

EAST RENFREWSHIRE COUNCIL

PLANNING APPLICATIONS COMMITTEE

October 4th 2023

Report by Director of Environment

Section 33A notice - 29 East Kilbride Road, Busby, G76 8JY.

UPDATE

1.0 INTRODUCTION

- 1.1. This report is to update members on the service of a Notice under Section 33A of the Town and Country Planning (Scotland) Act 1997, authorised by the Planning Applications Committee on 7th 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 several 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 This was submitted on 17th March 2023 but then withdrawn the following day, as the landowner wrongly believed planning permission was not required.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 31st March advised the landowner that formal action would be considered if a planning application were not submitted before 14th 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 7th 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 To clarify, failure to submit a retrospective planning application does not mean that the Planning Service is required to serve an enforcement notice to seek removal of the structures. Circular 10/2009 (Planning Enforcement) sets out Scottish Government policy on enforcement and states that planning authorities should consider whether any breach of control would affect unacceptably either public amenity or the use of land and buildings meriting protection in the public interest. For example, it is usually

inappropriate to take formal enforcement action against a trivial or technical breach of planning control which has no material adverse planning implications.

- 3.3 The unauthorised works relate to the erection of outbuildings for domestic purposes within an existing domestic curtilage and a timber boundary fence. The use of the outbuildings for purposes ancillary to the dwelling would not therefore be out of character with the residential use of the site and would not give rise to significant additional noise and disturbance than would normally be associated with a residential garden.
- 3.4 Whilst the fence and outbuildings are visible from out with the site and from the adjacent properties on Printer's Land, they are nevertheless domestic in scale, their timber finish is appropriate to a domestic garden location, and helps soften their appearance. They are therefore considered to be acceptable in appearance and do not significantly detract from the character or visual amenity of the area. They would, meet the permitted development requirements of Class 3A of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended, were it not for the fact they sit forward of the principal elevation of the house where that elevation faces a footpath. As a result, the development requires planning permission.
- 3.5 In this instance, the minimal impact of the unauthorised development, as discussed above, is not considered to justify further action.

4 CONCLUSIONS

- 4.1 The Planning Applications Committee authorised the service of a Section 33A Notice on 7th June 2023 in respect of the unauthorised development at 29 East Kilbride Road, Busby. The applicant has refused to comply with the terms of the notice however for the reasons noted above, it is considered that the impact of the unauthorised works does not justify further enforcement action.

5.0 RECOMMENDATION

- 5.1 It is recommended that no further action is taken in respect of the erection of outbuildings and a fence within the garden ground associated with the property at 29 East Kilbride Road, Busby, G76 8JY.

6.0 BACKGROUND PAPERS:

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

DATE: 27th September 2023

DIRECTOR OF ENVIRONMENT