

ABERDEEN CITY COUNCIL

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COMMITTEE	Planning Development Management
DATE	28 May 2015
DIRECTOR	Pete Leonard
TITLE OF REPORT	Alleged breach of planning control at Cairdhilllock Farm, Kingswells, Aberdeen
REPORT NUMBER	CHI/15/193
CHECKLIST COMPLETED	No

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1. PURPOSE OF REPORT

The purpose of this report is to inform the Committee in respect of a breach of planning control regarding the infilling, compacting and raising of land (i.e. re-profiling), together with the importing of materials to undertake these works at Cairdhilllock Farm, Kingswells, Aberdeen and seek authorisation to commence enforcement action and redress in the Courts as deemed appropriate.

2. RECOMMENDATION(S)

It is recommended that the Committee authorise the serving of an Enforcement Notice upon MacIntosh Plant Hire and the owner of the land requiring the submission of a Proposal of Application Notice in respect of the area of land as shown on the Stop Notice to rectify the breach of planning control. A copy of the Stop Notice is appended for information. The breach should be remedied by the removal of the imported materials, putting the land back to its original levels/profile and thereafter put to agricultural use.

In the event that a Proposal of Application Notice is not submitted within the prescribed time authorisation is sought of the Committee to seek redress in the courts.

3. FINANCIAL IMPLICATIONS

Financial costs may be incurred should the Enforcement Notice not be complied with.

4. OTHER IMPLICATIONS

There will be implications in terms of staff time to prepare and issue the Enforcement Notice. Costs may be incurred if action is required to secure compliance with the Enforcement Notice.

## 5. BACKGROUND & MAIN ISSUES

### Basis of Report

In January 2015 Councillor Cameron on behalf of a constituent raised the matter of the continued tipping of excavated materials by McIntosh Plant Hire on land adjacent to the Brodiach Burn within the western part of the Cairdhilllock Farm steading at Kingswells.

Following dialogue with Officers, McIntosh Plant Hire (MPH) confirmed that they had stopped importing filling material from outwith Cairdhilllock Farm on the 7<sup>th</sup> of February 2015. MPH on the 27<sup>th</sup> of February 2015 submitted a retrospective planning application for the infilling and re-profiling of the land associated with the importation of material. The application was subsequently validated by the Council on the 5<sup>th</sup> of March 2015 under application reference 150315.

Following validation of the planning application Officers of the planning authority were notified that there were on-going works on the land at Cairdhilllock Farm. Upon investigations by Officers it was confirmed that engineering operations were occurring within and outside the application site shown on the submitted drawings without the benefit of planning permission. MPH indicated that the works would not stop.

In response to the investigations and the on-going activity a Temporary Stop Notice (the Notice) was served on MPH and the owner of Cairdhilllock Farm, together with the placement of a copy of the Notice at the access point to the site on the 15<sup>th</sup> of May 2015. Upon receipt of the Notice, Mr B McIntosh informed Officers that he intended to continue with the works.

The Notice is only effective for 28 days from the date of service and this period provides the opportunity for the planning authority to seek authorisation of enforcement action, together with any other action deemed proportionate to the breach of planning control. Although served with the Notice MPH were undertaking the infilling, compacting, re-profiling land, together with the importing of materials to undertake the works on the 20<sup>th</sup> of May 2015.

Allowing for the breach of the Notice, Mr McIntosh of MPH together attended a meeting with the Planning Case Officer and a Legal Officer on the 26<sup>th</sup> of May 2015, at which point Mr McIntosh confirmed that the works had now stopped and the works were undertaken without the benefit of planning permission (i.e. a breach on control had occurred). Mr McIntosh also confirmed that he would submit a Proposal of Application Notice by the 5<sup>th</sup> of June 2015.

On the 26<sup>th</sup> of May 2016 (i.e. the same date as the meeting with the Case Officer and a representative of Legal Services) MPH have applied to SEPA for a Regulation 19 Exemption to place an additional 30,000 tonnes of material on part of the area covered by the Notice. SEPA are currently investigating the current activity on site together with the new exemption application.

The works involve the importation of materials outwith the site with consequential highway safety implications, the movement of plant to undertake the engineering operations with its attendant noise and affect upon public amenity, together with potential impact upon watercourses and water sources.

### The Enforcement Position

Section 127(l) of the Town and Country Planning (Scotland) Act 1997 (the Act), as amended, states that a planning authority may issue an enforcement notice where it appears to them:

- (a) That there has been a breach of planning control, and
- (b) That it is expedient to issue the notice, having regard to the provisions of the development plan and any other material considerations.

Paragraph 7 to Circular 10 of 2009 "*Planning Enforcement*" notes that planning authorities have a general discretion to take enforcement action against any breach of planning control. The paragraph goes on to state that when authorities considering whether enforcement action is expedient they should be guided by a number of considerations that include:

- Whether the breach of planning control would affect unacceptability either public amenity or the use of land and buildings meriting protection in the public interest; and
- Enforcement action should be commensurate with the breach of planning control to which it relates.

The Council informally requested Mr McIntosh of McIntosh Plant Hire via e-mail on the 21<sup>st</sup> of May 2015 to submit a retrospective planning application in respect of the works within the red line shown on the Stop Notice. Section 33A of the Act introduced by the Planning etc. (Scotland) Act 2006 allows a planning authority to issue a notice requiring the submission of a retrospective planning application.

### Planning Assessment

The aforementioned works constitute a breach of planning control and it is considered expedient to commence enforcement action having

regard to the provisions of the development plan and other material considerations.

The development plan for the purposes of this matter under the provisions of sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, as amended, constitutes the Aberdeen Local Development Plan (the ALDP) of 2012. Whilst the emerging replacement Local Development Plan does not form part of the statutory development plan it has been adopted by the Council as constituting a material consideration in the decision-taking process.

Policy NE2 of the ADLP addresses those areas designated as green belt and will permit development in such areas provided it is essential for agriculture, restoration or landscape renewal. In this instance, MPH has not evidenced that the engineering operations are essential for agriculture, save the comment that they are going to reseed the land. On the matter of landscape renewal / restoration, it is accepted that such operations can occur by utilising the native materials on the land but this does not extend to the importing of materials from outwith the farm as has occurred in this case to undertake the

The ADLP addresses the matter of managing the transport impact of development under policy T2 that looks to ensure that sufficient information is available to take a reasoned decision in assessing the transport impact of new development that includes highway safety. In this instance, MPH has not supplied any information with regard to:

- vehicle activity associated with the importing of material to the site
- the movement of vehicles in and off the land to undertake the works,
- measures to avoid the spreading of mud on the local road network from vehicles accessing and leaving the site that can have an adverse effect upon road safety.

It is therefore considered that the development is contrary to this policy of the ADLP and the works will have an impact upon highway safety.

It is accepted that the protection of amenity constitutes a material consideration in the development management process and is an important objective in ensuring that public amenity is protected in the public interest. It is acknowledged that day to day agricultural calendar activities will generate noise, dust etc. that will impinge upon amenity. However, the importing of materials together with the works fall outwith this scope and it affects public amenity that that merits protection in the public interest.

The area where the breach of planning control has occurred abuts Brodiach Burn and the area in general could be described as boggy ground. Policy NE6 of the ADLP headed "*Flooding and Planning*" looks

in part to control the discharge of additional surface water. In principle it is accepted that the re-profiled land may not be increase additional surface water flow, however the same cannot be said with regard to the works to produce the new landscape. Clearly, there is a need to ensure that there is no adverse impact upon watercourses or water sources.

MPH indicated by an e-mail dated the 24<sup>th</sup> of April 2015 that the area has a full SEPA licence. In order to ascertain the veracity of this statement Officers have written to SEPA to ascertain the scope and geographical extent of any consents that they may have issued in respect of the site. As noted above SEPA are investigating if there is a breach of the current exemption on the site and the new application submitted to SEPA on the 26<sup>th</sup> of May 2015.

It is the understanding of Officers that the imported material may compromise elements that could lead to contamination both of the land as well as any watercourses and/or waster sources. Clearly, this is an area that merits control under the planning regime.

The planning authority in principle has no issue with the nature of the development. However, there are aspects of control with regard to highways (e.g. level of activity and highway safety), public amenity and its protection, together with potential hydrological and contamination impacts required in the public interest that can be achieved and managed via a retrospective planning application as provided for under section 33A of the Act. It is considered that this requirement of MPH and the landowner is proportionate to the breach of planning control.

#### Concluding comments

For the reasons set out above it is considered that the infilling, compacting and re-profiling of the land together with the importing of materials constitutes a breach of planning control having regard to the provisions of the development plan and it is therefore expedient to commence enforcement proceedings in the public interest, whilst allowing redress to the Courts.

#### 6. IMPACT

Health and Safety - No health & safety implications have been identified.

Risk Management - If serious breaches of planning control are not followed up, then this could act as an encouragement for other developments to take place without the necessary planning permission and consequent effective control over environmental impacts.

Equal Opportunities - No equal opportunity issues have been identified.

Social - No social issues have been identified.

Economic – MPH has noted that the works have to undertaken for the land to be seeded for the landowner to claim a farm payment.

7. MANAGEMENT OF RISK

It is considered that this matter does not negatively impact upon the five specialist risk related areas.

8. BACKGROUND PAPERS

Background papers include the aforementioned e-mails; planning application file 150 and 95/1530.

9. REPORT AUTHOR DETAILS

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