

ABERDEEN CITY COUNCIL

COMMITTEE	Planning Development Management Committee
DATE	19 th September 2019
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Breach of Planning Control at 7 Airyhall Place
REPORT NUMBER	PLA/19/374
CHIEF OFFICER	Gale Beattie
REPORT AUTHOR	Gavin Clark
TERMS OF REFERENCE	3

1. PURPOSE OF REPORT

- 1.1 To inform the Committee in respect of a breach of planning control comprising the erection of unauthorised fencing to the front, side and rear of the dwellinghouse.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 Authorise the serving of an Enforcement Notice upon the owner of the property, to rectify the breach of planning control. An application for planning permission was refused by the Local Review Body (LRB) on the 13th August 2019.
- 2.2 Agree that the breach should be remedied by the removal of the unauthorised fencing.

3. BACKGROUND

Basis of the Report

- 3.1 In August 2018 a retrospective application for planning permission (Ref: 181521/DPP). was submitted for the erection of a fence to the side and rear of the dwelling. This application was withdrawn by the applicants on the 31st August 2018.
- 3.2 A revised application (Ref: 190128/DPP) was submitted in January 2019 for an alternative proposal of fencing at a slightly reduced height around the principal elevation. Following dialogue with Officers, no acceptable solution was agreed

and the application was refused under delegated powers on the 8th March 2019. This application was subject to a review sought via the Local Review Body (LRB) which was unsuccessful, with the decision notice issued on the 15th August 2019.

- 3.3 No works to rectify the works have taken place and the Council therefore seeks to take formal enforcement action to rectify the breach of planning control on site.
- 3.4 The Planning Authority may be in a position to support a fence in its current position if it is amended to be 1.2m in height up until the north-western corner; and along the boundary shared with the adjacent property, 1 Airyhall Gardens, a 2m fence could be supported.

The Enforcement Position

- 3.4 Section 127(l) of the Town and Country Planning (Scotland) Act 1997 (the Act), as amended, states that a planning authority may issue an enforcement notice where it appears to them:
- (a) That there has been a breach of planning control, and
 - (b) That it is expedient to issue the notice, having regard to the provisions of the development plan and any other material considerations.
- 3.5 Paragraph 7 to Circular 10 of 2009 "*Planning Enforcement*" notes that planning authorities have a general discretion to take enforcement action against any breach of planning control. The paragraph goes on to state that when authorities consider whether enforcement action is expedient, they should be guided by a number of considerations that include:
- Whether the breach of planning control would affect unacceptability either public amenity or the use of land and buildings meriting protection in the public interest; and
 - Enforcement action should be commensurate with the breach of planning control to which it relates.

Planning Assessment

- 3.6 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) requires that where, in making any determination under the planning acts, regard is to be had to the provisions of the development plan and that determination shall be made in accordance with the plan, so far as material to the application, unless material considerations indicate otherwise.
- 3.7 The application for planning permission was refused as it was considered that *"the proposed fence would be incongruous in design, siting, scale and height to the original building and the surrounding area. Because of its height, the proposed fence would have a detrimental impact on the street scene which would have an adverse impact on the character of the surrounding area. The grant of planning permission for such a proposal could also set a negative*

precedent for similar development which would be significantly detrimental to the character of the surrounding area. The proposal would therefore conflict with Policies D1 - Quality Placemaking by Design and H1 - Residential Areas of the Aberdeen Local Development Plan; and the Supplementary Guidance: 'The Householder Development Guide'. There are no material planning considerations that warrant the grant of planning permission in this instance.

4. FINANCIAL IMPLICATIONS

- 4.1 Financial costs may be incurred should the Enforcement Notice not be complied with, such as to either take direct action or seek redress in the Courts.

5. LEGAL IMPLICATIONS

- 5.1 There will be implications in terms of Governance staff time to prepare and issue the Enforcement Notice. Costs may be incurred in relation to both Place and Governance staff if action is required to secure compliance with the Enforcement Notice.

6. MANAGEMENT OF RISK

	Risk	Low (L), Medium (M), High (H)	Mitigation
Financial	Financial costs may be incurred should the Enforcement Notice not be complied with.	L	The risk can be mitigated by ensuring that there is funding available from the appropriate budget for direct action to be taken. In the event that direct action is required we will seek to recover all of the costs of the required action from the landowner in accordance with the relevant legislation.
Legal	The applicant may not comply with the Enforcement Notice, which will require formal action by the Council.	L	The risk can be mitigated by ensuring that if there is a failure to comply with the Notice that we are prepared to proceed with further action which may include the instigation of Court Action.
Employee	N/A		
Customer	N/A		
Environment	N/A		

Technology	N/A		
Reputational	There may be a negative impact if the Council do not decide to proceed with formal enforcement action	L	Proceed with the enforcement action as suggested

7. OUTCOMES

Local Outcome Improvement Plan Themes	
	Impact of Report
Prosperous Economy	The proposal is unlikely to significantly contribute or result in a negative impact on the economy of Aberdeen.
Prosperous People	The proposal is unlikely to have a significant impact on people with protected characteristics or any negative impact on the delivery of the Council's Equality outcomes.
Prosperous Place	The proposal will have no impact on sustainable communities
Enabling Technology	The proposal will not advance technology for the improvement of public services.

Design Principles of Target Operating Model	
	Impact of Report
Customer Service Design	None directly
Organisational Design	None directly
Governance	None directly
Workforce	None directly
Process Design	None directly
Technology	We will exploit digital technologies in data collection, analysis and reporting wherever possible.
Partnerships and Alliances	None directly

8. IMPACT ASSESSMENTS

Assessment	Outcome
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Equality & Human Rights Impact Assessment	Full EHRIA not required.
Data Protection Impact Assessment	Not required
Duty of Due Regard / Fairer Scotland Duty	Not applicable.

9. BACKGROUND PAPERS

Background papers include written correspondence, emails and the associated planning applications (Ref: 181521/DPP and 190128/DPP), and the Local Review Body decision of the 13th August 2019 (issued on the 15th August 2019).

Planning Application Details (Including LRB Decision Notice):

<https://publicaccess.aberdeencity.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

10. REPORT AUTHOR CONTACT DETAILS

Gavin Clark
Senior Planner (Enforcement)
gaclark@aberdeencity.gov.uk
01224 522321