PE1465/A

Falkirk Council Letter of 22 March 2013

Subject: RE: Scottish Parliament Public Petition PE1465 on maintenance of vacant land in private ownership

With regard to open space areas within residential developments

Land management agreements or factoring arrangements with householders are usually put in place when a developer completes a residential development and consequently the open space maintenance tends to be satisfactory in nine out of ten cases. However, on occasion problems arise where residents are unaware that open space maintenance is written into their title documentation. Unfortunately, if a factor is not in place or payment arrangements fall down open space can rapidly become unkempt which results in a Council receiving complaints with regard to land management. For obvious reasons, and somewhat ironically, those complaints tend to be from persons living in the residential development i.e. the responsible householders. Falkirk Council's recently adopted policy as expressed in Supplementary Planning Guidance is that where factoring arrangements are not deemed 'certain and robust' the Council will require that open space areas are given over to it with a commuted sum equivalent to an estimate of 10 years annual maintenance. This policy should avoid the above situations occurring in the future.

Unless there is some environmental hazard involved which renders unmaintained land a threat to public health the only power available to Councils would appear to be an Amenity Notice under Section 179 of the Town and Country Planning (Scotland) Act 1997. A Notice must be served on the owners of the land involved and the Council is left with a situation whereby taking action against every householder within an estate is the only way to progress the issue legally. This is generally not viable or effective given the number of householders involved and, in our experience, the improbability of achieving a successful outcome. The failure to satisfactorily re-establish disintegrating factoring arrangements is central to this particular problem. Local Residents Associations may be best placed to persuade householders to re-establish effective factoring arrangements in their own interests and this has been successful in some cases. As the ownership of such areas is shared amongst any number of householders re-sale would be a complex matter and one for their consideration, perhaps as a constituted Local Residents Associations. The planning permission condition would however still apply i.e. that the land should be maintained as open space in perpetuity. Open space could be sold and developed for other purpose if a close assessment of provision within a community indicated a surplus of provision and all other material planning consideration were taken into account.

This would be regardless of ownership.

General comments on the use of Section 179 Notices

Section 179 of the Town and Country Planning (Scotland) Act 1997 provides for local authorities to serve Amenity Notices requiring adequate maintenance of land considered to be adversely affecting amenity. However, the terms of this section of the Act are such that this power could be used in almost any given circumstances ranging from not cutting their grass in a private garden through to a demolition site covered in rubble and potentially hazardous materials. Whilst this power is wide ranging enforcement practitioners are aware that there are real difficulties in using Amenity Notices due to the subjectivity of the issues, the problems of identifying land ownership and the fact that the only option open to Councils to secure improvement is often to use direct action. It is significant to note that while there is a right of appeal against an Amenity Notice there are no back-up powers to prosecute or serve fixed penalties.

Councils have to consider whether a significant visual disamenity is evident and whether the action proposed is justifiable, expedient and commensurate. This often leads to difficulties in complainants being dissatisfied with a decision not to take action on something that understandably they may regard as unsightly but which a Council would not consider to be a matter which justified action e.g. grass cutting, wild gardens. In addition, Councils often cannot identify ownership of random areas of open space even when carrying out land registry searches. This makes service of a Notice impossible and leaves no opportunity for a negotiated resolution. The only option for non-compliance with a Section 179 Notice is direct action by the local authority followed by attempts to recover costs where an owner can be identified. Councils do not generally have budgets set aside for direct action and therefore funding would have to come from existing departmental budgets. If the likelihood of recouping that expenditure is low there is little incentive to employ Section 179 Notices.

Conclusions

It should be noted that although neglected sites are a real concern for those living close to them the problem is not a widespread one. Nevertheless an extension of the provisions of Section 179 Amenity Notices to include prosecution powers would assist in a proportion of case. Success would still ultimately depend on successfully identifying and working with willing site owners.

John Angell
Head of Planning and Transportation
Falkirk Council