

REPORT TO: DEVELOPMENT QUALITY COMMITTEE – 29 APRIL 2002

**REPORT ON: REQUEST FOR DIRECT ACTION, 72 CAMPHILL ROAD,
BROUGHTY FERRY, DUNDEE**

REPORT BY: DIRECTOR OF PLANNING AND TRANSPORTATION

REPORT NO: 226-2002

1 PURPOSE OF REPORT

- 1.1 This report seeks the agreement of members to the Director of Planning and Transportation and Director of Support Services to take appropriate action to seek compliance with an Enforcement Notice. The site is the garden ground at 72 Camphill Road, Broughty Ferry, Dundee where the occupier is storing second hand motor vehicles.

2 RECOMMENDATIONS

- 2.1 It is recommended that the Committee approves direct enforcement action under the terms of Section 135 of the Town and Country Planning (Scotland) Act 1997, to allow the Council to enter onto land at 72 Camphill Road, Broughty Ferry, Dundee and take the necessary steps to comply with an Enforcement Notice, following the non-compliance of its terms by the landowner and recover from the landowner or lessee any expenses reasonably incurred.
- 2.2 It is recommended that the Director of Planning and Transportation is authorised to enter onto the land concerned and execute the necessary works to seek compliance with the Enforcement Notice.
- 2.3 It is recommended that delegated authority be given to the Director of Planning and Transportation in consultation with the Director of Support Services, to executive Direct Action powers should a re-occurrence of this breach of planning control occur.

3 FINANCIAL IMPLICATIONS

- 3.1 The estimated cost of removal and storage of the vehicles is approximately £800. Part of the costs involved may be recoverable by the sale of the vehicles. The remainder will be recoverable from the owner. The costs can initially be met within the Planning and Transportation Revenue Budget year 2002/2003.

4 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 There are no Local Agenda 21 implications.

5 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 There are no equal opportunities implications.

6 BACKGROUND

- 6.1 The site concerned is the garden ground of the property at 72 Camphill Road, Broughty Ferry, Dundee. A substantial part of the garden ground attached to the upper floor flat of this property is being utilised for the storage of up to 8 cars at any one time. An Enforcement Notice was served on 18 July 2000, under the terms of Section 127 of the Act. This Notice has not been withdrawn by the Council and is still legally binding. The Notice required the landowner to stop using the land affected for the commercial storage of and exposure for sale of motor vehicles. The reason for service of the Notice was that the unauthorised use of the garden ground was not suitable for a residential area. It disturbed the neighbours through noise, traffic movement and car parking and it was unsightly in such an area. The landowner did not appeal the terms of the Notice.
- 6.2 It has come to the Council's attention that the terms of the Notice are once again being breached. The landowner has once again been made aware of the terms of the Enforcement Notice and given until 21 February 2002 to comply with the Notice.
- 6.3 The Council has three options to pursue this matter further.
- i It could report the circumstances of the case to the Procurator Fiscal Services. This, if pursued, may result in a conviction against the landowner. However, any conviction would be for failing to comply with the Enforcement Notice only and would not guarantee the removal of the motor vehicles.
 - ii A submission under the terms of Section 146 of the Act to the Sheriff Court seeking an Interdict to cease the storage of motor vehicles could be sought, although this is at the discretion of the Court and cannot be guaranteed and indeed is not without risk to the Council.
 - iii Finally, the Authority has the power under terms of Section 135 of the Act, to enter onto the land, remove the vehicles and recover their costs from the landowner.
- 6.4 Option iii is recommended because this option appears the greatest certainty that the terms of the Enforcement Notice will be implemented to the satisfaction of the Council.
- 6.5 To do this the Council will act in accordance with advice and guidelines laid down within the Scottish Office Planning Advice Note PAN54, Planning Enforcement and The Scottish Office Circular 4/1999 Planning Enforcement. To that end agreement has been reached with a Private Vehicle Haulage Company. They have sufficient numbers of the appropriate vehicles to remove the cars from the site as well as sufficient space at their premises to store the vehicles removed, until such times as their disposal can be arranged.
- 6.6 If successful in obtaining permission to take Direct Action it is intended to undertake the works within 7 days and it is estimated that the work will take a full day to complete.
- 6.7 No special powers of entry will be required as there is provision within Section 135 of the Act to allow entry onto the land and execution of the necessary steps. It has also

been arranged the Officers from Tayside Police will be present on the day to ensure that no public disorder or obstructions to Council Officers takes place.

- 6.8 If the vehicles removed from the site are not claimed within 3 days of the removal, then the Council has the right to sell them and recover any expenses reasonable incurred. If after selling the vehicles and recovering costs there is a balance of money left, then it is to be paid back to the landowner.
- 6.9 It is recommended that the Council, as Local Planning Authority, uses the powers vested in it by the Act to enter the land at 72 Camphill Road, Broughty Ferry, Dundee and remove the vehicles being stored therein and subsequently takes such steps as are necessary to recover its costs all in accordance with the terms of this report.

7 CONSULTATIONS

- 7.1 The Chief Executive, Director of Finance, Director of Support Services, and Tayside Police have been consulted and are in agreement with the contents of this report.

8 BACKGROUND PAPERS

- 8.1 Planning Enforcement Notice Ref DAB/LG/4/5/3/244 served on 18 July 2000. Scottish Office Planning advice Notice PAN54 (Planning Enforcement) Scottish Office Circular 4/1999 (Planning Enforcement).

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Director of Planning & Transportation

Ian Mudie
Building Quality Manager

18 April 2002

IGSM/LC/EH

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