
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
- 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".

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

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