

COMMITTEE	Planning Development Management Committee
DATE	20 <sup>th</sup> July 2017
REPORT TITLE	Planning Enforcement Activity - April 16 to March 2017
REPORT NUMBER	CH/17/174
DIRECTOR (INTERIM)	Bernadette Marjoram
REPORT AUTHOR	Robert Forbes (Senior Planner)

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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 and Sustainable Development Service from 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017.

**2. RECOMMENDATION**

- 2.1 That Members note the contents of this report.

**3. REPORT**

- 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. The previous report, which was presented to the Development Management Committee in July 2016, advised of the enforcement work that had been pursued by the Development Management Section for the 12 months up to 31<sup>st</sup> March 2016.
- 3.2 This report identifies all cases which have been investigated with a view to determining whether or not 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 and updates those cases that were under investigation prior to April 2016 and those that have required formal enforcement action. It also lists cases which were investigated prior to April 2016 and have yet to be resolved. The attached spreadsheets provide a summary of the complaints/breaches and an update of the current status and any related action.
- 3.3 It is evident that a number of cases have been resolved through negotiation and discussion, without recourse to formal enforcement action. In a number of 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 182 new cases have been investigated since the last report. The majority (126 ie. 70%) have been resolved without recourse to formal action by the approval of a retrospective planning application, by informal negotiation, or were found not to constitute a breach of planning control. The remainder (56 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 disamenity or threat to public safety. Eight enforcement notices have been served during the current reporting period. Of the historic enforcement cases previously investigated, 25 are 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 and are frequently householder related cases (approximately half of all complaints). As these cases often do not relate to properties conservation areas or involve protected trees, and often do not raise issues of public amenity or public safety concern, they are likely to be of lower priority in terms of consideration of possible enforcement action, notwithstanding the statutory duty to investigate enforcement complaints. However, these cases can give rise to very strong feelings between those affected, often taking up a significant amount of officer time in investigating / resolving a dispute.
- 3.6 The commitment of the Scottish Government to ensuring sustainable economic growth places increased emphasis on considering the economic implications of enforcement activity. Factors such as employment retention and creation are therefore of increased weight in considering whether, in any any given situation, it is expedient to take enforcement activity. There is also increased need at this time 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, and the wider city centre, in accordance with the report to the meeting of the Planning Development Management Committee of July 2016 (see weblink below). This is in recognition of the civic importance of this street, its related conservation status / heritage interests and the public perception of physical decline of the appearance of the street. There are two ongoing planning appeals against the service of Enforcement Notices by the Council in relation to breaches of planning control for erection of roller shutters on shopfronts. In addition further enforcement notices have been served in relation to unauthorised shopfront / commercial signage (e.g. at 15 and 150 Union St). Discussion with the relevant owners / occupiers is ongoing in relation to resolution of such breaches. Direct action may be required to secure removal of such signage in the event that the owners fail to resolve the breaches of control.
- 3.8 Concerns regarding the neglected condition of upper floor properties is to be progressed with relevant Council and third party colleagues. Should action by property owners fail to address concerns regarding the poor physical

condition and appearance of such property, there may be a need for the Council to serve “Amenity Notices” using powers under section 179 of the Planning Act. Such powers were successfully used in relation to Aberdeen Rail Station, which was the subject of a recent appeal decision supporting their use in response to concerns regarding failure of building maintenance and perception of physical neglect. A weblink to the relevant decision notice is provided at the end of this report.

- 3.9 Notwithstanding the ongoing slump in oil and gas related development and relatively low rates of housebuilding in the reporting period, the scale and number of major developments, which have been consented and partly constructed within the City, presents significant resource challenges in terms of monitoring and compliance with planning permission requirements. This has placed a significant burden on the role of planning enforcement given that such applications are often subject to numerous conditions / legal obligations which require post approval monitoring / action. A recurring issue with many of these sites is the level and scale of developer obligation burdens imposed on developers and potential breach of related planning conditions / obligations ( e.g. in relation to major / greenfield residential development ). Bearing in mind the need to be proportionate and reasonable, the general approach of the service in these circumstances has been to try and resolve the relevant matter by negotiation with the developer, 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 The following table provides a summary of the enforcement caseload since the April 2016 report and divides the cases into new and those included in the previous report.

<i>New Cases – 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017</i>	<i>Cases resolved</i>	<i>126</i>
<i>New Cases - 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017</i>	<i>Under investigation or being negotiated</i>	<i>56</i>
<i>Update of cases from previous reports</i>	<i>Cases resolved and/or closed</i>	<i>36</i>
<i>Update of cases from previous reports</i>	<i>Being negotiated, awaiting planning application/appeal decisions, or referred for enforcement.</i>	<i>25</i>
<i>Enforcement Notices served</i>		<i>8</i>
<i>Enforcement Notices in process of being prepared</i>		<i>4</i>

- 3.11 An Enforcement Charter, which is a statutory requirement arising from implementation of the 2006 Planning (Scotland) Act, was adopted by the Council in June 2009 and updated in May 2016. This 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. Enforcement activity and prioritisation, including reporting and deciding whether it is expedient to

take any enforcement action, reflects the recommendations made within the Charter and the particular circumstances of each enforcement enquiry. Priority is given to those cases which raise significant public amenity concerns. Other cases, such as domestic cases which do not raise public amenity concerns, have less priority in terms of possible enforcement action. In accordance with the expectations of the Development Management (DM) service Customer Service Excellence (CSE) accreditation, the Enforcement Charter is updated regularly with minor changes made to reflect recent revision of the wider DM Charter.

#### **4. FINANCIAL IMPLICATIONS**

There are no specific implications for revenue and capital budgets, priority based budgeting, or state aid arising from consideration of this report. Some cost may be incurred if direct action to secure compliance with 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**

There are no direct legal implications arising from the recommendations of this report. Where enforcement action is required / considered expedient, or appeals against enforcement notices are submitted, or prosecution is sought, in accordance with the Town and Country Planning (Scotland) Act 1997, as amended, there are resource implications in terms of the officer time in seeking input from legal services in undertaking such work.

#### **6. MANAGEMENT OF RISK**

There are no direct legal, financial or technological risks resulting from the report recommendation, although undertaking direct action in relation to specific enforcement action carries a low degree of risk in relation to recovery of costs incurred by the Council. Normal Health & Safety at Work considerations apply and are required to be considered by employees in exercising their duties. If successful enforcement is not carried out, there may be low risk implications for health and safety in relation to specific unauthorised works. Scottish Ministers attach great importance to effective enforcement as a means of sustaining public confidence in the planning system. The long term credibility of the planning service is dependent on effective enforcement activity. Reputational damage may result if such action is not taken. Effective enforcement should result in greater protection for the environment. There would be no direct impact on any of the Council's property functions, unless breaches of planning control have occurred on land within the ownership of the Council. In such cases, the use of planning enforcement action against the Council as owner is not considered appropriate, and use of alternative powers by the Council as landowner is sought to resolve such breaches.

#### **7. IMPACT SECTION**

7.1 This section demonstrates how the proposals within this report impact on the strategic themes of Aberdeen City Council and Community Planning Aberdeen, as set out in the [Aberdeen City Local Outcome Improvement Plan 2016-26](#) and the [Aberdeen City Council Strategic Business Plan](#).

## **7.2 Economy**

7.2.1 No direct impacts resulting from the report recommendation. The issue and relevance of economic impacts is considered on a case by case basis in relation to evaluation of specific planning applications and in considering whether enforcement action is expedient.

## **7.3 People**

7.3.1 No direct impacts resulting from the report recommendation. The Corporate Best Practice Guide on Human Rights and Equalities will be adhered to when deemed necessary to take enforcement action. There is no requirement for Equalities or Human Rights Impact Assessment in this case. Investigating alleged breaches of planning legislation and undertaking enforcement action is beneficial in terms of staff development and experience.

## **7.4 Place**

7.4.1 No direct impacts resulting from the report recommendation. The issue and relevance of placemaking and environmental impacts are considered on a case by case basis in relation to evaluation of specific planning applications and in considering whether enforcement action is expedient. Undertaking enforcement action is often in response to the desire to protect environmental quality in accordance with Scottish Planning Policy and Local Plan policy objectives and guidance.

## **7.5 Technology**

7.5.1 No direct impacts resulting from the report recommendation.

## **8. BACKGROUND PAPERS**

Relevant planning appeal decisions / letters issued within the relevant period and referred to in the attached spreadsheet are available at the following weblinks :-

<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=117694>

Aberdeen Station, Guild Street – “Amenity Notice” – Appeal dismissed - 26/02/17

<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=117717>

150 Union Street – Advertisement Consent Appeal - Appeal dismissed- 17/05/17

The Council's Planning Enforcement Charter and DM Charter, which are referred to in section 5 above, are available in Council libraries and published on the Council's website at the following address:-

[http://www.aberdeencity.gov.uk/web/files/sl\\_Planning/plan\\_enforce\\_charter.pdf](http://www.aberdeencity.gov.uk/web/files/sl_Planning/plan_enforce_charter.pdf)

[http://www.aberdeencity.gov.uk/planning\\_environment/planning/planning\\_sustainable\\_development/pla\\_developmanage\\_charter.asp](http://www.aberdeencity.gov.uk/planning_environment/planning/planning_sustainable_development/pla_developmanage_charter.asp)

The Committee report regarding investigation of enforcement relating to Union Street is available below :-

<https://committees.aberdeencity.gov.uk/documents/s58527/Draft%20Union%20Street%20Enforcement%20Investigation%20-%20report.pdf>

## **9. APPENDICES**

1. Spreadsheet : Enforcement Investigation Lists

## **10. REPORT AUTHOR DETAILS**

Name: Robert Forbes  
Job title: Senior Planning Enforcement Officer  
Email address: rforbes@aberdeencity.gov.uk  
Phone number: (01224) 522390

## **HEAD OF SERVICE DETAILS**

Name : Eric Owens  
Job title : Head of Planning and Sustainable Development  
Email address: eowens@aberdeencity.gov.uk  
Phone number: (01224) 523133

### Current Ward Index and Councillors

<u>Ward Number</u>	<u>Ward Name</u>	<u>Councillors</u>
1	Dyce/Bucksburn/Danestone	Barney Crockett Avril MacKenzie Neil MacGregor Gill Samarai
2	Bridge of Don	Alison Alphonse Brett Hunter John Reynolds Sandy Stuart
3	Kingswells/Sheddocksley/Summerhill	David John Cameron Steve Delaney John Wheeler
4	Northfield/Mastrick North	Jackie Dunbar Gordon Graham Ciaran McRae
5	Hilton/Woodside/Stockethill	Neil Copland Lesley Dunbar Freddie John
6	Tillydrone/Seaton/Old Aberdeen	Ross Grant Alexander McLellan Jim Noble
7	Midstocket/Rosemount	Jenny Laing Bill Cormie Tom Mason
8	George Street/Harbour	Dell Henrickson Ryan Houghton Michael Hutchison Sandra MacDonald
9	Lower Deeside	Marie Boulton Philip Bell M. Tauqeer Malik
10	Hazlehead/Ashley/Queens Cross	Jennifer Stewart Martin Greig John Cook Claire Imrie
11	Airyhall/Broomhill/Garthdee	Ian Yuill Douglas Lumsden Gordon Scott Townson
12	Torry/Ferryhill	Yvonne Allan Christian Allard Alan Donnelly

		Catriona MacKenzie
13	Kincorth/Nigg/Cove	Sarah Duncan Stephen Flynn Alex Nicoll Philip Sellar