

REPORT TO: DEVELOPMENT MANAGEMENT COMMITTEE – 18 SEPTEMBER 2017

REPORT ON: REQUEST FOR DIRECT ACTION TO REMOVE UNAUTHORISED GARAGE FROM 59 FINDHORN PLACE, DUNDEE, DD4 9PF

REPORT BY: EXECUTIVE DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 303-2017

1 PURPOSE OF REPORT

1.1 This report seeks authority to take appropriate action to seek compliance with an Enforcement Notice at 59 Findhorn Place, Dundee, DD4 9PF (as shown in Appendix 1 Figure 1).

2 RECOMMENDATION

2.1 It is recommended that the Committee authorise direct action under the terms of Section 135 of the Town and Country Planning (Scotland) Act 1997 as amended to allow the Council to enter onto land at 59 Findhorn Place, Dundee, DD4 9PF and take the necessary steps to comply with the terms of the Enforcement Notice, following the non-compliance of its terms by the landowner.

2.2 Thereafter, it is recommended that Committee authorise the Executive Director of City Development to recover any expense reasonably incurred by the Council taking such action from the landowners.

3 FINANCIAL IMPLICATIONS

3.1 An estimate for removing an unauthorised garage is £1,300. The materials from the removal of the garage would be stored by the Council for 3 days in order to allow for them to be reclaimed by the owner.

3.2 The costs can initially be met from the City Development Revenue Budget 2017/2018. The Council will seek to recover the cost from the landowner.

4 BACKGROUND

4.1 The erection of unauthorised garage (as shown in Appendix 1 Figure 2) was brought to the attention of the Council in January 2016. An Enforcement Notice requiring the removal of the garage was served on the owner of the land on 29 June 2016, in accordance with Section 127 of the Town and Country Planning (Scotland) Act 1997 as amended.

4.2 The Enforcement Notice took effect on 8 August 2016 and allowed 30 days to comply with the terms of the Notice. The garage remains on the site and has not been removed. The Enforcement Notice has therefore not been complied with. The Notice has not been withdrawn by the Council and is still legally binding.

4.3 The Council has the following three options to pursue the matter:

- a report the matter to the Procurator Fiscal which, if pursued, may result in a conviction against the land owner. However, any conviction would be for failing to comply with the Enforcement Notice and would not guarantee the removal of the garage. Additionally, the Procurator Fiscal might not report on a case unless every other avenue has been explored;
- b issue a fixed penalty notice for the sum of £2,000. This would discharge any liability to a conviction for such an offence and would not ensure that the garage is removed; or

- c take direct action, using the Council's powers under Section 146 of the Town and Country Planning (Scotland) Act 1997 as amended to enter the land, remove the garage and thereafter recover the costs from the landowner.
- 4.4 Option C (direct action) is recommended as the best solution available to the Council as it would have the greatest certainty of ensuring compliance with the terms of the Enforcement Notice to the satisfaction of the Council.
- 4.5 In carrying out direct action, the Council will act in accordance with the advice and guidance contained in The Scottish Government's Circular 10/2009 "Planning Enforcement".
- 4.6 An agreement has been reached with Neighbourhood Services to enter the land and remove the garage. The Council would thereafter store the materials from the duntakings for 3 days to allow the owner to reclaim them.
- 4.7 If they are not reclaimed within 3 days of their removal, the Council has the right to sell or dispose of them and recover any expenses reasonably incurred.
- 4.8 If successful in obtaining permission to take direct action, it is intended to take action within 30 days and it is estimated that the work would take 2 days to complete.
- 4.9 No special powers of entry will be required, as there is provision within Section 135 of the Act to allow any Officer duly authorised in writing by the Planning Authority to enter land to execute the necessary steps. It is intended to undertake the works immediately and that the works will take a day to complete.
- 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.

Mike Galloway
Executive Director of City Development

Gregor Hamilton
Head of Planning and Economic Development

GH/DG/KM

6 September 2017

Dundee City Council
Dundee House
Dundee

APPENDIX 1

FIGURE 1 – SITE LOCATION

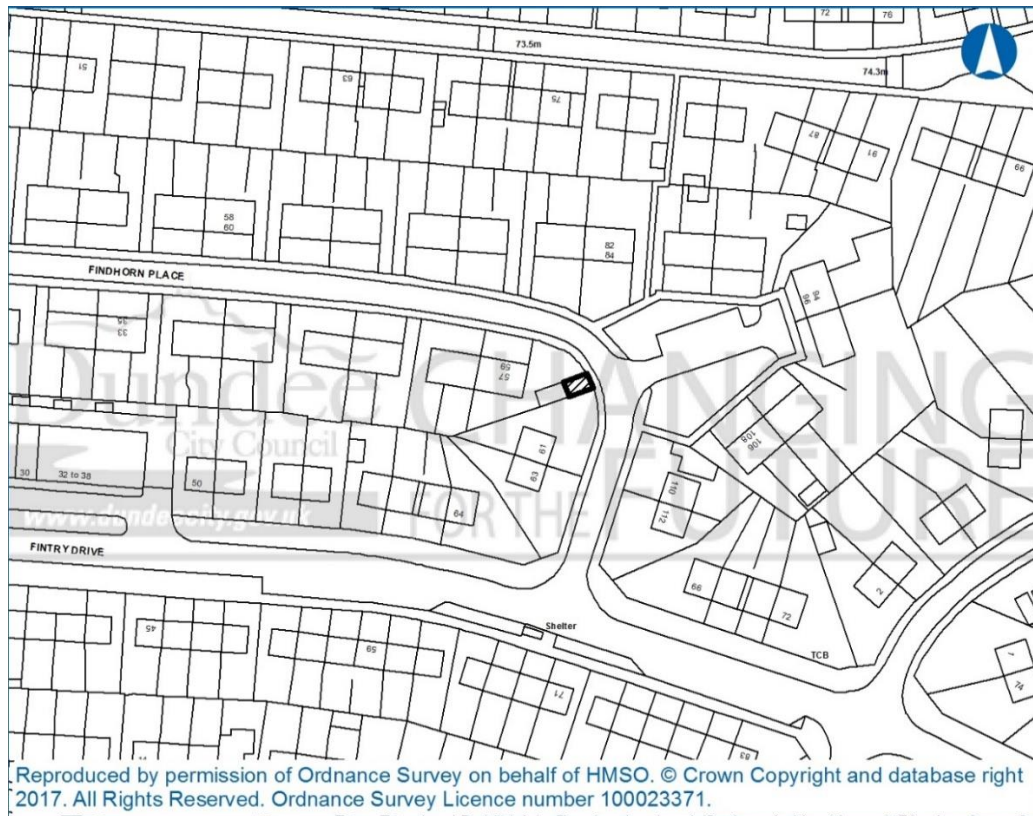


FIGURE 2 – PHOTOGRAPH OF GARAGE

