

Perth and Kinross Council
Development Management Committee – 11 May 2016
Enforcement Report by Development Quality Manager

Formation of five permanent gypsy/travellers pitches at Crookmoss, Crook of Devon, Kinross-shire

Ref. No: 12/00546/FLL
Ward No: 8 – Kinross-shire

Summary

Enforcement update on alleged Breach of Conditions 9, 10, 11, 12, 13 and 14 for the formation of 5 gypsy/travellers pitches

BACKGROUND AND DESCRIPTION

- 1 This permission was previously considered by this Committee at its meetings on 16 September 2015 and 13 January 2016 in respect of an update on the enforcement position in relation to conditions attached to the consent and it was remitted to report back again to this Committee at this meeting. The previous Committee reports together with a copy of the planning consent notice, setting out the full terms of the conditions, are attached to this report.
- 2 Members, in requesting a further update were concerned over the conditions relating to the following areas:
 - Noise
 - Drainage
 - Water supply
 - Access
 - Landscaping
- 3 All other issues in relation to the permission and conditions remain the same.

CONSULTATIONS

- 4 Further discussions have taken place with the Scottish Water and the Council's Environmental Health Officer.

REPRESENTATIONS

- 5 There have been no further representations received as a result of the further review period. All representations associated with the original application are as detailed in the original Committee Report.

APPRAISAL

Noise

- 6 No further complaints have been received from neighbouring residential properties. With regards to the siting of the electricity generators, all the occupied pitches now have acoustic housing units for their respective generators. The alternative solution of a mains electricity supply is prohibitively expensive and as such, the occupants have decided to focus their resources, at this time, on other matters. Conditions 12 and 13 are currently in compliance.

Drainage

- 7 Following the September and January Committees, Scottish Water were contacted in respect of the likelihood of a mains sewer connection being available to serve the 5 pitches. In terms of an interim connection to the public sewer, the subject of a flow and load survey, has been assessed by Scottish Water. At this time there is no opportunity for an interim connection. Scottish Water infrastructure is being overwhelmed by surface water infiltration which must be resolved prior to further connections being offered. No specific time has been given for resolving surface water ingress and therefore we have been advised that the occupants should seek resolution to Scottish Water's '5 Growth Criteria'.

Water supply

- 8 Mains water supply will be forthcoming at a time when foul treatment is in place. The occupants are using bottled water with a single private water supply.

Access

- 9 The access has been completed and as such, conditions 3 and 4 could be discharged.

Landscaping

- 10 Landscaping for the wider site is complete. This relates principally to the perimeter planting, which is more of a priority for the external appearance of the site. Individual pitch landscaping is also underway where pitches are occupied. Site landscaping is being monitored to ensure that it is maintained to satisfy condition 15.

ADDITIONAL INFORMATION

Paddock

- 11 The Planning Application submitted for the area of ground between the consented pitches and the road frontage under ref; 15/02078/FLL for change of use from paddock to form 3 gypsy/traveller pitches and erection of a fence (in

retrospect) was refused on 9 March 2016. The applicant has 3 months from the date of decision for appeal therefore our position on enforcement is held in abeyance until the end of this period.

Alleged Pitch 6

- 12 As a result of the planning application mentioned at para 11, a 'Pitch 6' had been neighbour notified. Pitch 6 should not have been neighbour notified as an address for this pitch does not exist on the Council's address gazetteer. Further investigation has revealed a Council Tax assessment carried out in 2012 considered there to be 6 pitches rather than 5. Generally, previous experiences relating to neighbour notification has meant that the Planning Authority take a cautious approach to neighbour notification to ensure all affected residents are notified. Pitch 6 does not exist now and has never existed.

CONCLUSION AND RECOMMENDATION

- 13 Whilst significant progress in key areas of concern in relation to compliance with the conditions attached to the consent has been made, the issue of drainage remains to be resolved. I am aware that Committee will be concerned about the current position and that the timescales for drainage compliance could be extended significantly. However, I am of the view that further enforcement action would not be appropriate in respect of conditions regarding drainage. As we have served formal notices under Section 145 of the Act the development will not become lawful through passage of time. My recommendation is that the action we have taken to date is sufficient and no further enforcement action is necessary.
- 14 An Enforcement Notice in these circumstances would not, in my opinion, be appropriate use of our enforcement powers. An Enforcement Notice could not be used to secure delivery of drainage infrastructure and as such there would be no positive outcome to be gained from service. An Enforcement Notice could be used, as has been suggested, to clear the site and return it to its former use. To be able to do that, though, we would be required to demonstrate 'planning harm' in relation to a notice which achieves this outcome. As described in the paragraphs above, there is no injury to residential or visual amenity, roads matters have been addressed and SEPA have again confirmed that there are no environmental concerns with the site. Therefore, 'planning harm' is not demonstrated in relation to this development and as such an Enforcement Notice would be unlikely to succeed.
- 15 Key considerations by a Reporter, if dealing with an Enforcement Notice appeal, would be: firstly, as stated above, has planning harm resulted, and, secondly, have all possible options been explored to resolve the issue. I am of the view that the option to deliver mains drainage has not been fully exhausted as an option and still remains open.
- 16 I appreciate that Members could reasonably require an update to our position after a given period. However, given the circumstances set out in this Report I

consider that it is not necessary for future reports to be referred back to this Committee. To this end, I would recommend that future updates be directed to the affected Local Members and Convenor in separate, regular meetings in the future until matters have been resolved.

- 17 In conclusion therefore it is recommended that the option of connection to the mains drainage continues to be pursued with the applicants and Scottish Water and that progress on this be reported back directly to the affected Local Members and Convenor.

Background papers: None
Contact Officer: Eddie Jordan – Ext 75341
Date: 28 April 2016

NICK BRIAN
DEVELOPMENT QUALITY MANAGER

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