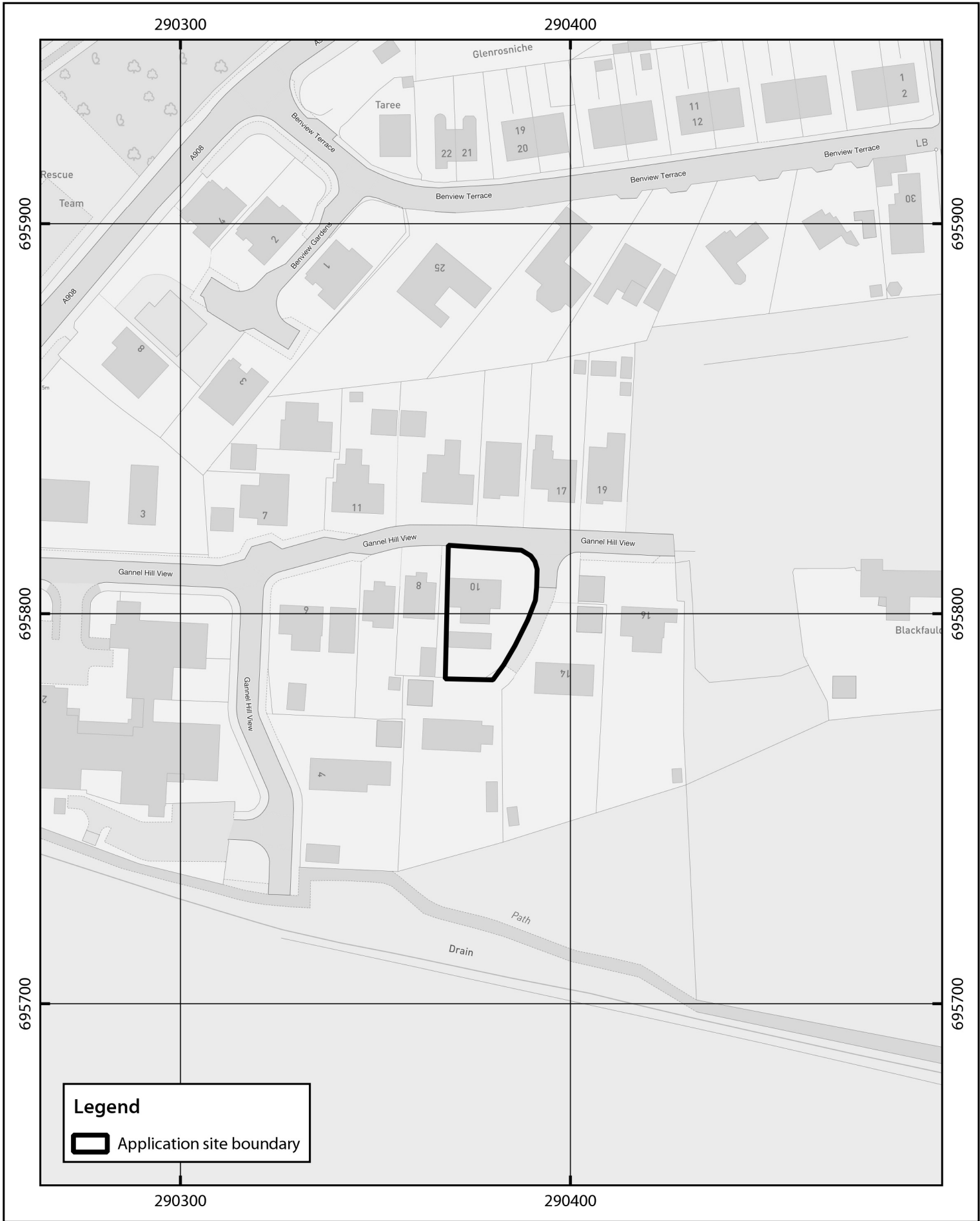
Yes (please list the documents below) No

Author(s)

NAME	DESIGNATION	TEL NO / EXTENSION
Grant Baxter	Principal Planner	

Approved by

NAME	DESIGNATION	SIGNATURE
Allan Finlayson	Planning and Building Standards Team Leader	
Emma Fyvie	Senior Manager (Development)	



Legend

 Application site boundary

11/00020/FULL – Land At Blackfaulds, Fishcross

Erection of House - Modification to Approved House Type "C" (10 Gannel Hill View) (Planning Permission Ref No. 05/00241/FULL)

Ward: Clackmannanshire Central
 0 10 20 30 40 50 metres

OS Grid Ref: NS903958

Scale: 1:1,250



Date:
21 Oct 2021

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CLACKMANNANSHIRE COUNCIL

Report to: **Planning Committee**

Date of Meeting: **8th November 2018**

Subject: **10 Gannel Hill View, Devon Village, FK10 3GN – Update Report following Enforcement Appeal – Planning Application ref: 18/00037/FULL**

Report by: **Grant Baxter, Principal Planner**

1.0 Purpose

- 1.1. To provide the Committee with an update on the recent enforcement notice appeal decision and related matters in respect of the siting and occupation of a static caravan and construction of a house at 10 Gannel Hill View, Devon Village, and to provide advice on the possible next steps available to the Council in respect of both the caravan and incomplete house on the site.

2.0 Recommendations

- 2.1. It is recommended that the Committee note the contents of this report and delegate authority to the Development Services Manager and Legal Services Manager to determine any appropriate actions that the Council may progress in order to achieve the cessation of occupation of the caravan, and its removal from the site and ensure completion of a house on the site.

3.0 Considerations

3.1. Background

- 3.2. Members will recall that at their meeting of 26th April 2018 they refused planning permission for the “Use of Land for Temporary Siting and Occupation of Static Residential Caravan During Construction of House (Variation of Condition 1 of Planning Permission 17/00095/FULL to Extend Permission for a Minimum Period of 1 Year” at 10 Gannel Hill View by the owner of the site, Mr Steve Smith. The reason for refusal was:

1. The siting and occupation of the caravan on the house plot since September 2014 has not resulted in significant progress on house construction towards a stage of habitation. The continued siting and occupation of the caravan is beyond what could reasonably be considered a temporary period and given its location, visual appearance, proximity to and relationship with surrounding households, would have an unacceptable impact on residential amenity for surrounding householders.

- 3.3. At their meeting of 26th April 2018, the Committee also unanimously agreed to delegate authority to the Development Services Manager in respect of any enforcement action deemed necessary to require cessation of occupation of the caravan and its removal from the site. Following this, the Council served an Enforcement Notice on the owner of the site, dated 11th May 2018. This required occupation of the static caravan to cease and for it to be removed from the site within 28 days of it taking effect. The owner, Mr Smith lodged an appeal to the Enforcement Notice on 8th June 2018, on two grounds:
1. That the matters stated in the notice did not constitute a breach of planning control.
 2. That the compliance period specified in the notice fell short of what should reasonably be allowed.
- 3.4. Following an accompanied site visit, the Reporter appointed by Scottish Ministers to determine the appeal issued his Appeal Decision Notice on 13th September 2018. The decision was to uphold the appeal and quash the enforcement notice. The Reporter concluded that the siting and occupation of the caravan is permitted development under either Class 14 (Temporary Buildings and Uses) and Class 16 (Caravan Sites) of The Town & Country Planning (General Permitted Development) (Scotland) Order, 1992, as amended, (the GDPO), and did not therefore constitute a breach of planning control. The Council had argued in its response to the appeal that the matter did not constitute permitted development under either of these classes of the GDPO.
- 3.5. Following the decision on the enforcement notice appeal, a separate planning appeal against refusal of the application was withdrawn by Mr Smith, on the basis that following the Reporter's decision on the enforcement notice appeal, the development was deemed to be permitted development.
- 3.6. The effect of the Reporter's decision is that the caravan may be retained and occupied on the site until building operations on the house have been completed.
- 3.7. Subsequent to the Reporter's decision, officers have considered potential options available to the Council that may be progressed to seek cessation of occupation of the caravan and completion of a house on the site. These options are now presented to Planning Committee for information and consideration.
- 3.8. Options in respect of cessation of occupation of the caravan and its removal from the site are set out below.

OPTION	EFFECT
Discontinuance Order	The planning authority has the power to require discontinuance of any use of land, alteration or

removal of any buildings or works, or to impose conditions on the continuance of land. The power is exercised in the interests of the proper planning of its area (including the interests of amenity).

Regard has to be had to the development plan and any other material considerations. One of which would be the enforcement appeal decision, which has determined that the caravan is permitted development. Therefore it could only be on the grounds of an amenity issue. The partly built house is however part of the negative amenity.

Also, an order would not take effect until confirmed by the Scottish Ministers, and there is provision for a hearing to be held at the request of anyone affected by the order.

There is a right to reclaim the costs of the works from the Council and also for compensation in respect of depreciation and disturbance of enjoyment.

It is an offence not to comply with the order and the Council may enter the land and take the required steps and recover their expenses from the owner.

It is important to note that where the requirements of an order will involve displacement of persons residing in any premises, it shall be the duty of the Council, as planning authority, where there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of displacement.

All of which may incur considerable costs to the Council.

<p style="text-align: center;">Judicial Review</p>	<p>The Council, and indeed other interested parties, may seek a judicial review of the enforcement notice appeal decision within 3 months of it being made. The grounds for seeking a review are not based on the planning merits of the case, but that the Reporter acted outwith his powers in upholding the appeal and quashing the enforcement notice. The grounds for judicial review fall under three main headings; illegality, irrationality and procedural impropriety.</p> <p>Officers from Planning and Legal Services have reviewed the Reporter's decision in the context of legislation and relevant case law. The Officers do not believe there has been any irrationality or procedural impropriety. The final ground would be the Reporter's decision being wrong in law. Legal Services have carried out a review of the legislation and case law and is of the view that a successful challenge to the Reporter's decision is unlikely.</p>
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3.9. In respect of progress with completion of the house on the site, Members should note that there is evidence of construction work being undertaken on the site by the owner since the appeal decision. A water pipe that was affecting the solum of the proposed integral garage has now been moved by Scottish Water. The owner had previously cited this as an issue preventing progress on this part of the build. Subsequent to this a concrete base has been formed for the garage by the owner. The owner has also contacted officers to agree limited extension to approved hours of construction. Information has also been received from a neighbouring property that works have been undertaken outwith these agreed hours and this has been taken up by the Planning Service with the owner.

3.10 Conclusions

3.11 As confirmed above it is the view of officers of both Planning and Legal Services that a successful challenge to the Reporter's Decision through Judicial Review is unlikely to be successful.

3.12 It is recommended to Members that given the fact that the appeal decision is very recent and also that some construction activities have taken place on site that progress and activity in respect of the house build is regularly monitored by officers and a further report brought to the Committee, providing further advice on any actions, if any, at that stage.

4.0 Sustainability Implications

4.1. There are no sustainability implications in respect of this report.

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 has been consulted and has agreed the financial implications as set out in the report. Yes

5.4. *Staffing*

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)

- | | |
|--|-------------------------------------|
| The area has a positive image and attracts people and businesses | <input type="checkbox"/> |
| Our communities are more cohesive and inclusive | <input type="checkbox"/> |
| People are better skilled, trained and ready for learning and employment | <input type="checkbox"/> |
| Our communities are safer | <input type="checkbox"/> |
| Vulnerable people and families are supported | <input type="checkbox"/> |
| Substance misuse and its effects are reduced | <input type="checkbox"/> |
| Health is improving and health inequalities are reducing | <input type="checkbox"/> |
| The environment is protected and enhanced for all | <input checked="" type="checkbox"/> |
| The Council is effective, efficient and recognised for excellence | <input type="checkbox"/> |

(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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