

## ITEM No ...4.....

**REPORT TO:** PLANNING COMMITTEE – 18 JUNE 2018

**REPORT ON:** UNAUTHORISED DEMOLITION OF WALLACE CRAIGIE WORKS  
(FORMER HALLEY'S MILL)

**REPORT BY:** EXECUTIVE DIRECTOR OF CITY DEVELOPMENT

**REPORT NO:** 212-2018

### **1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to advise Committee of the enforcement options available under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in relation to the unauthorised demolition of the Category B Listed Building - Wallace Craigie Works (formerly Halley's Mill) and to agree an appropriate response by the Council.

### **2 RECOMMENDATION**

- 2.1 It is recommended that Committee considers the Options contained in this report and approves Option C to report the demolition of this Category B Listed Building without the benefit of authorisation to the Procurator Fiscal.

### **3 FINANCIAL IMPLICATIONS**

- 3.1 There are no financial implications for the Council in terms of this report.

### **4 BACKGROUND**

- 4.1 Members are advised that on 11 May 2018 the City Council became aware that demolition works had commenced at the former Wallace Craigie Works (Halley's Mill) site. This was confirmed by officers on visiting the site.
- 4.2 The property is a Category B Listed Building and separate statutory permissions in terms of the Planning and Building legislation are required from the Council prior to the commencement of any works including demolition.
- 4.3 Planning Permission was granted by the Council on 20 January 2015 for the development of 100 flats including the conversion of a B-Listed Mill. Listed Building Consent was also granted on 22 January 2015 for the retention of the main Category B Listed Mill and its conversion into 32 flats. Both permissions expired in January 2018 with no commencement of the proposed works.
- 4.4 In November 2017 the owner's representative contacted Council officers advising that the building continued to deteriorate and that it may be prudent to consider demolition. The site was subsequently inspected by the Council's City Engineer who advised that, whilst defects were present, demolition was not the only option to preserve public safety or indeed the building itself.
- 4.5 An application for a Building Warrant (17/00759/NDOM7) to demolish was received on 21 December 2017 and was subsequently approved on the 24 April 2018. Regulation 3.8.2 of the Scottish Building Standards Procedural Handbook states the following:

*“Regulation 3.8.2 - The information required on the existing building and on the method of demolition, is intended for the purpose of allowing a verifier to judge what is the appropriate provision of protective works to ensure the safety of the general public. Other details of any method statement prepared to meet Health and Safety at Work legislation need not be checked by the verifier. For Building Warrant approval only sufficient information is needed to ensure the requirements set in regulations 10 and 13 to 15 of the building regulations are met.”*

- 4.6 Where the above has been demonstrated, Building Standards would have no justification in refusing to grant of a Building Warrant.
- 4.7 On approval of the Building Warrant, the applicant failed to provide Notification of Commencement of work. The Applicant was made aware that they are required to obtain all legislative approvals before commencing any works on site, with the below warning on the formal Building Warrant Demolition approval: **WARNING - a Building Warrant does not exempt you from obtaining other types of permission that may be necessary, such as planning permission or listed building consent. Consult the Local Authority if in doubt.**
- 4.8 On 22 December 2017, the owner's agent was contacted advising them that the property was a Category B Listed Building and that Listed Building Consent was required from the Council for its alteration or demolition and that this had not been granted. The owners agent replied on 22 December 2017 stating that he would advise the owners of this requirement. An application for Listed Building Consent was submitted prior to the commencement of the demolition works.
- 4.9 Historic Environment Scotland (HES) has confirmed that its Designations Team had not been asked to review the listing (including delisting) of the building and that they had not been approached by the owner, or other interested party, to discuss a demolition proposal.
- 4.10 In terms of the unauthorised works HES advised that:
- "The Historic Environment Scotland Policy Statement (HESPS) (paragraph 3.38) emphasises that once lost Listed Buildings cannot be replaced. It goes on to say that Listed Buildings can be robbed of their special interest by inappropriate alteration or by demolition, and therefore presumption is against demolition or other works that adversely affect the special interest of a Listed Building or its setting.*
- The demolition of Wallace Craigie Works has resulted in the complete loss of a Category B Listed Building, part of Dundee's rich industrial heritage. No opportunity was given to discuss the retention or making safe of the building due, we understand, to the demolition works being unauthorised.*
- It is now a matter for your Council to decide what is in the public interest to happen next. We would fully expect this to be appropriate to the scale and seriousness of the unauthorised works undertaken."*
- 4.11 The demolition of the Listed Building commenced without the benefit of Listed Building Consent from the Council. The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 Section 6 (Restriction on works affecting Listed Buildings) states that:
- "no person shall execute or cause to be executed any works for the demolition of a Listed Building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised."*
- 4.12 In addition, Section 8 of the Act states that:
- "If a person contravenes section 6 he shall be guilty of an offence."*
- 4.13 In terms of section 34 of the Act, where it appears to the planning authority:
- a that any works have been, or are being, executed to a Listed Building in their district; and
  - b that the works are such as to involve a contravention of section 8(1) or (2),
- they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, serve a notice under this section (in this Act referred to as a "Listed Building enforcement notice"). The notice shall specify the works the authority requires to cease and the works which require to be carried out.

4.14 There are three options available to the Committee:

- a take no further action;
- b issue an Enforcement Notice; or
- c make a report to the Procurator Fiscal.

4.15 Take No Further Action

The owner was clearly aware that the property was a Listed Building as a number of Listed Building Consent applications had previously been lodged for the conversion of the property. As outlined above Council officers directly contacted the owners representatives advising them that the property was a Listed Building and Listed Building Consent was required for alterations or demolition. The unauthorised demolition of a Listed Building is a significant breach of National Legislation as reinforced through the comments by Historic Environment Scotland. Given the national significance of demolishing a Category B Listed Building, taking no further action would not be appropriate. The demolition can be seen as a clear and deliberate act to remove a significant piece of Dundee's and Scotland's industrial heritage to provide a cleared development site. For the above reasons, taking no further action is not considered to be an appropriate response.

4.16 Issue an Enforcement Notice

Section 34 of Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 provides powers to Councils to issue an Enforcement Notice. The Notice is required to specify the alleged contravention and the works which require to be ceased or steps required to be undertaken. Listed Building Consent had not been granted for the demolition of the building and no notification of the commencement of proposed works through the Building Warrant (17/00759/NDOM7) had been submitted to the Council. By the time Council officers visited the site, demolition of the building had progressed beyond a point where it could be stopped and ensured that the remaining part of the building could be retained and made safe. The serving of a Notice under Section 34 to stop work would not have been in the interest of public safety given the level of demolition that had been undertaken when Dundee City Council investigated the alleged unauthorised works. The stonework of the building has been crushed and removed from site. The serving of an Enforcement Notice would allow an appeals process to the Scottish Government. Given the Listed Building has now been completely demolished and materials removed from the site it is considered that such restoration would not be reasonably practicable, and serving an Enforcement Notice would not be an appropriate course of action.

4.17 Report The Matter To The Procurator Fiscal

In terms of Section 8 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 a person guilty of an offence shall be liable - (a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding £50,000, or both, or (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine, or both.

4.18 The owner was aware that the property was a Category B Listed Building. There was frequent correspondence between Council officers and the owners representatives late in 2017. The information that was provided by the owners representatives in the opinion of DCC Engineers clearly confirmed that, whilst defects were present, demolition was not the only option to preserve safety or indeed the building. No further information was submitted to the Council advising of any changes to the structural integrity of the property in the interest of public safety. No notification under any of the statutory procedures justifying in detail, the carrying out of the works was submitted to the Council. Given the nature and the lack of notification or contact with Dundee City Council prior to the commencement of the demolition process, it is considered that this displays a disregard for the statutory process in relation to the demolition of a Listed Building.

- 4.19 After consideration of the 3 options it is recommended that Dundee City Council reports the matter to the Procurator Fiscal.

## **5 POLICY IMPLICATIONS**

- 5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

## **6 CONSULTATIONS**

- 6.1 All members of the Council Management Team have been consulted and are in agreement with the contents of this report.

## **7 BACKGROUND PAPERS**

- 7.1 There are no background papers of relevance to this report.

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GH/GK/KM

5 June 2018

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