



## REPORT TO GARIOCH AREA COMMITTEE 27 JUNE 2017

### MEMBER PROMOTED ISSUE (MPI): UNCOMPLETED DEVELOPMENT AT KINGSEAT

#### 1 Recommendations

**The Committee is recommended to consider the issues raised through this Member Promoted Issue and give views on how the issue may be moved forward.**

#### 2 Background / Discussion

- 2.1 This report is being presented to Garioch Area Committee as a member promoted issue, submitted by Councillor Ford. This report is the result of the officer liaising with Councillor Ford so there is a full narration of the issue. The report is the professional view of the officer.
- 2.2 Kingseat is a mixed use development on the site of the former Kingseat Hospital, approximately 1 mile to the East of Newmachar. It contains a mix of residential properties including flats in some of the former hospital buildings as well as new build housing. The site contains some affordable housing run by a Housing Association. In order to enable the conservation of the hospital buildings and the hall, planning permission was granted some years ago and there is an extensive planning history to the site (refer to Appendix1). The site has conservation status, although none of the buildings are listed.
- 2.3 The development has not been completed by the developer. This has had a knock-on effect in that some community facilities have not been delivered – these were due to be provided on completion of the development itself. It should be noted that the developer does not have ownership of all of the remaining former hospital buildings. Some of these are owned by other individuals and businesses. A number of these are in a derelict state.
- 2.4 There have been a number of ongoing issues in Kingseat (refer to Appendix 2). These include;
- the unfinished state of the development / derelict buildings – linked to phasing plan and possible enforcement;
  - lack of playpark provision – details of equipment to be provided have been submitted but phasing of provision was omitted when purifying the condition in 2006;
  - the poor state of the hall and future ownership / use – there is an obligation in the S75 legal agreement for the developer to offer the hall to Aberdeenshire Council on completion of the development;
  - the developer's interest in the site;
  - the factoring and quality of landscaping;
  - Sustainable Drainage Systems (SuDS) adoption;
  - the possibility of enforcement or other action;
  - lack of facilities for the community; including a shop.

2.5 Over a long period of time residents, the New Machar Community Council, elected members and council officers have individually and collectively tried to improve the situation and address the issues described in Paragraph 2.3. In addition local MSPs have become involved on behalf of constituents. There is agreement on the need to address the issues, but also a collective frustration about lack of progress in doing so. Nevertheless, a number of actions have taken place and many of these are listed below.

- The Ward 12 elected members, Area Manager and Senior Planner have met with the Resident's Association and Community Council on numerous occasions to hear their concerns and update them on progress, and have contacted the developer to discuss the situation;
- Residents, local elected members and Council Officers have engaged in discussion with the developer on several occasions but with little or no success;
- The Garioch Community Planning Officer has met with residents, and along with the Garioch Partnership helped set-up a Resident's Association, focusing in particular on factoring and service issues such as winter gritting;
- The Garioch Local Community Planning Group commissioned The Garioch Partnership to undertake community engagement in Kingseat, and a Community Action Plan has been produced;
- Building Standards officers have visited the site on a number of occasions to ensure the derelict buildings are safe (sometimes in response to specific community concerns);
- Discussions between Development Planning, Policy Planning, Housing, Legal and Governance and The Area Management Team have taken place on a number of occasions, however, these always reach the same conclusion that without the developer's co-operation it is difficult to move forward;
- In July 2016, Legal and Governance wrote to the developer about the state of the hall and administration buildings, reminding them of their legal obligations with regard to these buildings, and this did lead to action by them to make them windproof and watertight;
- Recently, an officer group has been set-up to keep re-visiting the issues and work together to do so;
- Development Planning colleagues have provided advice and guidance to prospective purchasers of the administration and other buildings, which have been put up for sale by the developer, although to date and despite some notices of interest there has been no sale.

2.6 Finding a way forward will require the community and Aberdeenshire Council to continue to work together to identify opportunities. It has been identified that a Working Group could be set-up by the Area Committee. In addition to council officers, this group could include local members and community representatives, although on occasion council officers may need to meet as an officer-only group to investigate suggestions and look at feasibility, costs and other relevant issues. The group should provide a progress report to Garioch Area Committee every 6 months. This can be done through Ward Pages or Area Committee.

2.7 A number of ideas have already been suggested by a range of interested parties, including using the buildings for affordable housing, further negotiations with the developer and community ownership of the playpark.

2.8 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

### **3. Scheme of Governance**

3.1 The Committee is able to consider and take a decision on this item in terms of Section B.1.1 of the List of Committee Powers in Part 2A of the Scheme of Governance as it is a matter that is specific to the Garioch Area and not otherwise delegated to any other Committee.

### **3 Equalities, Staffing and Financial Implications**

4.1 An equality impact assessment is not required because the report is for information only and does not have a differential impact on any of the protected characteristics.

4.2 There are no staffing implications arising from this report.

**Maria Walker**  
**Director of Education and Children's Services**

Report prepared by Douglas Milne, Garioch Area Manager  
1 June 2017

**APPENDIX 1: Planning history of the site (key applications)**

<b>Reference</b>	<b>Site Address / Description</b>	<b>Decision</b>
<b>Whole Site</b>		
APP/2004/0001	Former Kingseat Hospital, Aberdeen Mixed Use Development	FAC (02/03/04), GAC (16/03/04 & 27/04/04), ISC (06/05/04), FPP Granted 09/12/2004
APP/2005/4314	Former Kingseat Hospital, Newmachar, Aberdeen Amendment to Cond. 2 of Planning Permission APP/2004/0001	GAC (14/03/06) FPP Granted 15/03/2006
APP/2007/0037	Kingseat Hospital, Newmachar, Aberdeen Amendment to Cond. 1 of Planning Permission APP/2005/4314	Delegated decision, FPP Granted 28/05/2007
<b>Ward Building</b>		
APP/2011/0506	Former Kingseat Hospital, Kingseat, Newmachar Part Conversion of Building to form 4 Additional Flats	Delegated decision, FPP Granted 12/09/2011
<b>Sibbald Building (E12)</b>		
APP/2013/1345	Building E12, Former Kingseat Hospital, Newmachar, Aberdeen, AB21 0UE Conversion of Building to Form 7 Flats	Delegated decision due to lack of information, FPP Refused 09/07/2013
APP/2013/2494	Building E12, Former Kingseat Hospital, Newmachar, AB21 0AB Conversion of Building to Form 7 Flats	Delegated decision, FPP Granted 07/10/2013

## **APPENDIX 2: Key issues at Kingseat**

### Unfinished state of the development / derelict buildings

There are five buildings within the Kingseat site that have not been developed (refer to Appendix 2a). Three are in the ownership of Avant Homes and the other two are believed to be in separate private ownership.

1. The most significant building is the former hospital ward building that lies in the centre of the site. This received planning permission for the formation of 16 flats under the 2004 permission and 4 further flats in 2011.
2. To the south-east, the Sibbald / E12 building received permission for the formation of 4 flats under the 2004 permission and 7 flats in 2013.
3. The village hall did not form part of the development proposals in 2004, but was part of the package of developer contributions, with it to be offered to the Council at the end of the construction phase.
4. The admin building formed a key part of the non-residential element of the original scheme, with it receiving permission as a shop. Following this, it changed ownership and there have been no further proposals for it.
5. The cottage sits to the west of the admin building. A number of enquiries have been received to redevelop / demolish the building, but there have been no formal proposals submitted.

As an enabling development, the Planning Service put safeguards in place through the 2004 phasing plan to ensure the conversions of all the historic buildings were in the first phase of the development, cross funded by an element of open-market new build housing. Two later phases of development were proposed to complete the scheme. This was amended through the approval of the 2006 phasing plan, which introduced five phases of development, with the conversions split across phases 2-3. Finally, the approved 2007 phasing plan shows phases A-D.

In each case, there are caveats in the phasing plan that the next phase cannot commence until the preceding phase has been completed. In most cases, with most developers, such an approach would be sufficient to regulate the development of the site. It is unclear if monitoring of the site was being undertaken by the planning service; this would not be common practice. However, it is apparent that the developer did not adhere to the phasing plan from an early stage as the Sibbald / E12 building should have been restored as part of phase 2 / B and remains derelict today. In 2010 the developer approached the planning service requesting permission to commence the final phase (D) of the development on the basis that the employment land had been serviced as required by the associated condition. There was no doubt the employment land had been delivered as some premises were actually occupied by then. The developer was given permission in January 2010 to develop phase D despite the fact that the primary requirement, that the development proceed in accordance with the revised 2007 phasing scheme, had clearly not happened.

The developer is in breach of condition 1 of the decision APP/2007/0037 issued on 28 May 2007 by commencing phase C before phase B was completed and finishing phase D prior to completing all works on the previous phases. Phasing was not controlled within the legal agreement. The issuing of the letter by the planning service advising the final phase could commence is unfortunate, but the developer remains in breach of the condition.

Enforcement has considered this matter in some detail and has concluded that the pursuit of formal enforcement action (most likely an Enforcement Notice) would not be appropriate. The wording of the correspondence issued by the Planning Service in January 2010 allowing works to proceed on phase D, in the knowledge that earlier phases were not fully complete, would be a significant factor to be taken into account when deciding to take any enforcement action. The letter could be interpreted that there was an acceptance by the planning authority that a breach of condition would take place and that it was acceptable to proceed in full knowledge of this. No variation would be accepted without a full justification, which was considered by the planning service at the time. Current processes and scrutiny are more robust now in this respect. To pursue the breach now would not be reasonable nor expedient (if the breach was acceptable in January 2010 then it is no longer expedient to pursue some seven years later). Any such Enforcement Notice, if tested in the courts, could potentially be challenged on these grounds. Although it is recognised that the letter was only intended to relate to phases C and D, Planning Enforcement must consider whether information held would be robust enough to withstand challenge. It is considered that in view of the 2010 letter it would not be expedient or reasonable to now pursue enforcement action. There is a question of whether dealing with the matter of phasing at that time in a different way would have a different outcome.

The Planning Service is generally unable to compel a developer to complete their development once the planning permission has been implemented.

The use of Amenity Notices (S179 of the 1997 Planning (Scotland) Act) and Urgent Works to Buildings in Conservation Areas (S68 of the Planning (Listed Buildings & Conservation Areas) Act 1997) are tools that Aberdeenshire Council could use to preserve the buildings within However, there are a number of matters that require to be considered.

Consideration has been given to the issue of an Amenity Notice to address the condition of the original hospital buildings. It should be stressed that the buildings presently being in a poor condition does not in itself constitute development for which planning control is required.

Section 179 of the Town and Country Planning (Scotland) Act 1997 as amended provides planning authorities with the power to serve a notice on the owner, lessee or occupier of land in their area, if the condition of an area is considered to adversely affect the amenity of the area – commonly termed as an “Amenity Notice”. A Notice of this type would require the owner, lessee or occupier of the land to carry out specific actions to remedy the specific points impacting on the amenity of an area or building. However, there are limitations to this power that the planning service must consider prior to pursuing this course of action.

Firstly, the notice is open to appeal to the Scottish Government on several grounds including:

- (i) That the amenity has not been affected.
- (ii) The steps required by the notice exceed what is necessary to address any amenity issue
- (iii) The time for compliance given falls short of what should reasonably be allowed

- (iv) The condition of the land is attributable to a continuing lawful use of the land or from continuing lawful operations.

Amenity is a subjective concept and as such, the developer or owner could challenge the issue of a notice based on their own interpretation of amenity. Prior to the issue of a notice the planning authority must also consider what action could be taken should an Amenity Notice not be complied with. An Amenity Notice carries with it no powers for prosecution or the issue of a Fixed Penalty Notice. Careful consideration must be given to the cost implications if any direct action was required by the planning authority to complete the steps covered by the Amenity Notice. The planning authority must also consider whether it is in the wider public interest to incur such costs. If a notice was pursued it would require confirmation of the works which would be required to address the amenity issue, the cost implications of these works, and any subsequent action to recover the costs of a civil debt. Having given consideration to the condition of the site/buildings, taken account of the subjective nature of amenity and the potential for substantial costs to be incurred it is not considered expedient to pursue an Amenity Notice.

The serving of a notice for Urgent Works to Buildings in Conservation Areas (S68 of the Planning (Listed Buildings & Conservation Areas) Act 1997 also has issues. The need for a notice would be a decision that would be made in conjunction with Historic Environment Scotland. The process would essentially involve Aberdeenshire Council commissioning an independent surveyor to undertake assessment of the buildings with a view to identifying the minimum works required to stabilise the buildings and prevent further deterioration along with the costings of the required works. Aberdeenshire Council would require to fund the necessary works identified and in this case, a substantial budget is likely to be necessary. The Council would thereafter undertake the works and in the same way as an amenity notice recover the civil debt from the landowner. The cost to the Council could potentially be considerable and recouping this money from the owner through civil legal proceedings would be a lengthy process involving further costs. It is unlikely the Council would be fully reimbursed and therefore the implications of pursuing this course of action requires careful consideration.

#### Lack of playpark provision

The completed development should have delivered a number of ancillary benefits to the new residents; one of these is provision of a playpark. A condition attached to the 2004 application required submission of details of a children's play area and when it was to be provided. In November 2005 a plan and specification for the play area was submitted and this was formally accepted by the planning service in February 2006. Unfortunately, whilst the siting and specification of the play equipment were provided, the details of the implementation were required to be tied into the phasing of the development.

The relevant condition required:

*“That no development or any housing phase shall take place unless there has been submitted to and approved in writing by the planning authority a scheme for the provision of facilities for children’s play including the phasing of provision and the approved scheme shall be carried out in its entirety”.*

Any condition must be robust enough to withstand challenge. The revised approved phasing plan 2007 did not include the area accommodating the play park within any

phase of development on the plan. Notwithstanding this fact, even if the play park had been included, enforcement action regarding the phasing would not be expedient for the reasons detailed above.

The proposed play area was to be sited between the hospital ward and admin building. This area was used as a compound during the construction phase of the development and only recently tided up by the developer, however, it remains enclosed by security fencing. The lack of agreed implementation date has allowed the developer to renege on delivery of the play area for the children of Kingseat.

The area in question is part of the land being marketed by the developer at the present time.

### The Village Hall

The legal agreement linked to the 2004 application has a number of obligations with regard to this significant building. Specifically, the developer:

- must make it available for community use from time to time for the duration of the development period;
- will be responsible for its maintenance in a secure and wind and water tight condition during the construction phase; and
- once the final residential unit is complete, shall offer ownership of the hall and associated car park to be transferred to the Council, or such other body as may be agreed for no consideration.

The developer was first contacted by the planning service in March 2009 about the requirement to keep the hall wind and water tight and about allowing community access if requested. There is no know response to this letter. In May 2014, the developer contacted the Council to offer the hall in its present condition. The planning service responded to advise it was not in a position to agree to this, but was prepared to begin consideration of a transfer. No further correspondence was sent or received on this matter.

In July 2016, a letter from Business Services (Governance) again highlighted the need to fulfil the obligation in the legal agreement. In October 2016, a meeting with the developer, local and national political representatives, officers and community representatives was convened on site. Following this, the Council was advised that a contractor was being appointed to survey and undertake the necessary works. It is clear that some work was done, although the sufficiency of this is disputed.

The condition of the hall is a matter where the Council believes there has been a breach of the legal obligation and this may be ongoing.

### Sewers and SUDS adoption

The developer has advised that these have not to date been adopted by Scottish Water and following any sale of the remaining development areas of the site it will remain responsible for this process which is subject to ongoing discussions with Scottish Water



## Factoring and quality of landscaping

The majority of the public open space at Kingseat is maintained by a third party property management and factoring company.

Conditions attached to APP/2004/0001 state:

*“That the development hereby permitted shall not take place unless there has been submitted to and approved in writing, for the purpose by the planning authority, a tree survey and scheme of landscaping for the site, which schemes shall include the existing and proposed areas of tree/shrub planting including details of numbers, densities, locations, species, size and stage of maturity at planting.”*

*“That all planting and seeding/ turfing comprised in the approved scheme of landscaping for each phase on the appended phasing plan shall be carried out in the first planting season following completion of development of that phase and any trees or plants which, within a period of five years from the date of completion die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a size and species similar to those originally required to be planted, or in accordance with such other scheme as may be approved in writing by the planning authority.”*

A site visit was undertaken on 12 June 2017 by an enforcement officer and senior planner from the planning enforcement team. Following the visit it was found that substantial planting within the development had taken place, much of which is now well established. The Environment Team has indicated the presence of failed tree plantings in and around the location of the cricket pitch. The condition above details that all planting shall be carried out in the first planting season following “completion”. Whilst the preceding part of the condition relating to implementation makes reference to “completion of development of that phase”, the timing for the replacement of the failed plantings does not specify to what the term “completion” relates and is therefore ambiguous. The completion may relate to completion of that phase but given the absence of monitoring of the phasing, it would not be expedient or reasonable to now pursue enforcement action. If the “completion” relates to the overall development, as it has not been completed, this condition would not be robust enough to withstand challenge. Notwithstanding the ambiguity in the condition, the landscaping has been in place for a considerable time period (in excess of the stated five years) and is therefore likely to be considered as immune from Enforcement action.

It is understood that every household within the original development has an equal share in ownership of the communal areas of landscaping. The Council’s Legal Service are presently looking into this to confirm the position. If the open space is found to be in multiple ownership, Planning Enforcement would be required to serve notice on each individual person / property which would not be considered as a reasonable or expedient action.

There is provision for landscaping under the Section 75 agreement which states:

*“It is agreed that, by the end of the first planting season following completion of the development on the Trust site, the proprietors will enter into an Agreement with the Scottish Green Belt Company or such similar company as be agreed by the parties / acting reasonably for the ongoing maintenance of all open areas,*

*woodland, communal garden ground, paths, car parks and any other non-adopted surfaces laid outwith the Trust site”.*

There is a factoring agreement in place. The Environment Service has been in direct discussions regarding specific aspects of the landscaping, particularly the trees. Given the conservation area status, the existing trees within the designated area are afforded a level of protection and on the back of this, Aberdeenshire Council may be able to request that any failed plantings are replaced by the appointed factor. This matter requires further exploration.

#### Other developer interest in the site

Since February 2015, the developer has been marketing its remaining parcels of land comprising the hospital ward and Sibbald buildings, former village hall and central open space. The planning service had positive pre-application discussions with a housing association and another developer. In October 2016, the existing developer advised that it was in advanced discussions with an interested party and local developer seeking to complete the development. There has been no further indication that negotiations are progressing at the time of writing.

