

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Planning Development Management Committee
<b>DATE</b>	19 <sup>th</sup> September 2019
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Breach of Planning Control at 2 Park Brae - Cults
<b>REPORT NUMBER</b>	PLA/19/381
<b>CHIEF OFFICER</b>	Gale Beattie
<b>REPORT AUTHOR</b>	Gavin Clark
<b>TERMS OF REFERENCE</b>	14 Part 3 (Authorise the Taking of Enforcement Action)

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### **1. PURPOSE OF REPORT**

- 1.1 To inform the Committee in respect of a breach of planning control comprising the failure to relocate security fencing in line with the approved planning application at 2 Park Brae, Cults.

### **2. RECOMMENDATION(S)**

That the Committee:-

- 2.1 Authorise the serving of an Enforcement Notice upon the owner of the property, to ensure compliance with the submitted plans. The proposal (which had several areas of retrospective works) was previously approved at the Planning Development Management Committee on the 1<sup>st</sup> November 2018.
- 2.2 Agree that the breach should be remedied by either removing the security fencing, or locating it in line with the approved drawing associated with planning application 181248/DPP (Ref: 18/11/03 A) to an extent that planning permission would not have been required – and the works would therefore constitute permitted development.

### **3. BACKGROUND**

Basis of the Report

- 3.1 In July 2018 a retrospective application for planning permission (Ref: 181248/DPP) was submitted for the erection of timber screen fencing to front, side and rear (behind granite wall) and addition of security features within site.

The application was approved at the Planning Development Management Committee on the 1<sup>st</sup> November 2018.

- 3.2 Amended plans were submitted which indicated that the security fencing would be relocated to an area which planning permission would not be required.
- 3.3 It should be noted that most of this authorised work as described in Section 3.1 has now taken place – the area subject to the enforcement notice relates to the security fencing located on the western boundary (shared with 2 Park Road) only.

#### The Enforcement Position

- 3.4 Section 127(I) 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 approved following the submission of amended plans as it was considered that “*the proposed fencing, metal security fixture, gate and gate piers would not adversely affect the architectural integrity of the original dwelling and would not adversely affect the character and amenity of the surrounding area in terms of their scale and design. The proposal would therefore comply with policies D1 - Quality Placemaking by Design and H1 - Residential Areas of the Aberdeen Local Development Plan, and the associated Supplementary Guidance: 'The Householder Development*

*Guide'. There are no material planning considerations that warrant refusal 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**

	<b>Risk</b>	<b>Low (L), Medium (M), High (H)</b>	<b>Mitigation</b>
<b>Financial</b>	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.
<b>Legal</b>	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.
<b>Employee</b>	N/A		
<b>Customer</b>	N/A		
<b>Environment</b>	N/A		
<b>Technology</b>	N/A		

<b>Reputational</b>	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
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## 7. OUTCOMES

<b>Local Outcome Improvement Plan Themes</b>	
	<b>Impact of Report</b>
<b>Prosperous Economy</b>	The proposal is unlikely to significantly contribute or result in a negative impact on the economy of Aberdeen.
<b>Prosperous People</b>	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.
<b>Prosperous Place</b>	The proposal will have no impact on sustainable communities
<b>Enabling Technology</b>	The proposal will not advance technology for the improvement of public services.

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

## 8. IMPACT ASSESSMENTS

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

## 9. BACKGROUND PAPERS

Background papers include written correspondence, emails and the associated planning applications (Ref: 181248/DPP), agreed by the Planning Development Management Committee on the 1<sup>st</sup> November 2018.

Planning Application Details

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

## 10. REPORT AUTHOR CONTACT DETAILS

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