

ABERDEEN CITY COUNCIL

COMMITTEE	Planning Development Management Committee
DATE	30 April 2020
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Planning Enforcement Activity – April 2019 to March 2020
REPORT NUMBER	PLA/20/084
CHIEF OFFICER	Gale Beattie
REPORT AUTHOR	Gavin Clark
TERMS OF REFERENCE	General Delegation 8.5 - monitor performance relevant to its purpose and remit

1. PURPOSE OF REPORT

- 1.1 To inform Members of the planning enforcement work that has been undertaken by the Planning Service from 1st April 2019 to 31st March 2020.

2. RECOMMENDATION(S)

- 2.1 That members note the contents of this report.

3. BACKGROUND

- 3.1 This report provides an annual update for the Planning Development Management Committee of the enforcement work that has been pursued by the Development Management Section of Strategic Place Planning.
- 3.2 Appendix 1 to this report identifies all cases which have been investigated with a view to determining whether a breach of planning control has taken place and whether it is expedient to take enforcement action. It details those cases that have been resolved; updates cases that were under investigation prior to April 2019; and those that have required formal enforcement action. The Appendix provides a summary of the complaint/ alleged breach and an update of the current status and any related action.
- 3.3 The information indicates that a number of cases have been resolved through negotiation and discussion, without recourse to use formal enforcement action. In most circumstances, particularly where householders are concerned, the breaches are relatively minor and may have taken place because the parties were unaware of the requirement of the need for first obtaining planning permission. In many cases, the submission of a planning application and eventual grant of planning permission has resolved the situation.
- 3.4 A total of 216 new cases have been investigated since 1st April 2019. The majority of these (142) have been resolved without recourse for formal action. These cases fall into one of the following categories: -

- by the approval of a retrospective planning application,
- by informal negotiation,
- being a minor breach where it would not be reasonable or economical to progress,
- no breach of planning control

The remaining 74 cases are still under investigation and may require formal enforcement action if negotiation proves unsuccessful and if there is found to be a breach of planning control which has resulted in significant dis-amenity or threat to public safety. Eleven enforcement related notices have been served during the current reporting period. Of the historic enforcement cases previously investigated (prior to 1st April 2019), eight are still unresolved and may require formal action to ensure a satisfactory outcome.

- 3.5 It is a continuing trend that a significant proportion of complaints received are of a relatively minor nature, these are mostly householder cases. As these cases often do not relate to the priorities identified for action in the Council's Enforcement Charter (properties in conservation areas, involving protected trees or raising issues of public amenity or public safety), they are likely to be of lower priority in terms of consideration of enforcement action, notwithstanding the statutory duty to investigate enforcement complaints. However, these cases can give rise to very strong feelings amongst those affected, often taking up a significant proportion of officers' time in investigating/resolving a dispute.
- 3.6 The commitment of the Scottish Government to ensuring sustainable economic growth requires consideration of the economic implications of enforcement activity. Factors such as employment retention and creation are, therefore, of some weight in considering whether, in any given situation, it is expedient to take enforcement activity. There is also a need to ensure that burdens imposed on developers in terms of planning conditions and planning obligations/ legal agreements are proportionate and reasonable.
- 3.7 A significant issue within the reporting period has been the prioritisation of action in relation to Union Street, relating to the Union Street Conservation Area Regeneration Scheme (CARS). This is in recognition of the civic importance of the street, its related conservation status/ heritage interests and the public perception of physical decline of the appearance of the street. The importance of prioritising limited staff resource and time to taking action in this area is now recognised in the recently amended Enforcement Charter adopted in March 2020. A good example of action in the City Centre was the serving of an Amenity Notice in relation to a shop frontage which was causing a dis-amenity to the character of the conservation area at 25 Union Street. The applicants appealed this notice to the Scottish Government with the appeal subsequently dismissed. Discussion with the relevant agent is ongoing and a planning application/ listed building consent application has been submitted for a more sympathetic shop frontage. There are also a significant number of other cases (30) that have been opened/ investigated within the area, with the Council currently in negotiation or seeking to serve formal notice on several sites.

- 3.8 A further issue within the reporting period has been the installation of unauthorised signage throughout the city (41 cases – 19% of all cases). A number of these cases have been resolved through negotiation with relevant parties, however there have been cases where the Council have been required to take formal action. This includes the installation of an unauthorised sign at 11 Holburn Street. The Planning Service contacted the owner soon after the sign was installed to advise that it was unauthorised and would need to be removed, as it was unlikely that planning permission would be granted for such works. Following negotiations, a planning application was submitted, and an acceptable scheme was approved. The unacceptable signage has since been removed, with works currently being undertaken to install the approved scheme.
- 3.9 Notwithstanding the challenging economic situation, the scale and number of major developments, which have previously been consented and partly constructed within the City, presents significant resource challenges in terms of monitoring and compliance with planning permission requirements. The Planning (Scotland) Act 2019 inserts a new sub-section stating that the Enforcement Charter (discussed below) must contain a statement about how the Planning Authority will monitor compliance with planning permissions for major developments, and how they will record such monitoring and make the records available to the public. This has placed a significant burden on the role of planning enforcement given that such applications are often subject to numerous planning conditions/ legal obligations which require post approval monitoring/ action. Such action is generally led on a case-by-case basis by the planning case officer, in liaison with relevant key consultees/ other interested parties (e.g. legal services). A recurring issue with many of these sites is the level and scale of developer obligation burdens imposed on developers and the potential breach of planning conditions / obligations (e.g. in relation to major residential development). The general approach of the services in these circumstances has been to try and resolve the relevant matter by negotiation, rather than by use of formal enforcement powers. However, in cases raising potentially serious environmental/ amenity/ infrastructure impacts, it may be necessary to use such powers.
- 3.10 An example of where this has occurred has been within an ongoing residential development within Aberdeen city. At present there are several areas of work that have been undertaken without the benefit of planning permission. The Planning Service served a Temporary Stop Notice (TSN) and a subsequent planning application dealt with several dwellings that had not been constructed in accordance with approved plans. There are wider issues that remain outstanding in relation to materials, finished and landscaping, with the Planning Service waiting on the submission of further details to rectify this breach of planning control. An Enforcement Notice may be required if no satisfactory solution is forthcoming.
- 3.11 The following table provided a summary of the enforcement caseload since 1st April 2019 and divides the cases into new and those within the previous reporting period.

New Cases – 1st April 2019 to 31st March 2020	Cases resolved & no further action required.	142
New Cases - 1st April 2019 to 31st March 2020	Under investigation, being negotiated, or application decisions pending.	74
Enforcement Related Notices served		11
Enforcement Notices in process of being prepared		4

- 3.12 An Enforcement Charter, which is a statutory requirement arising from implementation of the 2006 Planning (Scotland) Act, was first adopted by the Council in June 2009. There is a statutory requirement to review this document every two years. There have been updates on several occasions since 2009, with the most recent update taking place in March 2020. A copy of this document is appended at Appendix 2 for information. The Charter helps to explain the role of the planning enforcement team to the public, as well as setting priorities in terms of delivery of the planning enforcement service. These priorities include the Union Street Conservation Area Scheme area.
- 3.13 The Planning Service previously had to request authority from the Planning Development Management Committee to serve enforcement notices (all other types of notice were previously delegated excluding enforcement notices). The new scheme of delegation now gives delegated powers to serve such notices; meaning that enforcement is now a fully delegated function. This will hopefully speed up and increase the effectiveness and efficiency of the enforcement service.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no specific implications for revenue or capital budgets, property-based budgeting, or state aid arising from consideration of this report. Some costs may be incurred in direct action to secure compliance when an enforcement notice is necessary. This can generally be accommodated within existing budgets, actions outwith budget parameters will trigger a specific report being submitted to Committee to seek authorisation or other instructions

5. LEGAL IMPLICATIONS

- 5.1 There are no legal implications arising from this report.

6. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Strategic Risk	N/A		
Compliance	N/A		
Operational	N/A		

Financial	Financial costs may be incurred should Enforcement Notices not be complied with	L	The risk can be mitigated by ensuring 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 the costs of the required action from the landowner in accordance with the relevant legislation
Reputational	There may be a negative impact if the Council do not decide to proceed with enforcement action.	L	Proceed with the enforcement action where required.
Environment / Climate	Not undertaking enforcement action could result in adverse impacts on the built and natural environment	L	Proceed with the enforcement action where required.

7. OUTCOMES

<u>COUNCIL DELIVERY PLAN</u>	
Aberdeen City Local Outcome Improvement Plan	
Prosperous Economy Stretch Outcomes	The Council aims to support improvement in the local economy to ensure a high quality of life for all people in Aberdeen. This report monitors indicators which reflect current economic activity within the City and actions taken by the Council to support such activity.
Prosperous People Stretch Outcomes	The Council is committed to improving the key life outcomes of all people in Aberdeen. This report monitors key indicators impacting on the lives of all citizens of Aberdeen. Thus, the Planning Service will need to measure the effectiveness of measures already implemented, as well as allowing an evaluation of future actions which may be required to ensure an improvement in such outcomes.
Prosperous Place Stretch Outcomes	The Council is committed to ensuring that Aberdeen is a welcoming place to invest, live and visit, operating to the highest environmental standards. This report provides essential information in relation to enforcement related issues to measure the impact of any current action.

8. IMPACT ASSESSMENTS

Assessment	Outcome
Impact Assessment	Full impact assessment not required.
Data Protection Impact Assessment	Not required.

9. BACKGROUND PAPERS

9.1 None

10. APPENDICES

10.1 Appendix 1 – Enforcement Cases

10.2 Appendix 2 – Enforcement Charter – March 2020

11. REPORT AUTHOR CONTACT DETAILS

Name	Gavin Clark
Title	Senior Planner
Email Address	gaclark@aberdeencity.gov.uk
Tel	01224 522321