

CLACKMANNANSHIRE COUNCIL

Report to Planning Committee

Date of Meeting: 28 October 2010

**Subject: Unauthorised Use of Land as Garden Ground to the Rear of 5
Woodburn Way, Alva**

**Report by: Julie Hamilton, Development Services Manager, and Andy
Wyse, Solicitor**

1.0 Purpose

- 1.1. This report updates members on action taken to regulate the unauthorised use of land to the rear of 5 Woodburn Way, Alva and concentrates on the planning issues arising at this site. Other aspects in response to the Motion approved by Council on September are being addressed in a separate report to Council on 28 October 2010.
- 1.2. This report confirms that:
 - 1.2.1. The current use of the site as garden ground is unlawful as planning consent has not been granted. Further, conditional planning consent is the most appropriate way to deal with the contamination issue.
 - 1.2.2. A Section 33A notice has been served on the owners of the site, requiring them to submit a planning application within a period of 28 days from the date of service to enable the Council to regularise the breach of planning control.
 - 1.2.3. No application for planning permission has been submitted within the specified period but shortly before expiry of that period a letter was received from the solicitors for the owners of the land that the owners "are of the clear view that garden use is an established use" of the land in question and "On that basis our clients consider that there is no need to complete the Section 33A Notice Form provided to them by the Council."
 - 1.2.4. Accordingly an enforcement notice has been now served upon the owners of the site, as the requested planning application has not been received and in the light of the letter from the solicitors is unlikely to be forthcoming. Had such an application been submitted, it would have enabled the Council to consider the basis on which the unauthorised use could be regularised and if so minded to approve the application subject to appropriate planning conditions.

2.0 Recommendation

- 2.1. It is recommended that members note the actions undertaken to seek to regularise the breach of planning control.

3.0 Considerations

3.1 The current unlawful use of the land:

The site (as shown on the appended plan) was acquired in October 2001 by the owners and occupiers of No. 5 Woodburn Way from British Gas/Transco Property Division for £11,500. It was vacant land that was formerly part of a gas works site. It was not garden ground and, as such, a planning application for change of use from disused vacant ground forming part of a former gas works site to private garden ground was required. The new owners of the land were clearly aware of the planning position as their original offer for the ground, dated 30th January 2001 stated that it was conditional upon them applying for and being granted a change of use consent to allow the site to be used as garden ground, although they subsequently withdrew this condition, because British Gas/Transco Property Division were not prepared to accept any offers which were subject to planning permission.

The owners of the site have since used the ground as an extended garden for No. 5 Woodburn Way. Planning permission has not been applied for and therefore the use is not lawful. Their specific use of the land for soft landscaping and vegetable growing has increased the risk of disturbance of and thus exposure to the otherwise static contamination lying below the land. A grant of Conditional Planning Consent in response to the required application can enable this issue to be addressed by restricting the manner in which the land is used as garden ground e.g. hard landscaping.

3.2 Issue of a Section 33A Notice:

The Planning etc. (Scotland) Act 2006 introduced a new section (S33A) such that the Planning Authority could require the owner of land, where development had been unlawfully carried out, to make an application for planning permission for the development. This was introduced in August 2009. The principal purpose of Section 33A is to enable the Planning Authority to deal with an unauthorised development **where it would be minded to approve the application**, particularly where that approval would be subject to conditions. There is no right of appeal against a Section 33A Notice.

The owners were issued with the S33A Notice (dated 09 September 2010) by recorded delivery. To assist them, the application form was substantially completed, and exceptionally, the normal planning application fee was waived. They were given 28 days for submission of the planning application for change of use from disused vacant ground forming part of a former gas works site to private garden ground. No planning application was submitted and the solicitors' letter referred to at paragraph 1.2.3 above was the only direct contact from the owners to the Planning Service. A complaint on behalf of the owners was received about "Enforcement action" appearing publicly in the Planning Register but that was a reference to the service of the Section

33A Notice as, having embarked on formal action, the Council is legally obliged by statute to publish the Section 33A Notice in the Planning Register.

3.4 Enforcement Action:

As no planning application was received, the only course of action available to the Council to seek to regulate the breach of planning control was to pursue further enforcement action. This accords with the Council's agreed Enforcement Strategy. Accordingly, an Enforcement Notice was served upon the owners, dated 15 October 2010. This requires that the unauthorised use of the site as garden ground shall cease, either permanently, or until a scheme acceptable to the Council has been implemented to eliminate the risk of exposure to the contamination lying beneath the ground.

There is a right of appeal against an Enforcement Notice to Scottish Ministers.

4.0 Sustainability Implications

4.1 The actions detailed in this report further the enhancement and improvement of the environmental quality of the land to which this report relates and its environs.

5.0 Resource Implications

5.1 There are no resource implications for the Council from the recommendations of this report.

6.0 Equalities Impact

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

Not required

7.0 Legality

It has been confirmed that in taking the actions detailed in this report and in adopting its recommendations, the Council is acting within its legal powers.

8.0 Appendices

1. Location Plan

9.0 Background Papers

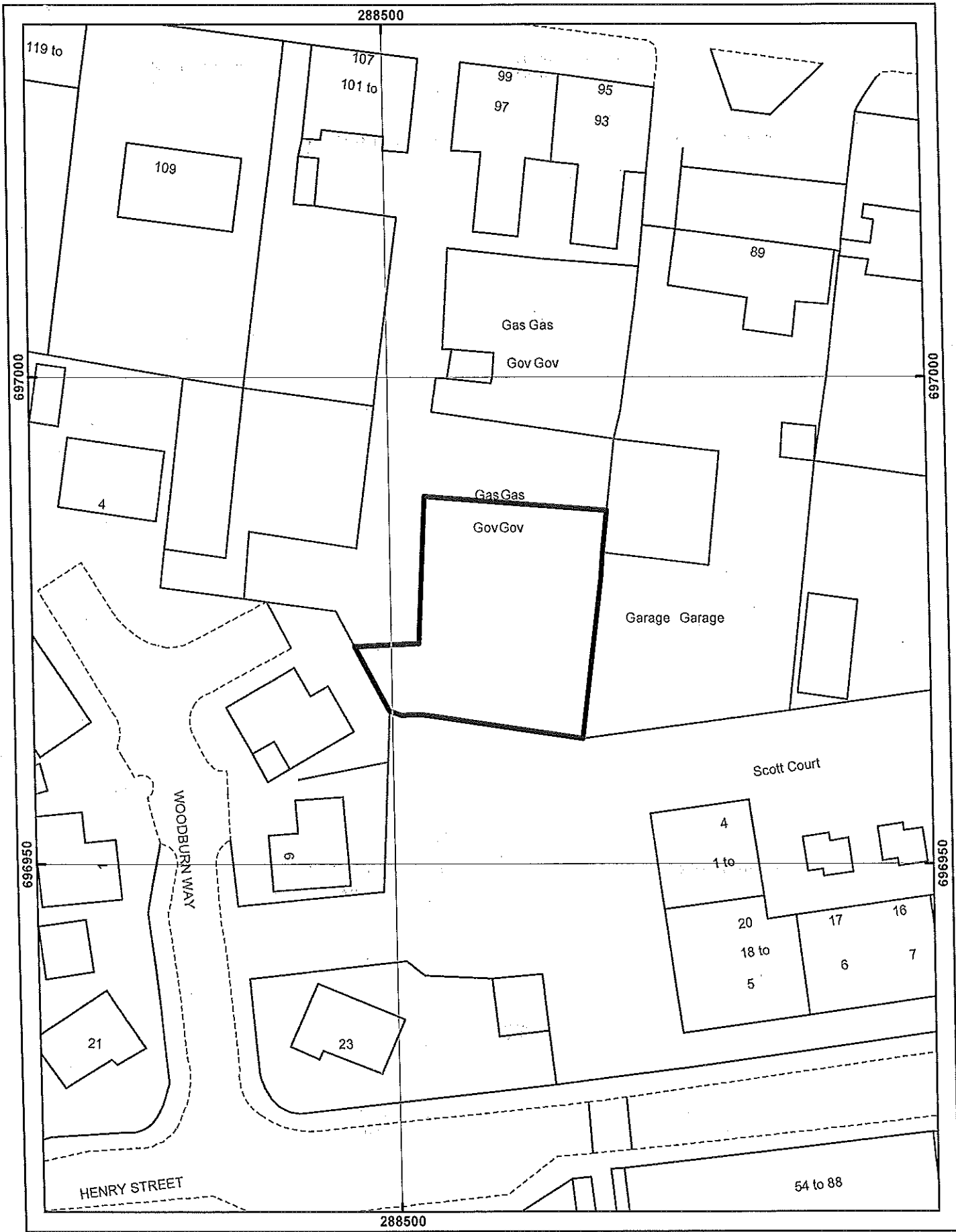
Town & Country Planning (Scotland) Act 1997
Planning etc. (Scotland) Act 2006
Council's Enforcement Strategy
Clackmannanshire Local Plan
Section 33A Notice dated 09 September 2010
Enforcement Notice dated 15 October 2010

Author(s)

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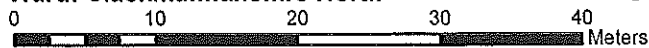
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**Unauthorised Use Of Garden Ground To Rear Of
5 Woodburn Way, Alva. FK12 5LB**

Ward: Clackmannanshire North

OS Grid Ref: NS 884 969



Scale: 1:500

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N

Date:
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