

REPORT TO ABERDEENSHIRE COUNCIL – 17 JANUARY 2019

PLANNING ENFORCEMENT GYPSY/TRAVELLER SITE AT NORTH ESK, ST CYRUS - UPDATE REPORT

1. Recommendations

The Council is recommended to:

- 1.1 Note recent enforcement activity in terms of the Interdicts to prevent further works taking place on site;
- 1.2 Note the submission of two new planning applications for development on the site and consequently any enforcement action is on hold pending determination; and
- 1.3 Note the on-going discussions with representations for the residents at North Esk regarding alternative sites will continue meantime.

2. Background/discussion

2.1 At its meeting on 28 June 2018 (Item 4) the Council considered an update Report concerning the existing Gypsy/Traveller site at North Esk, St Cyrus.

2.2 The Council agreed to:-

- (1) Note the progress made towards (a) the submission of a potential new planning application for the Gypsy/Traveller site at North Esk, St Cyrus, and (b) the identification and promotion of a suitable alternative site to which the current residents of the site at North Esk, St Cyrus could move; and
- (2) Approve an additional 6 months of engagement and dialogue in the pursuit of an acceptable solution with a further update Report to the meeting of Aberdeenshire Council on 17 January 2019.

2.3 The purpose of this Report is to provide an update on -

- Recent enforcement activity concerning the site;
- The submission of planning applications;
- Alternative sites; and
- Enforcement Action: Next Steps.

Recent Enforcement Activity

- 2.4 On 19 September 2018, following reports that works were taking place at the halting site (the north part of the site), the site was visited and it was confirmed that excavations were taking place comprising of the removal of the bund along the north east boundary, the excavation of hard surfaces and a start to remove the services (toilet, laundry block). The works appeared to demonstrate, at least in part, compliance with the Enforcement Notice for the halting site.
- 2.5 Further reports alleging that works were continuing were investigated on 26 September 2018 when it was confirmed that site clearance works were continuing along with, what appeared to be 9 sets of new drainage and water pipes, including new septic tanks, all within the halting site. These works showed an intent to develop the site in advance of any future planning application being submitted (the works reflected the proposals that were being discussed with the Planning Service for the purposes of the new planning application). As this was further unauthorised works, Aberdeenshire Council applied for and was granted at Aberdeen Sherriff Court on 28 September 2018, an Interim Interdict to prevent the continuation of further works. At a subsequent Hearing the Interim Interdict was undefended and the Interdict confirmed. No further works have taken place on the halting part of the North Esk site.
- 2.6 On 8 November 2018 it was brought to the Council's attention that a new chalet building had been brought on to the permanent accommodation site (the south part of the site). This was investigated which confirmed the additional chalet along with the plot subject of the new chalet having been subdivided into 2 plots. Following further investigations and an assessment of the options going forward, it was decided to apply for an Interdict to prevent further works taking place. Because of the multiple site ownership there was a need to establish all relevant landowners (plot owners) for Court proceedings. However before the Interdict could be applied for, a second chalet building was brought on to site. An Interim Interdict was subsequently granted at Aberdeen Sherriff Court on 16 November 2018 preventing any further works that would be in breach of planning control on the permanent part of the site and the field to the immediate south of the site. At a subsequent Hearing the Interdict was confirmed. No further works have taken place on this part of the site. The whole of the North Esk Site is now the subject of an Interdict.

Submissions of two Planning Applications

- 2.7 As discussed in the Report to Full Council on 28 June 2018, the Council is not obliged to consider a fresh planning application within 2 years of the Ministers decision unless it is materially different from the previous planning application for the site. Following submission of written details accompanied by plans which showed material changes including the inclusion of additional land in the application site boundary, it was confirmed that the Council would be obliged to accept the submission of a new planning application on the basis of the information submitted.
- 2.8 Early engagement with the Planning and Building Standards Service was encouraged and indeed the applicant's agent has had pre-application discussion with Officers.

- 2.9 On 17 December 2018 two planning applications were lodged, one relating to the halting part of the site (Ref APP/2018/3027) and the other for the permanent accommodation part of the site (Ref APP/2018/3028). These applications are materially different from the previous application considered by Aberdeenshire Council and the Council is duty bound to consider them. The applications will initially be considered by the Kincardine and Mearns Area Committee before determination by Full Council.
- 2.10 A Processing Agreement for the applications will be agreed and whilst it is too early to indicate when the applications will be considered by Full Council they potentially could be considered at the 25 April 2019 meeting.
- 2.11 As new planning applications have been submitted it would be inappropriate for Members to discuss them, or anything in relation to the site for risk of potentially prejudicing themselves before the applications come before Full Council following consideration by the Kincardine and Mearns Area Committee.

Alternative Sites

- 2.12 The Report to Full Council on 28 June 2018 outlined progress that had been made regarding alternative sites that could accommodate halting accommodation and, halting and permanent accommodation. Preliminary discussions have taken place regarding the principle of potential sites, and further dialogue with representatives from North Esk is required.

Enforcement Action: Next Steps

- 2.13 Whilst the planning applications are being processed, the Enforcement process in terms of addressing the previous Planning and Enforcement decisions is effectively put on hold until the conclusion of the application process. This is established practice in such situations until the outcome of the application/appeal process is known.
- 2.14 It is recognised that putting the enforcement process on hold will cause further delay in seeking compliance with the Enforcement Notices and the Reporter's decision which required compliance by 31 July 2018. It is also acknowledged that this is further delay to what has already been a lengthy and drawn out planning process with repeat applications and subsequent call-in application by Scottish Ministers. Such continuing delay causes uncertainty and undermines public confidence in the planning process. However, to pursue compliance with the Notices while the current application process has still to run its course, when the outcome is unknown, would be premature and potentially costly to the Council.
- 2.15 In reaching a decision on the next steps, the Council must weigh up, the need to determine the new applications and follow due process in terms of its statutory requirements, with the need to seek compliance with the extant Enforcement Notices for serious breaches of planning control that have existed since 2013. The continued unauthorised occupation of the site brings with it the continued risk to life and property in terms of the flood risk on account of the propensity of the site to flood, as highlighted by the Reporter. The need to seek compliance and remove such risk is paramount. If the

current application process cannot address the risks and no subsequent approval is forthcoming, the Council requires to decide if direct action is to be taken. Until then, work in relation to certain aspects of the Action Plan endorsed by Full Council on 18 January 2018, will continue.

3 Scheme of Governance

- 3.1 The Council is able to consider this item since it relates to a decision of Full Council taken in terms of paragraph A17 of the previous Scheme of Delegation (now Part 2A of the Scheme of Governance Section 11.1 and Part 2C List of Planning Delegations Section 3.1(a)).
- 3.2 Members are reminded that the Head of Planning and Building Standards has delegated power to take action, including direct action, in pursuance of enforcement against unauthorised developments, in terms Part 2B List of Officer Powers Section F4.8.

4 Implications and Risks

- 4.1 An Equality Impact Assessment has been carried out and is attached as **Appendix 1** to this Report.
- 4.2 There are no staffing implications arising from this Report at this stage.
- 4.3 As presented to Full Council at its meeting on 23 November 2017 (Item 7) and on 28 June 2018 (Item 4), in the event of the Enforcement Notices not being complied with, the Council could incur significant costs in implementing further actions on the St Cyrus Gypsy/Traveller site. These are set out in the Action Plan and potentially could be recoverable, in part, through the Courts.
- 4.4 The Council continues to assess any necessary steps for enforcement action in consideration of human rights and equality issues. In particular, while acknowledging the conclusion of the report to Scottish Ministers that the development gives rise to substantial risk to life and property on account of the propensity of the site to flood, the Council must also ensure that any enforcement powers it may use to tackle unauthorised development are used in a lawful and proportionate way when responding to breaches of planning control.
- 4.5 The following risks have been identified as relevant to this matter on a Corporate Level: ACORP006 Reputation Management and ACORP007 Social Risk ([Corporate Risk Register](#)); and at a Strategic Level: ECSSR004 Support Inclusive, Vibrant and Healthy Communities ([Directorate Risk Registers](#)). Risks will continue to be identified and monitored in the Action Plan.
- 4.6 A Town Centre Assessment is not required because there will be no significant impact as a result of this Report on Town Centres.

Stephen Archer

Director of Infrastructure Services

Report prepared by Bruce Stewart, Planning Service Manager
21 December 2018

APPENDIX 1
EQUALITY IMPACT ASSESSMENT

Stage 1: Title and aims of the activity (“activity” is an umbrella term covering policies, procedures, guidance and decisions).	
Service	Infrastructure Services
Section	Area Manager
Title of the activity etc.	Planning Enforcement
Aims of the activity	To seek compliance with Ministerial Decision
Author(s) & Title(s)	W Munro Area Manager (K&M)

Stage 2: List the evidence that has been used in this assessment.	
Internal data (customer satisfaction surveys; equality monitoring data; customer complaints).	Previous reports to Area Committee and Council on retrospective planning applications, enforcement notices issued, information from education and Gypsy/Traveller Liaison Officer
Internal consultation with staff and other services affected.	Multi Service Group with representation from Planning and Building Standards, Roads and Landscape Services, Housing, Legal and Governance, Education, Customer Communications and Improvement, Area Manager
External consultation (partner organisations, community groups, and councils).	Police Scotland, NHS Grampian
External data (census, available statistics).	Minister’s Decision
Other (general information as appropriate).	

Stage 3: Evidence Gaps.	
Are there any gaps in the information you currently hold?	We need to keep up to date with details of residents and their particular needs

Stage 4: Measures to fill the evidence gaps.		
What measures will be taken to fill the information gaps before the activity is implemented? These should be included in the action plan at the back of this form.	Measures:	Timescale:

Stage 5: Are there potential impacts on protected groups? Please complete for each protected group by inserting "yes" in the applicable box/boxes below.				
	Positive	Negative	Neutral	Unknown
Age – Younger	Yes	Yes		
Age – Older	Yes	Yes		
Disability	Yes	Yes		
Race – (includes Gypsy Travellers)	Yes	Yes		
Religion or Belief			Yes	
Gender – male/female			Yes	
Pregnancy and maternity	Yes	Yes		
Sexual orientation – (includes Lesbian/ Gay/Bisexual)			Yes	
Gender reassignment – (includes Transgender)			Yes	
Marriage and Civil Partnership				Yes

Stage 6: What are the positive and negative impacts?		
Impacts.	Positive (describe the impact for each of the protected characteristics affected)	Negative (describe the impact for each of the protected characteristics affected)
Please detail the potential positive and/or negative impacts on those with protected characteristics you have highlighted above. Detail the impacts and describe those affected.	Residents will no longer live in a place where they exposed to serious risk to life and property due to flooding.	Loss of settled home / community and breaking up of households
		Potential homelessness
		Disruption to education
		Potential for lack of continuity in health care
		Potential financial loss

Stage 7: Have any of the affected groups been consulted?	
If yes, please give details of how this was done and what the results were. If no, how have you ensured that you can make an informed decision about mitigating steps?	Discussions have been held with the original applicant/owner and planning agent. The site has been visited and residents met by senior officers. GTLO visits site regularly and provides support to residents and liaison with Council and other services to try to ensure needs are met. A communications strategy has been drawn up and once approved will be provided to residents through a nominated spokesperson.

Stage 8: What mitigating steps will be taken to remove or reduce negative impacts?		
These should be included in any action plan at the back of this form.	Mitigating Steps	Timescale
	Regular liaison to ensure needs are fully understood	Started and ongoing until conclusion
	Housing needs will be identified and addressed	In run up to residents leaving
	Education continuity	As residents leave
	Health continuity	As residents leave
	Action plan will identify risks and mitigations	Ongoing

Stage 9: What steps can be taken to promote good relations between various groups?	
These should be included in the action plan.	Communications Strategy and GTLO

Stage 10: How does the policy/activity create opportunities for advancing equality of opportunity?
The case is so complex and so many officers across services are involved that it will provide a learning opportunity for many in terms of the Gypsy/Traveller way of life and their needs. This learning will be taking into other aspects of officers' work.

Stage 11: What equality monitoring arrangements will be put in place?	
These should be included in any action plan (for example customer satisfaction questionnaires).	The multiagency action planning group will meet regularly with this as a standing item on the agenda.

Stage 12: What is the outcome of the Assessment?		
Please complete the appropriate box/boxes	1	No negative impacts have been identified –please explain.
	2	Negative Impacts have been identified, these can be mitigated - please explain. * Please fill in Stage 13 if this option is chosen.
	By continual engagement, identification, assessment and understanding of needs, all the impact risks except one can be mitigated.	
	3	The activity will have negative impacts which cannot be mitigated fully – please explain. * Please fill in Stage 13 if this option is chosen
The breaking up of a community and households will be mitigated as far as possible by ensuring that needs are identified and assessed and met as far as possible.		

* Stage 13: Set out the justification that the activity can and should go ahead despite the negative impact.

The Ministerial Decision is at the highest level of authority in terms of Town and Country Planning and must be complied with. Failure to take planning enforcement action will undermine the whole planning process and damage public confidence in the system and the council. The decision refers to serious risk to life and property which in itself cannot be ignored.

Stage 14: Sign off and authorisation.

Sign off and authorisation.	1) Service and Team	Infrastructure Services (Area Manager)	
	2) Title of Policy/Activity	Compliance with Planning Enforcement (if appropriate)	
	3) Authors: I/We have completed the equality impact assessment for this policy/activity.	Name: William Munro Position: Area Manager Date: 05/12/17 Signature:	Name: Position: Date: Signature:
		Name: Bruce Stewart Position: Planning Service Manager Date: 21/12/18 Signature:	Name: Position: Date: Signature:
	4) Consultation with Service Manager	Name: N/A Date:	
	5) Authorisation by Director or Head of Service	Name: Stephen Archer Position: Director Date: 21/12/18	Name: Position: Date:
	6) If the EIA relates to a matter that has to go before a Committee, Committee report author sends the Committee Report and this form, and any supporting assessment documents, to the Officers responsible for monitoring and the Committee Officer of the relevant Committee. e.g. Social Work and Housing Committee.	Date:	
	7) EIA author sends a copy of the finalised form to: equalities@aberdeenshire.gov.uk	Date:	
(Equalities team to complete) Has the completed form been published on the website? YES/NO			Date:

