
Report to Planning Committee

Date of Meeting: Thursday 31 October 2024

Subject: Unauthorised change in use of land to use for storage including the storage of 2 Steel Shipping Containers, 2 No Mechanical Diggers and storage/ parking of multiple Motor Vehicles, and installation of heras type mobile fencing to enclose the Site at Land to the North of Alexandra Street (A908) and West of Devonpark Mill Access Road, Devonside, Tillicoultry

Report by: Keith Johnstone, Principal Planner

1.0 Purpose

- 1.1. To advise the Committee of planning enforcement options open to the Council following non-compliance with an Enforcement Notice served by the Council on the owner of the land, and seek their approval for further action.

2.0 Recommendations

- 2.1. It is recommended, following review of the options set out in Appendix 1 to this report, that Members give authority to the Planning & Building Standards Team Leader to report the failure to comply with the Enforcement Notice as an offence to the Crown Office and Procurator Fiscal Service (COPFS), and if necessary, to use the other enforcement options as set out in Appendix 1, as deemed appropriate.

3.0 Considerations

- 3.1. The enforcement issue relates to the area of land which adjoins the A908 to the south, the access road to Devonpark Mills to the north and north east and a line of trees and a former shop building to the west. This area extends to approximately 1250 square metres. The land was previously owned by the Council and was sold to the current owner.
- 3.2. Since acquiring the land, it has been used by the owner, without any planning permission, for the storage of two steel shipping containers, JCB and telehandler and storage / parking of multiple motor vehicles. The type and number of vehicles has varied over time but includes minibuses, cars and 4 wheel drive vehicles. This is considered to be an unauthorised and unacceptable material change of use of the site to use for storage (Class 6)

including the siting of the two containers. The site has also been enclosed with heras type mobile fencing, which is also an unauthorised development due to its height exceeding 1.0 metre above ground level and lying within 20.0 metres of a road.

- 3.3. It should be noted that the condition of the derelict building on the site, whilst not part of the breach of planning control, is being monitored by the Building Standards team, and no formal action is considered necessary at this time, whilst the building is fenced off. If, through planning enforcement, or otherwise, the fencing was to be removed, the Building Standards team may need to consider actions under Dangerous Building legislation, if the building remained unprotected and in still its current condition.
- 3.4. The use and appearance of the site have been the subject of ongoing concerns from within the community for some time, and following a period of time when the Planning Service had been seeking to engage with the owner and have assurances and action to address the breach of planning control, the situation did not improve and subsequently, a Planning Enforcement Notice was served on the owner on 13th November 2023 (taking effect one month later) requiring:
- (a) *within a period of six months from the date on which this Notice takes effect, cease the use of the Site for storage and parking and remove from the Site all the items including the 2 shipping containers, mechanical diggers and vehicles and any other equipment.*
 - (b) *within 14 days from removal of the items on the Site and cessation of use of the land for storage required under (a) above, remove the heras type fencing from the Site and reinstate the land to its original condition.*
- 3.5. The owner failed to comply with the terms of the Notice within the compliance period (by 14th June 2024). Before, during and after the Notice period, the Planning Service has had regard to the personal circumstances that the landowner had highlighted to us, including restrictions and delays associated with the Covid 19 pandemic, his employment position including the provision of defence training in Ukraine, his health and the land transfer process after he purchased the land from the Council. He had also cited vandalism to vehicles as a factor in making it more difficult to move them. It is considered, however, that the Service has provided a reasonable period of time and opportunity for the owner to try to address the breaches of planning control.
- 3.6. The owner has recently been in contact with the Service, and officers met on site with him on 25th September 2024. During this meeting, and in subsequent emails, the owner has stated his intentions to clear the vehicles and machinery from the site, demolish the derelict building and remove fencing, with a view to applying for planning permission for a small residential development on the site. Subsequently, two vehicles were removed from the site, but no further action, as at the date of writing this report. The Service will continue to press the owner to address all the matters set out in the Enforcement Notice, and is seeking a further site meeting in this respect.

4.0 Sustainability Implications

None

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 have been consulted and have agreed the financial implications as set out in the report. Yes

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)

Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all

Our families; children and young people will have the best possible start in life

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

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

(2) **Council Policies** (Please detail)

None

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 Appendix 1: Enforcement Options: - Land to the North of Alexandra Street (A908) and West of Devonpark Mill Access Road, Devonside, Tillicoultry

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)

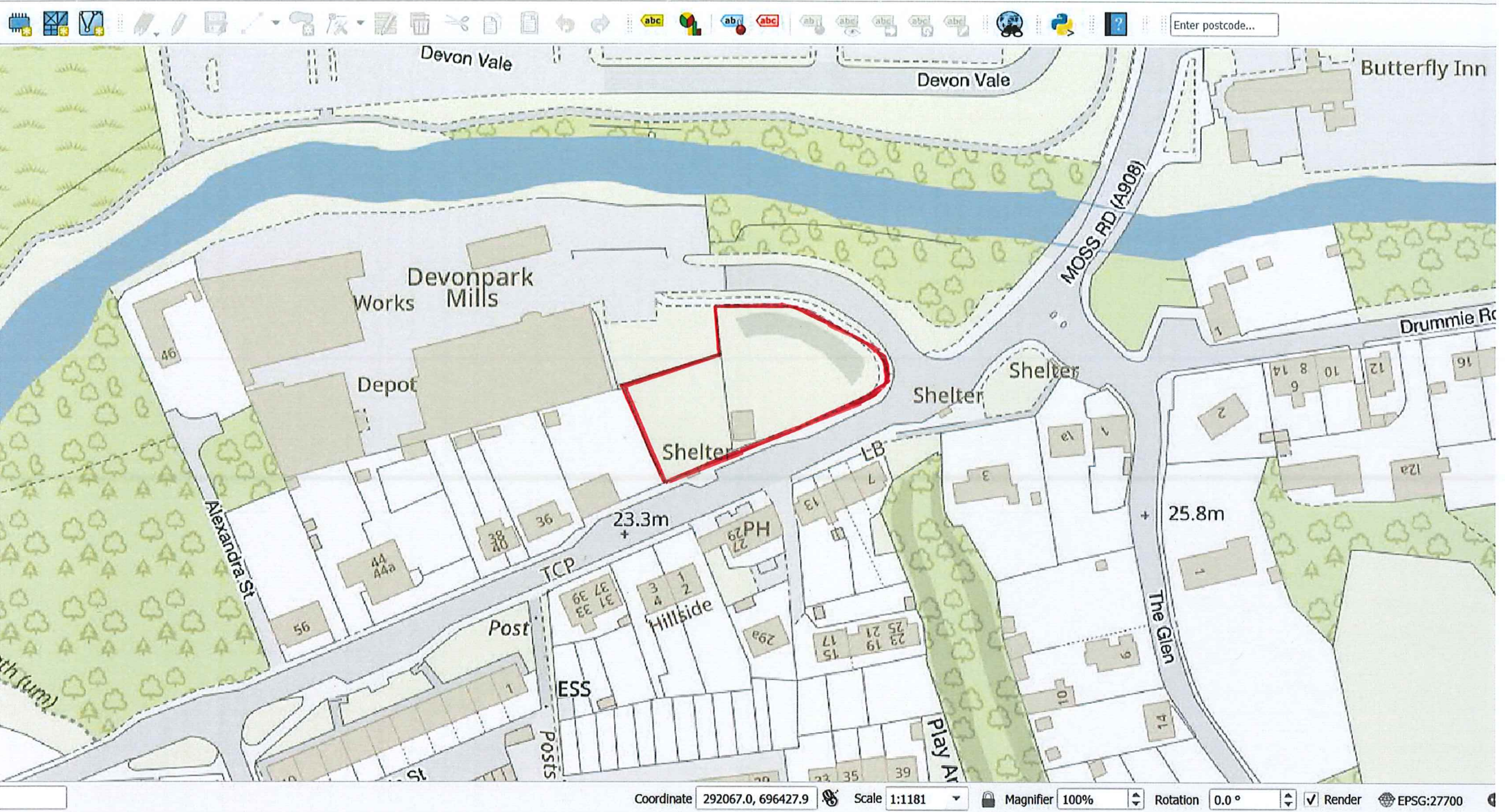
Yes (please list the documents below) No

Author(s)

NAME	DESIGNATION	TEL NO / EXTENSION
Keith Johnstone	Principal Planner	2614

Approved by

NAME	DESIGNATION	SIGNATURE
Grant Baxter	Planning & Building Standards Team Leader	



Land to the North of Alexandria Street (A908) and West of Devonpark



Clackmannanshire Council

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Comhairle Siorrachd Chlach Mhanann

Appendix 1: Enforcement Options: - Land to the North of Alexandra Street (A908) and West of Devonpark Mill Access Road, Devonside, Tillicoultry

Enforcement Options	Consequences of Non-compliance	Commentary
<p>1. Report the offence of non-compliance to the Crown Office and Procurator Fiscal Service (COPFS) who would decide whether to pursue a prosecution for the offence. This action is under Section 136 of the Act.</p>	<p>This action must be taken within 6 months of the end of the expiry period. If found guilty of an offence, the person may be fined (up to £50,000). If the use continues after conviction, the person may be convicted of a second or subsequent offence.</p>	<p>The Council will incur legal costs in taking a prosecution forward.</p> <p>If prosecution was successful, in determining the amount of any fine, the Court is to have regard to any financial benefit which has accrued or appears likely to accrue in consequence of the offence.</p> <p>Successful prosecution would not directly lead to resolution of the breach of planning control on the site.</p>
<p>2. Serve Fixed Penalty Notice. This action is under Section 136A of the Act.</p>	<p>This Notice can be served following non compliance with an Enforcement Notice. The Notice shall specify the breach and offer the person the opportunity of discharging the offence by paying an amount within the period of 30 days from the date of serving the Penalty Notice.</p> <p>The penalty amount is a prescribed amount, currently set at £2000. The Notice must be served within 6 months of the compliance period in the Notice. The Notice cannot be served after the person has been charged with an offence for not complying with the Enforcement Notice.</p> <p>By paying the penalty imposed by the Notice, the person will discharge any liability for prosecution for the offence.</p>	<p>Upon payment of the penalty, the person will not have to discharge the actions set out in the Enforcement Notice i.e. to remove the containers, vehicles and fencing and the cessation of the storage use.</p> <p>The Council still retain the power to take direct action to remedy the breach and recover the costs of the work from that person once the penalty has been paid.</p> <p>There is no right of appeal against a fixed penalty notice.</p>

<p>3. Direct Action for Non-compliance with an Enforcement Notice. This action is under Section 135 of the Act.</p>	<p>The Council may enter on the land, take those steps required by the Notice and then seek to recover the cost from the owner or lessee of the land.</p> <p>A planning authority taking direct action may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal. After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.</p>	<p>This option will address the breach of planning control on the site. The approach would incur costs to the Council upfront and the recovery of costs may take a protracted period and would be open to challenge.</p> <p>There would be a cost to store the items pending disposal or recovery by the owner. It is likely that quotations would have to be obtained to clarify the costs to remove the items from the land. An initial estimate of this from Facilities Management indicates this could be in the region of £10-15k depending on the number and type of items to be moved.</p> <p>Direct action could be pursued if a prosecution under Section 136 is unsuccessful.</p> <p>It should also be noted that removal of fencing from around the dilapidated building on the site would expose the public to risk, which would require consideration of serving a Dangerous Building Notice under the Building (Scotland) Act, 2003. This could require the building to be fenced off again or to be demolished.</p>
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<p>4. The Council take no further action having served an Enforcement Notice.</p>	<p>None</p>	<p>The Council would not incur any further costs, however the breach may remain unremedied for a considerable period of time. The owner has recently engaged with the Planning & Building Standards Services and initially removed some vehicles. The Services would continue to work with the owner to remedy the breach.</p>
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