

**Business Operations and Partnerships Department**

**Director of Business Operations & Partnerships: Louise Pringle**

Council Headquarters, Eastwood Park, Giffnock, East Renfrewshire, G46 6UG

Phone: 0141 577 3000

website: [www.eastrenfrewshire.gov.uk](http://www.eastrenfrewshire.gov.uk)

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When calling please ask for: John Burke (Tel No. 0141 577 3026)

e-mail:- [john.burke@eastrenfrewshire.gov.uk](mailto:john.burke@eastrenfrewshire.gov.uk)

TO: Councillors B Cunningham (Chair), J McLean (Vice Chair), P Edlin, A Ireland, C Lunday, M Montague and A Morrison.

**PLANNING APPLICATIONS COMMITTEE**

A meeting of the Planning Applications Committee will be held in the Council Chamber, Council Headquarters, Eastwood Park, Giffnock on **Wednesday 29 November 2023 at 2.00pm.**

The agenda of business is as shown below.

**Louise Pringle**

L PRINGLE

DIRECTOR OF BUSINESS OPERATIONS & PARTNERSHIPS

**AGENDA**

1. **Report apologies for absence.**
2. **Declarations of Interest.**
3. **Section 33A notice - 29 East Kilbride Road, Busby, G76 8JY – Update, report by Director of Environment (copy attached, pages 3 – 6).**
4. **Planning Applications Committee Meeting Schedule, report by Director of Environment (copy attached, pages 7 – 12)**

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EAST RENFREWSHIRE COUNCILPLANNING APPLICATIONS COMMITTEE29<sup>th</sup> November 2023Report by Director of EnvironmentSection 33A notice - 29 East Kilbride Road, Busby, G76 8JY.UPDATE**1.0 INTRODUCTION**

- 1.1. This report follows the decision of the Planning Applications Committee meeting of 4<sup>th</sup> October 2023 in relation to the service of a Notice under Section 33A of the Town and Country Planning (Scotland) Act 1997, authorised by the Planning Applications Committee on 7<sup>th</sup> June 2023, in respect of unauthorised development at 29 East Kilbride Road, Busby, G76 8JY.

**2.0 BACKGROUND**

- 2.1 Members will recall that two timber outbuildings and a 2-metre-high fence were erected without planning permission at 29 East Kilbride Road, Busby. The unauthorised development has been the subject of complaints from adjacent residents.
- 2.2 The Planning Service wrote to the landowner and requested submission of the required planning application. This was submitted on 17<sup>th</sup> March 2023 but then withdrawn the following day, as the landowner wrongly believed planning permission was not required. An email sent from the Planning Service on the 31<sup>st</sup> March advised the landowner that formal action would be considered if a planning application were not submitted before 14<sup>th</sup> April 2023. The landowner declined to submit an application and confirmed that he was taking legal advice on the matter.
- 2.3 At its meeting on 7<sup>th</sup> June 2023, the Planning Applications Committee authorised the service of a Section 33A Notice. This is a formal notice requiring the landowner to submit the required planning application in retrospect. Whilst there are no penalty provisions for failing to comply with this notice, it constitutes enforcement action under the relevant legislation and leaves it open to the Planning Service to pursue further action in terms of an enforcement notice at any time. In addition, the notice “stops the clock” towards immunity being reached i.e. after four years following the breach of planning control, the development would otherwise become lawful and no enforcement action could be taken.

**3.0 UPDATE**

- 3.1 To date, the landowner has not complied with the terms of the Section 33A Notice and has refused to submit the required planning application.
- 3.2 At the Planning Applications Committee Meeting of 4<sup>th</sup> October 23, the officer recommendation was that no further action should be taken in respect of the unauthorised works undertaken at the site. The decision of the Planning Applications Committee (PAC) was to not accept this recommendation and that further

advice/guidance was to be provided to the PAC at a future meeting to enable a decision to be made on further actions.

- 3.3 Given that the Planning Applications Committee has decided that further action is required in respect of the unauthorised works, the following report provides information to Members on potential options to progress this matter. For clarification, the planning authority is not obliged to pursue enforcement action.
- 3.4 The serving of an enforcement notice under S127 (1) of the Town and Country Planning (Scotland) Act 1997 constitutes taking enforcement action (as did the service of the Section 33A Notice.) The power to take further action and serve an enforcement notice is a discretionary power under Section 127 (1) of the aforementioned Act and circular 10/2009 (Planning Enforcement) provides guidance on matters to which the planning authority should have regard when determining the appropriate course of action. Under Section 127 (1) the planning authority may serve an enforcement notice where there has been a breach of planning control and it is expedient to issue the notice having regard to provisions of the development plan and any other material considerations. The breach of planning control here consists of the carrying out of unauthorised works without the required planning permission. The planning application has also not been submitted, as required by the Section 33A Notice. The Planning Applications Committee has determined that taking no action is not an acceptable approach, therefore the service of an enforcement notice is deemed to be the next available step.
- 3.5 Circular 10/2009 (Annex C) states that “Where a planning application is not submitted to the planning authority by the date specified, following the service of a Section 33A Notice, the planning authority should consider further enforcement action. Such further action should be considered particularly if the planning authority were of the view that a retrospective application would have been granted only if it were subject to conditions or limitations. In such cases it may be appropriate to issue an enforcement notice imposing restrictions on the use of the land or on activities carried out on the land.”
- 3.6 For clarification, the Section 33A Notice served sought the submission of a planning application for determination but this Notice or any other correspondence from the Planning Service did not indicate to the owners of 29 East Kilbride Road that the works were unacceptable in amenity terms or required to be controlled through the imposition of planning conditions. In this regard Circular 10/2009 further clarifies that “before issuing a notice under section 33A the planning authority should, as with any enforcement action consider whether the action is commensurate to the breach. There would be no purpose in issuing such a notice where the planning authority were of the view that permission would clearly not be granted.”
- 3.7 Section 128 of the Town and Country Planning (Scotland) Act 1997 states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes:
- 3.8 *These purposes under S128(4) are:*  
*S128 (4) (a) remedying the breach of planning control by making any development comply with the terms of any planning permission which has been granted on the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place. Planning Permission has not been granted and so only the latter section is applicable.*

*S128(4)(b) remedying any injury to amenity which has caused by the breach.*

*An enforcement notice may, for example, require –*

- a) *the alteration or removal of any buildings or works;*
- b) *the carrying out of any building or other operations,*
- c) *any activity on the land not be carried on except to the extent specified in the notice*

Given the above, the three options available in relation to serving an enforcement notice are considered to be those outlined below for the removal, or partial removal of the structures (option 1), serving a notice specifying relocation of the building or buildings (option 2), or serving a notice specifying what activity can take place at the site (option 3); having regard to the purposes of restoring the land to its former condition or remedying any injury to amenity.

It is necessary to consider what is expedient having regard to the development plan and any other material considerations. It is also necessary to consider what is reasonable and proportionate and, in relation to amenity, have in mind what the Planning Applications Committee considers to be the injury to amenity they are seeking to remedy. From the Circular, enforcement action should always be commensurate with the breach of planning control to which it relates and the planning authority should consider whether the breach of control would affect unacceptably either public amenity or the use of land and buildings meriting protection in the public interest. It is relevant to consider that if a planning application had been submitted, it is most likely that the recommendation would have been to grant planning permission for the unauthorised works.

3.9 **Option 1** - serve an enforcement notice seeking removal of the structures, with the following sub options available:

- a. Remove both unauthorised outbuildings and fence from the site;
- b. Remove both unauthorised outbuildings from the site only;
- c. Remove the unauthorised building closest to the footpath only.

**Option 2** – serve a notice specifying the relocation of one or both buildings to another location within the garden. This would require an alternative site within the garden ground to be identified.

**Option 3** – serve an enforcement notice requiring any activity on the land not to be carried on except to the extent specified in the notice. For instance a notice could state that the outbuildings can only be used for a specific purpose (such as storage for domestic/garden materials only).

3.10 In terms of the above options, it should be noted that the advice of officers has been that the breach of planning control (and subsequent failure to comply with the terms of the section 33A Notice by submitting a planning application) was not of such severity to amenity that further enforcement action was deemed expedient. It should be noted that option 3 would generally not be an appropriate route to seek to remedy a breach of planning control where the position and/or appearance of a building was deemed to be the most significant factor in terms of the development being unacceptable.

3.11 Option 3 could be an option if the activities taking place at the site are likely to be a breach of planning control in themselves and unacceptable in amenity terms but the buildings may be acceptable in this location if used in an alternative manner. In this regard, the Planning Service is not aware of any evidence that the unauthorised buildings are used for a purpose that is not incidental to the enjoyment of the main dwellinghouse at the site. However, it is noted that at the Planning Applications Committee meeting of 4<sup>th</sup> October, some concern was expressed by Members in respect of the potential use of the buildings.

- 3.12 A further option (**Option 4**) to monitor the situation is considered to be available to the Committee. Service of the Section 33A notice prevents the breach of planning control becoming lawful development. If the concerns of the Planning Applications Committee relate, for example, to the potential use and associated noise or other disturbance then monitoring would allow for this to be considered before further action is taken if deemed necessary.
- 3.13 In summary, in terms of options 1 to 3, it is considered that options 1 and 2 are more appropriate to remedy any deemed injury to visual amenity caused by the works. If Members form the view that the buildings are acceptable in this location in visual terms but that the use requires to be restricted, option 3 may be appropriate to control this aspect. Compliance with terms of the enforcement notice can result in deemed planning permission and option 4 might therefore be more appropriate to ascertain what the effect the unauthorised structures have and what the most appropriate remedy would be.
- 3.14 There is a right of appeal to an enforcement notice, with enforcement appeals determined by Scottish Ministers via the Planning and Environmental Appeals Division (DPEA). If the appellant is successful at appeal, the unauthorised works would become lawful in planning terms. A Scottish Government appointed Reporter can impose conditions or other restrictions as deemed necessary when deciding on an enforcement appeal. It should be noted that the applicant can submit an expenses claim alongside an enforcement appeal. If the Reporter deems that the Council has acted unreasonably, it is possible that costs could be awarded against the Council.

## 4 CONCLUSIONS

- 4.1 Following the decision of the previous Planning Applications Committee meeting of 4<sup>th</sup> October 2023, an updated position with options to consider is set out above. If the Planning Applications Committee determine that serving an enforcement notice is required, it will be necessary to specify exactly what the enforcement notice requires the land owner to do and also within what timescale.

## 5.0 RECOMMENDATION

- 5.1 This report sets out options for Members to consider how to progress this matter, which was previously reported to the Planning Applications Committee on 4<sup>th</sup> October 2023. Officers from the Planning Service will then take forward the action determined by the Planning Applications Committee.

## 6.0 BACKGROUND PAPERS:

- 6.1 Further information on background papers can be obtained from Mr Alan Pepler on 0141 577 3001.

DATE: 15<sup>th</sup> November 2023

**DIRECTOR OF ENVIRONMENT**

EAST RENFREWSHIRE COUNCILPLANNING APPLICATIONS COMMITTEE29<sup>th</sup> November 2023Report by Director of EnvironmentPlanning Applications Committee Meeting Schedule**INTRODUCTION**

1. The purpose of this report is to update the Planning Applications Committee on the impact of a reduced frequency of Planning Applications Committee meetings held during 2023 and to consider arrangements for 2024.

**RECOMMENDATION**

2. It is recommended that the Committee agrees to continue to hold Planning Applications Committee meetings bi-monthly (every second month) during 2024 and to review the effectiveness of this arrangement in June 2024.

**BACKGROUND**

3. As Committee is aware, the instances in which planning applications require to be reported to the Planning Applications Committee are set out in the East Renfrewshire Council Planning Scheme of Delegation, which is attached in Appendix A.

4. Prior to 2023, the Planning Applications Committee met monthly however following agreement of a report by the Chief Planning Officer to the Committee in December 2022, it was agreed that the schedule would be reduced to every second month. This agreement was subject to a report being brought back to the Committee in December 2023 to update on the effectiveness of this arrangement.

5. The Planning Applications Committee is supported by officers from Democratic, Planning and Legal Services with other Services attending as required.

**REPORT**

6. In 2023, the Planning Applications Committee met on six occasions and determined seven Planning Applications and two reports relating to Planning enforcement matters. A breakdown of this year's activity is set out in Appendix B.

7. Over the course of 2023 the Planning Service determined 547 applications the majority of which fell into the categories of householder and local developments. The performance of the Service is reported annually to Scottish Government and has shown an increase in time taken to determine applications during the reporting years 2020/21 to 2022/23. This was a direct result of significant resourcing issues during those years. Whilst the applications brought to Committee in 2023 were not determined within the statutory period, it is clear that the frequency of Committee meetings was not a factor in this and there is now clear evidence that performance is improving.

8. The continued improvement in performance is very important and it is proposed that if the Committee does agree to continue with bi-monthly meetings, a further report will be

brought back to Members in June 2024, which again assesses the impact and provides an update on performance.

9. The reduced frequency of meetings remains a support to officers in their ability to undertake other duties and the improved performance demonstrates a positive trend. If however it appears that the meeting schedule is likely to adversely affect applicants or Council performance figures, the option would still exist to call additional meetings of the Committee.

10. It is therefore recommended that meetings are held every second month from 2024 onwards in February, April, June, August, October and November/ December. If additional dates are required, these can be scheduled in accordingly.

**FINANCE AND EFFICIENCY**

11. This will result in a reduction in the need for officer support and will release officers to undertake other duties.

**CONSULTATION**

12. This matter has been discussed with Democratic and Legal Services and with the Planning Applications Committee Chair and Vice Chair.

**PARTNERSHIP WORKING**

13. This report has no partnership working implications.

**IMPLICATIONS OF THE PROPOSALS**

14. The proposed arrangement will result in a reduction in the need for officer support and will release officers to undertake other duties.

**CONCLUSIONS**

15. It is considered that, in view of the number of applications that are reported to the Planning Applications Committee meetings, it is appropriate to continue to hold meetings every second month. The option will remain to hold additional meetings if workload dictates.

**RECOMMENDATIONS**

16. It is recommended that the Committee agrees to continue to hold Planning Applications Committee meetings bi-monthly (every second month) during 2024 and to review the effectiveness of this arrangement in June 2024.

Director of Environment

Report Author: Julie Nicol, Planning and Building Standards Manager  
07918 499678 e.mail: Julie.nicol@eastrenfrewshire.gov.uk

November 2023



## APPENDIX A

**East Renfrewshire Council Planning Scheme of Delegation**Approved by East Renfrewshire Council on 25<sup>th</sup> February 2021and the Scottish Ministers on 15<sup>th</sup> March 2021**Made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997  
[as amended by Section 17 of the Planning etc. (Scotland) Act 2006]  
and The Town and Country Planning (Schemes of Delegation and Local Review  
Procedure)(Scotland) Regulations 2013**

The Director of Environment, *the Head of Environment (Chief Planning Officer), the Planning and Building Standards Manager or Principal Planner* is authorised in relation to development management to determine all 'local development' applications for planning permission (*including planning permission in principal and applications for consent, agreement or approval required by a condition imposed on a grant of planning permission*). 'Local development' is defined by the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act 2006, and the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and summarised below. The above authorisation applies unless the planning application involves any of the circumstances specified in (i) to (viii) below, in which case the application will be referred to the Planning Applications Committee for determination:-

- (i) the planning application is made by an *Elected Member of East Renfrewshire Council or their spouse or their partner,*
- (ii) the planning application is made by an employee of the Council's Planning and Building Standards Services *or their spouse or their partner,*
- (iii) an employee of the Council's Planning and Building Standards Services, *or their spouse or their partner,* has an interest in a planning application, for example, as an objector,
- (iv) there are 10 *or more* objection letters or *electronic communications* from 10 *or more individuals, who state their objections (including giving their reasons) in relation to the proposed development or use under consideration.*
- (v) where it is proposed to approve a proposal that is significantly contrary to the development plan
- (vi) the proposal has been subject to an Environmental Impact Assessment,
- (vii) where there are associated applications being considered by the Committee *e.g. where a planning application is accompanied by an associated Conservation Area Consent or Listed Building Consent,* or
- (viii) the application is made by the planning authority and 4 elected Members have individually requested a referral of the application to the Planning Applications Committee within 21 days of the validation of the application.

Additionally, Elected Members will be able to refer an application to the Planning Applications Committee where all of the following criteria are met:-

- (viii) at least two elected Members individually request the referral; and
- (ix) that the referral is received within 21 days of the validation of the application, and
- (x) where there are 6 *or more* objection letters or e-mails from 6 *or more individuals, who make their objections (including giving their reasons) in relation to the proposed development or use under consideration.*

For the avoidance of doubt for the purposes of the above referrals:

- a) Petitions shall be treated as a single objection,
- b) One letter or *electronic communication* signed by three people will count as one,
- c) The same person sending in three different letters, or *electronic communications* will only count as one,

- d) Three separate letters or *electronic communications* (albeit with the same text) from three different people will count as three.

## **Local Developments**

### **(1) Residential**

- (a) Applications for alterations or extensions to existing dwelling houses and other householder planning applications eg driveways, garages and other outbuildings
- (b) All planning applications for up to and including 49 dwellings.
- (c) All applications for residential development for sites less than 2 hectares in area.

### **(2) Business and General Industry, Storage and Distribution**

- (a) Alterations to existing buildings.
- (b) Construction of buildings, structures or other erections for use as an office, for research and development for products or processes, for any industrial process or for the use of storage or as a distribution centre up to a gross floor space of the building, structure or other erection of less than 10,000 square metres.
- (c) Construction of buildings, structures or other erections for use as an office, for research and development of products or processes, for any industrial process or for the use of storage or as a distribution centre, the site area of which is less than 2 hectares.

### **(3) Electricity Generation**

- (a) Construction of an electricity generating station providing the capacity of the generation station is less than 20 megawatt.

### **(4) Waste Management Facilities**

- (a) Construction of facilities for use for the purpose of waste management or disposal provided the capacity of the facility is under 25,000 tonnes per annum.
- (b) In relation to facilities for use for the purpose of sludge treatment, the capacity to treat residual sludge is no more than 50 tonnes (wet weight) per day.

### **(5) Transport and Infrastructure Projects**

- (a) Construction of new or replacement roads, railways, tramways, waterways, aqueducts or pipelines providing the length of road, railway, tramway, waterway, aqueduct or pipeline does not exceed 8 kilometres.

### **(6) Fish Farming**

- (a) The placing or assembly of equipment for the purpose of fish farming (the breeding, rearing or keeping fish or shellfish) providing the surface area of water covered is less than 2 hectares.

### **(7) Minerals**

- (a) The extraction of minerals providing the area of the site is under 2 hectares.

### **(8) Other Developments (Including planning applications for retail developments, education, institutional leisure, assembly, temporary buildings and uses, telecommunications developments, licensed premises and mixed use developments.)**

- (a) Any development not falling within the above classes of development providing the gross floor area of any building, structure or erection constructed is less than 5,000 sq. metres.
- (b) Any development not falling within the above classes of development providing the area of the site is less than 2 hectares.
- (c) Any development comprising a combination of the above classes providing the gross floor area of any building, structure or erection constructed is under 5,000 sq. metres or the area of the site is less than 2 hectares.

## **NOTE**

Please note that this Scheme of Delegation relates to applications for planning consent in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997. Delegation of decision-making for other consents such as advertisement consent, conservation area consent, tree works etc. are covered under the Council-wide [Scheme of Delegated Functions](#) approved separately by the Council.

## APPENDIX B

<u>Meeting Date</u>	<u>Number of Applications</u>	<u>Notes</u>
30 January 2023	1	Erection of 5 new build dwellings following the demolition of the existing riding school buildings with retention of the existing dwellinghouse.  (Application continued from December 2022)
15 February 2023	1	Erection of 18 garages, including refuse/recycling stores and resident parking (adjacent to existing garages) within the rear courtyards of existing apartment block development.
5 April 2023	1	Erection of 5 dwellinghouses and the formation of accesses and other associated works.
7 June 2023	3	Erection of 50 metre high wind turbine (to hub height) with formation of access road and siting of control building (renewal of previous planning permission 2014/0588/TP)
		Erection of residential development (comprising 80 dwellinghouses and 10 flats) with associated access roads, landscaping and SUDS (major) (amended drawings).  (Reassessment of previously approved application against new National Planning Framework 4)
		Erection of 1.5 storey dwelling with parking and amenity space.
9 August 2023		No meeting held
4 October 2023	2	Change of use of field to commercial dog walking facility, with associated fencing, access and parking (part retrospective).
		Service of a Notice under Section 33A of the Town and Country Planning (Scotland) Act 1997
29 November 2023	1	Service of a Notice under Section 33A of the Town and Country Planning (Scotland) Act 1997 (Update Report)

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