

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Planning Development Management Committee
<b>DATE</b>	22 April 2021
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Planning Enforcement Activity – April 2020 to March 2021
<b>REPORT NUMBER</b>	PLA/21/102
<b>CHIEF OFFICER</b>	Gale Beattie
<b>REPORT AUTHOR</b>	Gavin Clark
<b>TERMS OF REFERENCE</b>	General Delegation 8.5 - monitor performance relevant to its purpose and remit

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### 1. PURPOSE OF REPORT

- 1.1 To inform Members of the planning enforcement work that has been undertaken by the Planning Service from 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021.

### 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 2020; and notes 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 the 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 191 new cases have been investigated since 1<sup>st</sup> April 2020. The majority of these (139) have been resolved without recourse for formal action. These cases fell into one of the following categories: -
- By the submission and approval of a retrospective planning application, advertisement consent/ certificate of lawfulness (10 cases),
  - By informal negotiation resulting in the breach being rectified by the offending party (23 cases),
  - Being a minor breach where it would not be reasonable or economically viable to progress (12 cases),
  - The case was dealt with by colleagues in Spaces for People (6 cases), or
  - No breach of planning control (88 cases).
- 3.5 The remaining 52 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 loss of amenity or threat to public safety. Seven enforcement related notices have been served during the current reporting period. Of the historic enforcement cases previously investigated (prior to 1<sup>st</sup> April 2020), 12 are still unresolved and may require formal action to ensure a satisfactory outcome.
- 3.6 It is a continuing trend that a significant proportion of complaints received are of a relatively minor nature. These are mostly householder cases. The Council's [Enforcement Charter](#) prioritises the most significant breaches of planning control to ensure the most effective use of the staff resource available in the long-term public interest. These identified priorities are cases of significant negative effects on public amenity, particularly in the City Centre, breaches of condition for major developments, damage to listed buildings and damage to trees protected by tree preservation orders. As householder cases do not relate to the priorities identified for action in the Council's Enforcement Charter, 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 parties affected, often taking up a significant proportion of officers' time in investigating/resolving a dispute.
- 3.7 In May 2020, soon after the onset of the COVID pandemic, the Scottish Government provided advice to local authorities relating to enforcement, stating that, given the current, exceptional, circumstances, they that planning authorities will take a sympathetic approach to enable reasonable temporary extensions to working hours on construction sites, without enforcement action.
- 3.8 The letter also indicated that Planning can play an important part in enabling business operations to get back up and running within the terms of the ongoing restrictions, and also support them to regain some lost ground and revenue as a direct result of lockdowns. Examples might include taking a reasonable, positive and supportive approach to allow temporary use for on-street seating for cafes and bars, beer gardens and similar to accommodate physical distancing; and also to enable seasonal businesses such as holiday parks to

continue to operate beyond any conditioned limits to their seasons. In such situations it is common not to take enforcement action for a reasonable temporary period.

- 3.9 A notable issue within the reporting period has been complaints and enquiries received largely related to the formation of new, temporary, outdoor seating areas, enclosed structures, or areas of decking related to existing cafes, restaurants and pubs. As noted above, correspondence from the Scottish Government's [Chief Planner over the course of 2020](#) has urged Planning Authorities to take a supportive and flexible approach to such breaches.
- 3.10 In May 2020 the Council was awarded a ringfenced £1.76 million grant from the Scottish Government's Spaces for People fund to carry out temporary works to help provide space to physically distance in line with government guidance. Allied to this, the Council has prepared and kept updated a [Guide for Businesses](#) to help manage temporary outdoor seating areas for hospitality venues.
- 3.11 It should be noted that the vast majority of outdoor seating areas and associated structures created during the COVID public health emergency are not intended to be permanent features and, when requirements for physical distancing, particularly relating to indoor and outdoor hospitality are relaxed, the expectation is that most of these will be removed. The Council may need to take further action in the future if some of these structures remain in situ without planning permission and agreement on removal cannot be reached voluntarily. Progress out of the pandemic and Scottish Government advice in this regard will be carefully monitored and used to inform the Council and the Planning Service's approach.
- 3.10 In the reporting period, the Planning Service has also made served Enforcement Notices publicly available on the Council's planning portal. The Service is continuing to make further information relating to enforcement publicly available online.
- 3.11 The following table provides a summary of the enforcement caseload since 1st April 2020 and divides the cases into new and those within the previous reporting period:

New Cases – 1st April 2020 to 31st March 2021	Cases resolved & no further action required.	191
New Cases - 1st April 2020 to 31st March 2021	Under investigation, being negotiated, or application decisions pending.	52
Enforcement Related Notices served		7
Enforcement Notices in process of being prepared		4

- 3.12 An Enforcement Charter, which is a statutory requirement arising from implementation of the Planning etc. (Scotland) Act 2006, 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 and can be found [here](#). 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.

#### 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
<b>Strategic Risk</b>	N/A		
<b>Compliance</b>	N/A		
<b>Operational</b>	N/A		
<b>Legal</b>	N/A		
<b>Financial</b>	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
<b>Reputational</b>	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.
<b>Environment / Climate</b>	Not undertaking enforcement action could result in adverse impacts on	L	Proceed with the enforcement action where required.

	the built and natural environment		
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## 7. OUTCOMES

<u><b>COUNCIL DELIVERY PLAN</b></u>	
<b>Aberdeen City Local Outcome Improvement Plan</b>	
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 (Children and Young People)	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
<b>Impact Assessment</b>	Full impact assessment not required.
<b>Data Protection Impact Assessment</b>	Not required.

## 9. BACKGROUND PAPERS

9.1 None

## 10. APPENDICES

10.1 Appendix 1 – Enforcement Cases

## 11. REPORT AUTHOR CONTACT DETAILS

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