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## **ENFORCEMENT REPORT – FORMATION OF DORMERS AT 15 DUNDAS STREET, BONNYRIGG**

Report by Head of Communities and Economy

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### **1 SUMMARY OF CASE**

- 1.1 The breach of planning control relates to the formation of two dormer windows at 15 Dundas Street, Bonnyrigg without planning permission or listed building consent.**
- 1.2 Planning permission and listed building consent were granted in April 2009 for the erection of two dormer windows; however the windows as constructed are of a different design and are significantly larger than those that were granted consent. The applicant applied for planning permission (11/00677/DPP), retrospectively, for the dormers that have been erected on the site. The application was refused. The applicant sought a review of this refusal of planning permission in February 2012. The Local Review Body determined to dismiss the review and refuse planning permission.**
- 1.3 Following extensive attempts to negotiate the removal of the dormers or discuss alternative proposals, an enforcement notice was served on the owner of the property in April 2015. The notice required the removal of the unauthorised dormers, or, their replacement with or alteration to the dormer windows granted planning permission and listed building consent in 2009.**
- 1.4 The applicant appealed the Enforcement Notice and the Scottish Government Reporter dismissed the appeal and confirmed the enforcement notice and gave the applicant until 10 June 2016 to comply with the notices' requirements.**
- 1.5 The owners of 15 Dundas Street, Bonnyrigg have not as yet complied with the enforcement notice.**
- 1.6 This report seeks approval from the Committee to report the matter to the Procurator Fiscal as the next step in taking matters forward in relation to the breach if the unauthorised works are not removed by 10 June 2016.**

## **2 LOCATION AND SITE DESCRIPTION**

- 2.1 The site is centrally located in Bonnyrigg, to the south east of Bonnyrigg Toll. The property is a mid- terraced two storey, stone-built, category C(s) listed building. The other three properties that form part of the same terrace (13, 17 and 19) are also C (s) listed buildings. The dwellinghouse at 15 Dundas Street fronts the road and the rear elevation faces onto the public parking area to the rear of the town centre.

## **3 BACKGROUND**

- 3.1 Planning permission was granted by Midlothian Council on 2 April 2009 for the erection of two dormers on the rear elevation of 15 Dundas Street, Bonnyrigg (planning application 08/00623/FUL). Listed building consent was granted by the planning authority on the same date for the erection of the same dormers, rooflights and for internal alterations (listed building consent 08/00656/LBC).
- 3.2 As part of the appeal against the enforcement notice the applicant's agent advised that 'structural issues' came to light during the construction process which resulted in the formation of significantly larger dormers than those approved. The planning application case officer visited the site during construction and expressed concern regarding the scale of the partially built dormer windows. This concern was acknowledged by the applicants agent.
- 3.3 A retrospective planning application for the formation of both currently installed dormer windows was received by Midlothian Council on 5 October 2011 (planning application 11/00677/DPP). Planning permission was refused on 23 December 2011.
- 3.4 The applicant decided to exercise his right of review of that decision under the terms of S.43A of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning Etc. (Scotland) Act 2006. A notice of review was received by Midlothian Council on 22 February 2012. The Council's Local Review Body (LRB) considered the review by way of written submissions. The review was dismissed and planning permission refused at its meeting of 17 April 2012.
- 3.5 Subsequent attempts by planning authority officials to set up a meeting with the then appellant's planning agent and his client to negotiate a reasonable timescale to either remove both unauthorised dormer windows or to discuss any alternative proposals they may have proved to be fruitless. Further attempts to achieve a satisfactory negotiated solution with a second planning agent resulted in the same outcome.
- 3.6 An Enforcement Notice was served on the applicant on 30 April 2015 under the terms of Section 127 of The Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

- 3.7 At the same time that the Enforcement Notice was served the Planning Authority also served a Planning Contravention Notice on the applicant. This notice seeks the submission of information regarding the unauthorised development and presented the applicant with a formal opportunity to explain the events that lead to the breach of planning control. The applicant did not respond to the Planning Contravention Notice either within the required timescale or to date. This was despite the applicant being made formally aware that non provision of the required information would mean that he would be guilty of an offence.
- 3.8 The planning authority received notice on the 25 June 2015 that the applicant had appealed to the Scottish Ministers against the Enforcement notice. The appeal was dismissed on the 10 September 2015. The Enforcement notice dated 30 April 2015 was upheld subject to the variation of the terms of the notice in relation to the time period for compliance extending the time period from 3 to 9 calendar months. The enforcement notice gives the following 3 steps/options to be chosen to remedy the breach:
- The removal of both unauthorised dormer windows and remedial works to return the resultant open external parts of the same roof plane to its original enclosed condition; or
  - The removal of both unauthorised dormer windows and thereafter form both dormer windows subject of approved planning permission reference 08/00623/FUL; or
  - Carry out alteration works to both unauthorised dormer windows to form both dormer windows subject of approved planning permission reference 08/00623/FUL.
- 3.9 Non compliance with the enforcement notice will result in an offence being committed under the terms of Section.136 of the Town and Country Planning Scotland act 1997, as amended by the Planning etc (Scotland Act) 2006.
- 3.10 In addition, any person who executes - or causes to be executed - unauthorised works to a listed building is guilty of an offence under the terms of Section 8 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- 3.11 The applicant has until 10 June 2016 to comply with the Enforcement Notice. There is no evidence that work has, or is about to commence in relation to the dormer windows. As the next meeting of this Committee is not until August, and having regard to the need to move matters forward if the enforcement notice is not complied with, this report seeks approval of the action that should be taken in relation to this breach of planning control.

## **4 ENFORCEMENT CONSIDERATIONS**

4.1 The main issue to be considered in relation to this matter is what action if any the Council chooses to take in relation to the outstanding breach of planning control. The Council has four options:

- Take direct action to make alterations to the dwellinghouse to comply with the requirements of the enforcement notice, recouping the cost of the works from the applicant/owner of the property.
- Take no action and allow the unauthorised dormers to remain in situ on the building, without the benefit of Planning Permission or Listed Building Consent.
- As non compliance with the enforcement notice is an offence under The Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 and the works are an offence under the terms of Section 8 of The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; report the matter to the Procurator Fiscal.
- Give the applicant an extended period of time (3 months) to resolve the outstanding breach of planning control.

4.2 The first of these options, to take direct action, would involve the Council engaging contractors to remove the unauthorised dormer windows. The contractors would be carrying out work internally and externally to the dwellinghouse. The works are by their nature structural and any damage done to the building by contractors would make the Council potentially liable for their rectification. In addition the applicant is resident in the property and as such direct action is not considered to be a preferable option at this point. Furthermore, the costs of taking Direct Action could be substantial and recouping the costs may not be secured until such time that the property is sold.

4.3 The second option, to take no action, is a choice the Council can consider. However following this option the Council is exposing itself to allegations of undermining the planning system and bringing it into disrepute. It would bring into question the decisions of the Council including the decision of the Local Review Body on the planning applications. It would send out the message that if individuals do not like the decisions of the planning authority, they can build what they want, no sanction will be taken and there are no consequences.

4.4 The third option is to report the matter to the Procurator Fiscal with a view to prosecuting the applicant. The unauthorised formation of the dormer windows on the subject building (a listed building) is an offence. Non compliance with the requirements of an Enforcement Notice by 10 June 2016 would constitute a further offence. The matter has been fully examined and exhausted through the application

process, review and the appeal against the enforcement notice. If the applicant is prosecuted there is still the expectation that the unauthorised works are removed, with further prosecutions being instigated if the breach of planning control remains.

- 4.5 The final option is to give the owner of the property a further period of time, for example 3 months, to resolve the breach of planning control beyond the enforcement notice compliance date of 10 June 2016. However, as the applicant has not to date given any assurances of complying with the terms of the Enforcement Notice, it is doubtful that such extension of time will serve any useful purpose.

## **5 RECOMMENDATION**

- 5.1 That in relation to the formation of two dormer windows in the rear elevation of the dwellinghouse at 15 Dundas Street, Bonnyrigg, without the benefit of Planning Permission or Listed Building Consent, the Planning Committee agree to report the matter to the Procurator Fiscal with a view to prosecuting the applicant.

**Ian Johnson**  
**Head of Communities and Economy**

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**Applicant:** Mr Robertson  
**Agent:** Mr McCaskey/Mr Bennie

**Background Papers:** The planning applications referenced in the report.

