

ABERDEEN CITY COUNCIL

COMMITTEE	Planning Development Management Committee
DATE	31 st October 2019
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Breach of Planning Control at Soju (now Valentino's), 70 Carden Place, North Linn Farm and 2 Queen's Gardens
REPORT NUMBER	PLA/19/397
CHIEF OFFICER	Gale Beattie
REPORT AUTHOR	Gavin Clark
TERMS OF REFERENCE	14 Part 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 erection of an outdoor bar enclosure unit on the first-floor terrace area with associated works at Soju - 70 Carden Place;
- the unauthorised installation of several storage containers and associated works at North Linn Farm; and
- the non-compliance with conditions associated with the demolition of a garage to rear and formation of 2 parking spaces at 2 Queen's Gardens.

2. RECOMMENDATION(S)

That the Committee: -

Soju (Now Valentino's) – 70 Carden Place;

- 2.1 Authorise the serving of an Enforcement Notice upon the owner of the property, to rectify the breach of planning control by removal of the unauthorised bar enclosure unit. An application for planning permission was refused under delegated powers on the 3rd April 2019. No appeal was submitted.
- 2.2 Agree that the breach should be remedied by the removal of the unauthorised bar enclosure.

North Linn Farm

- 2.3 Authorise the serving of an Enforcement Notice upon the owner of the property, to rectify the breach of planning control. An enforcement file was opened on the site in relation to the siting of several large steel storage containers erected on agricultural land without planning consent in January 2017; despite repeated requests these structures have not been removed from site, and no planning application has been submitted to rectify the breach of planning control.
- 2.4 Agree that the breach should be remedied by the removal of the unauthorised storage containers.

2 Queen's Gardens

- 2.5 Authorise the serving of an Enforcement Notice upon the owner of the property, to rectify the breach of planning conditions associated with the planning consent. Planning permission and listed building consent was approved conditionally in September 2018 for the demolition of the garage to the rear and formation of two parking spaces. This included conditions in relation to the formation of a boundary wall and associated landscaping; to date these works have not been completed. A Breach of Condition Notice was served on the owner of the property on the 19th April 2019; this has not been complied with either.
- 2.6 Agree that the breach should be remedied by serving an enforcement notice to require that the conditions associated with the planning application/ listed building consent are complied with.

3. BACKGROUND

Basis of the Report

Soju (Now Valentino's) – 70 Carden Place;

- 3.1 In February 2019 a partially retrospective application for planning permission (Ref: 190177/DPP) was submitted for the erection of outdoor bar enclosure unit on first floor terrace area with associated works. The application was refused under delegated powers on the 3rd April 2019 for the reasons detailed in section 3.7 of this report.
- 3.2 No works to rectify the works have taken place, and no appeal against the Planning Authority's decision was submitted. The Council therefore seeks to take formal enforcement action to rectify the breach of planning control on site by requiring the removal of the unauthorised bar enclosure unit.

North Linn Farm

- 3.3 In January 2017 a complaint was received (Ref; ENF170017) in relation to the installation of several large steel storage containers erected on agricultural land without planning consent. There has been various correspondence with the site

owner, including the serving of a Planning Contravention Notice in November 2017. To date no planning application has been submitted to rectify the breach of planning control and the works on site therefore remain unauthorised.

- 3.4 No works to rectify the unauthorised development have taken place. The Council therefore seeks to take formal enforcement action to rectify the breach of planning control on site by the removal of the unauthorised storage containers.

2 Queen's Gardens

- 3.5 In May 2018 applications for planning permission and listed building consent (Ref: 180829/DPP and 180845/LBC) for the demolition of garage to rear and formation of 2 parking spaces. These included conditions requiring the formation of a boundary wall and the provision of landscaping within the curtilage of the site. The works have been completed on site and neither the boundary wall nor the landscaping have been provided. A Breach of Condition Notice was issued on the 19th April 2019; this has not been complied with either.
- 3.6 No works to rectify the unauthorised development have taken place. The Council therefore seeks to take formal enforcement action to rectify the breach of planning control on site by requiring the formation of a boundary wall and the provision of landscaping within the curtilage of the site.

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.

Soju (Now Valentino's) – 70 Carden Place;

3.7 The application for planning permission was refused as it was considered that:

- 1) By virtue of the proposed development's scale and siting at first floor level - relative to Albert Lane, Fountainhall Road and Blenheim Place in particular - the development has an undue adverse visual impact on the character and amenity of the Albyn Place/Rubislaw Conservation Area, mindful that it is a type development uncharacteristic the designation when viewed in isolation. As such, the proposal fails to comply with the relevant requirements of Policy B3 (West End Office Area), Policy D1 (Quality Placemaking by Design) and Policy D4 (Historic Environment) in the Aberdeen Local Development Plan 2017, as well as relevant national policy and guidance published by Historic Environment Scotland; and,
- 2) The proposed development would visually increase the massing and prominence of an unsympathetic extension to a historic building within the Albyn Place/Rubislaw Conservation Area. This type of development has been identified as a "threat" to the special architectural and historic interest of the Albyn Place/Rubislaw Conservation Area in the Albyn Place/Rubislaw Conservation Area Character Appraisal and Management Plan, and therefore would contribute to worsening this threat by neither preserving nor enhancing the qualifying interests of the conservation area. As such, the proposed development fails to comply with the relevant provisions of Policy B3 (West End Office Area) and Policy D4 (Historic Environment) in the Aberdeen Local Development Plan 2017 and national guidance published by Historic Environment Scotland on 'managing change in the historic environment'; and,
- 3) The proposed outdoor bar unit, as demonstrated by its unauthorised operation, has materially altered the function of the outdoor first floor terrace from: an area of the licensed premise which allows outdoor seating only and in a location situated a significant distance and requiring negotiation of a convoluted access route, such that it is limited in its level of use and also intermittent used; to a new separate fully serviced external and elevated bar area, giving rise to more intensified and prolonged noise disturbance as a consequence of a greater and prolonged usage. These concerns have been verified by recent noise complaints to the Environmental Health Service. Further, given the proposals offer no means of suitably mitigating this continued noise disruption threat to the nearest residential properties, it is considered the proposed development would have an unacceptable impact on the residential amenity. Such an adverse impact would mean the proposal fails to comply with the relevant provisions of Policy B3 (West End Office Area) and Policy D1 (Quality Placemaking by Design) in the Aberdeen Local Development Plan 2017.

North Linn Farm

- 3.8 The application site is located within the Green Belt, where Policy NE2 (Green Belt) applies; the Planning Authority would need to consider whether the works were in accordance with the aims and aspirations of this policy, as well as consider any other material planning considerations that would be relevant to the determination of a planning application.

2 Queen's Gardens

- 3.9 The applications for planning permission were approved conditionally; with the following conditions:
1. That demolition of the existing garage building shall not commence until the rear boundary wall hereby granted planning permission has been erected in complete accordance with Plan No's 04 Rev E, 02 Rev B & 06. Reason - in the interest of visual amenity of the area.
 2. That all planting, seeding and turfing comprised in the approved scheme of landscaping as shown on drawing No. 04 Rev E, or such other drawing as may subsequently be submitted and approved in writing by the planning authority, shall be carried out no later than the 1st planting season following demolition of the garage and any trees or planting which within a period of 5 years from the 1st planting season following demolition of the garage, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a size and species similar to those originally required to be planted for the purpose by the planning authority. Reason: in the interests of the amenity of the area.
 3. That notwithstanding the detail shown on Drawing No 04 Rev E, the landscaped area shall be enclosed by means of a low level, built wall of no less than 300mm in height, with such wall being erected prior to all planting, seeding and turfing shown on drawing No 04 Rev E being carried out. Reason: in the interests of the amenity of the area.
 4. That samples of all proposed materials including granite and brick shall be submitted to and approved in writing by the planning authority prior to the commencement of works. Reason: in the interest of protecting the special character of the listed building; and
 5. That details of the lime mortar mix to be used to fix the granite and brick stones shall be submitted to and approved in writing by the planning authority prior to the commencement of works. Reason: in the interest of protecting the special character of the listed building.
- 3.10 Conditions 1, 2 and 3 detailed above have not been complied with; and the development on site has been completed. There is therefore a breach of conditions on site.

4. FINANCIAL IMPLICATIONS

4.1 Financial costs may be incurred should the Enforcement Notice(s) 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(s). Costs may be incurred in relation to both Place and Governance staff if action is required to secure compliance with the Enforcement Notice(s).

6. MANAGEMENT OF RISK

	Risk	Low (L), Medium (M), High (H)	Mitigation
Financial	Financial costs may be incurred should the Enforcement Notice(s) 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(s), 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 proposals are unlikely to significantly contribute or result in a negative impact on the economy of Aberdeen.
Prosperous People	The proposals are 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 proposals would have no impact on sustainable communities
Enabling Technology	The proposals would 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

Soju (Now Valentino's) – 70 Carden Place;

Background papers include written correspondence, emails and the associated planning applications (Ref: 190177/DPP).

Planning Application Details

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

North Linn Farm

Background papers include written correspondence and emails associated with the Planning Enforcement file (Ref: ENF170017). These documents are not publicly available.

Queen's Gardens

Background papers include written correspondence, emails and the associated planning application and listed building consent application (Ref: 180829/DPP and 180845/LBC)

Planning Application Details:

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

Listed Building Consent Details:

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

10. REPORT AUTHOR CONTACT DETAILS

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