



To: Planning and Property Policy Board

On: 26 January 2016

Report by: Director of Development and Housing Services

Heading: 5 East Fulton Holdings: Enforcement Update

1. Summary

- 1.1 The following report provides an update to Members on the breach of planning control in relation to the site at 5 East Fulton Holdings, Clippens Road, Linwood. The site has been subject to unauthorised development within the designated greenbelt comprising of 'chalet' / mobile homes, caravans and associated development and the infilling of land with waste material.
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2. Recommendations

- 2.1 It is recommended that the Board:
- i. Note the current position with regard to the unauthorised development of the site at 5 East Fulton Holdings.
 - ii. Note that following the decisions of the Court of Session in November 2015:
 - (a) the decisions of the Local Review Body on 11 November 2014 are quashed;
 - (b) the Notices of Review are 'revived'; and a new meeting of the Local Review Body requires to be held to consider afresh the Notices of Review.
- 2.2 An area of land at 5 East Fulton Holdings has been subject to unauthorised development since May 2010 when the then site owner began to bring caravans and mobile homes onto the site and carried out associated works to enable the site to be used for residential purposes. This unauthorised development represents a breach of planning control.

- 2.3 Two enforcement notices have been served on the owner(s) of the site since October 2011 requiring the cessation of the unauthorised use and the removal of the unauthorised development from the site. Failure to comply with an enforcement notice is an offence, and a report was submitted to the Procurator Fiscal in April, 2013.
 - 2.4 The Procurator Fiscal raised proceedings against an owner of the site. That case has called at Paisley Sheriff Court and has been continued on a number of occasions. The last Court date was 23 November 2015, at which stage the matter was continued to 19 February 2016.
 - 2.5 Since the initial breach of planning control, title to part of the site at 5 East Fulton Holdings has been transferred.
 - 2.6 In January 2014 two planning applications were submitted for the site, as divided. Both applications were refused in May 2014 under the Council's Scheme of Delegation to Officers; and Notices of Review in respect of these decisions were lodged with the Council, to be considered by the Local Review Body (LRB).
 - 2.7 At its meeting in November 2014, the LRB rejected both Notices of Review and refused planning permission in respect of both applications. Both applicants lodged appeals with the Court of Session challenging the validity of the decisions taken by the LRB.
 - 2.8 The Council conceded both appeals on one ground alone, and this related to the adequacy of reasons given by the LRB for its decision in respect of each Notice of Review. In particular, no concession was made relating to the compatibility of planning legislation insofar as it relates to Local Review Procedures; a matter exclusively for the Scottish Ministers who were an interested party in this appeal.
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3. Next Steps

- 3.1. The effect of the appeals being allowed is that the decisions of the LRB to refuse planning permission are quashed and the Notices of Review are 'revived'. They will require to be considered entirely afresh.
- 3.2. Because the Notices of Review must be considered entirely afresh, and for the Council to demonstrate an entirely open, transparent, fair and objective process, it would be incompatible for those Members who have had prior involvement in the LRB meetings at which these matters were previously considered and determined, to participate in the process again. The re-convened LRB will therefore require to be comprised of Members who have not previously been party to earlier decisions of the LRB on these particular matters.

- 3.3. The Head of Planning and Housing Services and the Head of Legal and Democratic Services will jointly arrange training for prospective participants of the LRB who may not be fully familiar with the process and for other Members who may wish the opportunity for refresher training.
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Implications of the Report

1. **Financial** – None.
 2. **HR & Organisational Development** –None.
 3. **Community Planning** – None.
 4. **Legal** – The effect of the decisions of the Court of Session are outlined in the report and the Council may be open to further challenges in relation to future decisions.
 5. **Property/Assets**-None
 6. **Information Technology** – None.
 7. **Equality & Human Rights** - No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because it is for noting only.
 8. **Health & Safety** – None.
 9. **Procurement** – None.
 10. **Risk** – None.
 11. **Privacy Impact** – None.
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List of Background Papers

- (a) None.
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