
ABERDEEN CITY COUNCIL

COMMITTEE	Planning Development Management Committee
DATE	19 th September 2019
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Breach of Planning Control at 38 Cameron Street – Bridge of Don
REPORT NUMBER	PLA/19/384
CHIEF OFFICER	Gale Beattie
REPORT AUTHOR	Gavin Clark
TERMS OF REFERENCE	3 (Authorise the Taking of Enforcement Action)

1. PURPOSE OF REPORT

- 1.1 To inform the Committee in respect of a breach of planning control comprising the installation of a dormer not in accordance with approved plans at 38 Cameron Street.

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. Planning permission (Ref: 181208/DPP) was approved under delegated powers in October 2018 for erection of 1.5 storey extension to side, front porch and dormers to front and rear. These works are largely complete and are accepted by the Planning Authority, although the dormer to the front has not been completed in accordance with the approved plans.
- 2.2 Agree that the breach should be remedied by altering the design of the dormer to that approved under planning application Ref: 181208/DPP.

3. BACKGROUND

Basis of the Report

- 3.1 In July 2018 an application for planning permission (Ref: 181208/DPP) was approved under delegated powers for the erection of 1.5 storey extension to side, front porch and dormers to front and rear.
- 3.2 Complaints were received that works were not being carried out in accordance with the approved plans. Whilst works to the majority of the property are considered to be acceptable to the Planning Authority, the formation of a dormer to the front of the dwelling has not been built in accordance with the approved plans. Subsequently, the Planning Authority would seek to issue a notice to ensure that the dormer is completed in accordance with these details.
- 3.3 The dormer, as built, fails to comply with the Supplementary Guidance: Householder Development Guide for the following reasons:
- 3.4 (1) *The dormer extension should not appear to dominate the original roofspace;* – the dormer covers more than 50% of the area of the overall roofspace.; (2) *In terrace situations, or where a detached or semi-detached bungalow is very long, dormer extensions should be kept about 1500mm apart (i.e. dormer haffits should be 750mm back from the mutual boundary) so as not to make the dormer appear continuous or near continuous.* the dormer is a negligible distance from the boundary and (3) *‘The roof of the proposed extension should not extend to, or beyond the ridge of the existing roof, nor should it breach any hip. Dormer extensions cannot easily be formed in hipped roofs. Flat roofed extensions should generally be a minimum of 600mm below the existing ridge;’* – the dormer appears to be approx. 200-300mm from the ridge.
- 3.5 The approved dormer was 500mm below the ridge, flat roofed and was approved as being 600mm from the boundary with the adjoining property.

The Enforcement Position

- 3.6 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.
- 3.7 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

- 3.8 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.
- 3.9 The application for planning permission was approved following the submission of amended plans as it was considered that *“Although the dormers would not fully comply with the Supplementary Guidance: ‘The Householder Development Guide’ in that the front dormer would be 150mm less than 750mm from the adjoining boundary and both dormers would be 100mm less than the advised minimum 600mm below the roof ridge, the proposed 1½ storey side extension, dormers and front porch would be architecturally compatible in design and scale in the context of the original dwelling and the surrounding area.*
- 3.10 *Given the context of the existing garage to the rear of the site, the limited width of the rooflight and the shallow pitch of the roofslope, the proposed rooflight would have negligible impact on the level of privacy and thus amenity afforded to 11 Gordon Place. Whilst the side extension would have a minor impact on the level of sunlight afforded to the curtilage of 36 and 40 Cameron Street the affected curtilage comprises driveways and therefore the impact would have negligible impact on the level of sunlight afforded to neighbouring amenity.*
- 3.11 *Subject to an appropriately worded condition which would ensure that the windows in the rear dormer would be obscurely glazed, the proposal would not adversely affect the level of amenity afforded to any residential property to a degree that would warrant the refusal of planning permission.*
- 3.12 *The proposal would not have a significant adverse impact on the character and amenity of the surrounding area. The proposal would therefore not conflict with the principles of Policies D1 - Quality Placemaking by Design and H1 - Residential Areas of the Aberdeen Local Development Plan. There are no material planning considerations that warrant refusal 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.

- 5.2 If the Enforcement Notice is not complied with then the person or persons subject to the notice will be at risk of being found guilty of a criminal offence, subject to a fixed penalty or the cost of the local authority putting the property into compliance with planning control.

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. The applicant may appeal to the Scottish Ministers	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. The risk can be mitigated by having a robust case to base the issuing of the planning enforcement notice.
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
Equality & Human Rights Impact Assessment	Full EHRIA not required.
Data Protection Impact Assessment	Not required
Duty of Due Regard / Fairer Scotland Duty	Not applicable.

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9. BACKGROUND PAPERS

Background papers include written correspondence, emails and the associated planning applications (Ref: 181208/DPP), agreed under delegated powers on the 4th October 2018.

Planning Application Details

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

Planning Enforcement Charter

<https://www.aberdeencity.gov.uk/sites/default/files/2017-09/Planning%20Enforcement%20Charter%20June%202017.pdf>

10. REPORT AUTHOR CONTACT DETAILS

Gavin Clark

Senior Planner (Enforcement)

gaclark@aberdeencity.gov.uk

01224 522321