
Report to: **Planning Committee**

Date of Meeting: **24 January 2019**

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

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

1.0 Purpose

- 1.1. This report has been prepared to provide Members with a further update, on the possible next steps available to the Council in respect of both the residential caravan and incomplete house on the site, following the Reporter's decision on the Enforcement Notice Appeal.
- 1.2. The report to the 8th November 2018 Committee updated Members on the 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 the incomplete house on the site.
- 1.3. The Committee agreed to note the contents of the report and delegated authority to the Development Service Manager and the 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.
- 1.4. The Convener requested that a further report be brought to the next Planning Committee setting out an update on progress on site and setting out any further options available to the Council, and this report has accordingly been prepared.

2.0 Recommendations

- 2.1. It is recommended that the Committee note the contents of this report and, if required, delegate authority to the Development Services Manager and Legal Services Manager to undertake any actions that the Committee agree necessary following consideration of the options presented.

3.0 Considerations

- 3.1. Background

- 3.2. The Planning Committee of 26th April 2018 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. Following this, the Council served an Enforcement Notice on the owner of the site, dated 11th May 2018. The Notice 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 and 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 was 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.
- 3.4. 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.
- 3.5. 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.
- 3.6. Subsequent to the Reporter’s decision, officers 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 were set out to Planning Committee for information and consideration at meetings of the Planning Committee on 14th September 2017 and 8th November 2018, and are noted as background papers to this Report.
- 3.7. In respect of progress with completion of the house on the site, construction work has been undertaken on the site by the owner since the appeal decision. Between August and November 2018, a water pipe that was affecting the solum of the proposed integral garage was moved by Scottish Water (the owner had previously cited this as an issue preventing progress on this part of the build), a concrete base was formed for the garage and roof trusses has also been delivered and subsequently erected on the building.

3.8. Siting and Occupation of the Caravan

3.8.1 Planning powers that the Council may have at its disposal in order to achieve cessation of occupation of the caravan and its removal from the site, and which have been set out in previous reports are:

1. Discontinuance Order
2. Judicial Review

3.8.2 There are considered to be no other suitable further options in respect of the potential to remove the caravan from the site.

3.8.3 Discontinuance Order (DO)

3.8.4 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 use of land. The power is exercised in the interests of the proper planning of its area (including the interests of amenity).

3.8.5 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 amenity. The partly built house may also be deemed to be contributing to negative amenity.

3.8.6 Also, a DO 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 DO.

3.8.7 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.

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

3.8.9 It is important to note that where the requirements of a DO 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.

3.8.10 All of the above actions may incur considerable costs to the Council.

3.8.11 Judicial Review

3.8.12 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, as was stated in the previous report to Committee of 8th November 2018. 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.

3.8.13 Officers from Planning and Legal Services previously reviewed the Reporter's decision in the context of legislation and relevant case law, and concluded that there had not been any irrationality or procedural impropriety. The final ground of challenge is that the Reporter's decision was 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.

3.8.14 The Council did not request pursuance of a Judicial Review within the required time period and this option has now closed. The Council is not aware any third parties having lodged a request for Judicial Review with the Courts.

3.8.15 It should be noted that JR is only a process to contest the decision of the Reporter, and even if successful, would not of itself, have achieved removal of the caravan.

3.8.16 Summary on Siting & Occupation of the Caravan

3.8.17 The continued siting and occupation of the caravan for the duration of the house build has been accepted by a Reporter appointed by the Scottish Ministers as Permitted Development. Whilst this decision differs from the position of the Council, there do not appear to have been any reasonable grounds for challenging it via Judicial Review.

3.8.18 The Reporter's decision on the Enforcement Notice Appeal would indicate that Scottish Ministers would be very unlikely to confirm the serving of a Discontinuance Order in respect of the same matter, and even if such an Order were promoted by the Council and confirmed by Scottish Ministers, it would incur costs on the Council and require the Council to provide alternative accommodation suitable to the reasonable requirements of those persons affected by the Notice.

3.9 **Completion of House**

3.9.1 Planning powers that the Council may have at its disposal in order to achieve completion of the house are as set out below. The first three have previously been presented

3.9.2 Notice Requiring Proper Maintenance of Land

3.9.3 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 and material that could be removed from the site may well be items that would be required for the house build itself.

3.9.4 Completion Notice (CN)

3.9.5 The Council may serve such a notice where the development has commenced but hasn't been completed by the time the permission would

have expired had the development not yet commenced, and the Council is of the view that it will not be completed in a reasonable timescale. A CN would only take effect if confirmed by Scottish Ministers. Once the period specified in the CN has expired, no development carried thereafter will be competent/authorised. This could therefore still 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 planning permission. This would not be a satisfactory outcome for any parties, as the result would be to place a further obstacle on development progressing and the Council would be unlikely to refuse planning permission.

3.9.6 Revocation Order (RN)

3.9.7 The planning authority has the power to revoke or modify and grant of planning permission, prior to completion of the development. A RO would first need to be confirmed by Scottish Ministers. If it were served, only those works carried out prior to the date of confirmation are authorised by the permission. There would be liability on the Council to pay compensation as a result of an order.

3.9.8 The effect of a Revocation Order in this case would be that the house would remain incomplete and no that further works on it would then be permitted or lawful. This would not be a satisfactory outcome for any parties for the same reasons relative to a Completion Notice.

3.9.9 Compulsory Purchase Order (CPO)

3.9.10 One further option in respect of achieving house completion would be by the Council pursuing a CPO. This power allows public authorities to acquire land without the owner's permission where there is a strong enough case for this in the public interest. CPO powers exist in various Acts of Parliament, including the Planning Acts.

3.9.11 This is a complex area of legislation, with the process involving several stages, including potentially a public local inquiry. 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.

3.9.12 The Council would normally be expected to engage with the people affected by a CPO and attempt to buy land by agreement, if this is 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 (this would include the options already outlined above).

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

3.9.14 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.

- 3.9.15 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.
- 3.9.16 An authority 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.
- 3.9.17 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.
- 3.9.18 The Council has had no formal approach from any 3rd party proposing such an arrangement.
- 3.9.19 In all cases, the authority must weight 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, and thereafter be authorised by Scottish Ministers before it could be served.
- 3.9.20 Thereafter, the authority would require to engage with the affected parties, including agreeing how the Council would pay any professional fees, and if necessary, secure alternative accommodation.
- 3.9.21 The authority should seek to engage with the affected parties throughout the process, including to agree how the Council will meet professional fees incurred by them and also the possible need to provide alternative accommodation. If the CPO is opposed by the affected parties, a public local inquiry may be held.
- 3.9.22 Compensation to the affected parties may include:
- 3.9.23 The open market value of the property
- 3.9.24 Compensation for severance and/or injurious affection
- 3.9.25 Compensation for disturbance and other losses not directly based on the value of the property (including professional fees)
- 3.9.26 A home loss payment may also be made.
- 3.9.27 All of the previous options set out above, and the option of CPO carry with them costs, many of which are at this stage unknown, that the Council would have to have budgeted for in advance of proceeding with any specific course of action. The Notice Requiring Proper Maintenance of Land, Completion Notice and Revocation Order all also carry with them the risk that they do not achieve the desired outcome of house completion, and in fact, may make this outcome more rather than less difficult to achieve.

3.9.28 Compulsory Purchase, as noted above would involve 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. This case does not involve an unauthorised development but simply an incomplete house under construction in a cul de sac that also serves an undeveloped brownfield site with planning permission. As such, Officers cannot say, with confidence that this test would be met in this case.

3.10 Conclusions

3.11 Officers from Planning and Legal Services, having assessed the current circumstances at 10 Gannel Hill View, do not consider that using any of the above powers would be suitable or appropriate at this time and do not therefore recommend that any of these should be pursued by the Council. Officers will continue to provide support and advice to the owner of the site and surrounding residents, in order to progress to a satisfactory conclusion to the development of this house plot.

4.0 Sustainability Implications

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

5.0 Resource Implications

5.01 Financial Details

5.02 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

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

6.0 Exempt Reports

6.01 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 you people will have the best possible Start in life

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

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

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

- Report to Planning Committee of 8th November 2018
- Report to Planning Committee of 14th September 2017

Author(s)

NAME	DESIGNATION	TEL NO / EXTENSION
Grant Baxter	Principal Planner	2615

Approved by

NAME	DESIGNATION	SIGNATURE
Allan Finlayson	Planning & Building Standards Team Leader	
Julie Hamilton	Service Manager, Development	