

COMMITTEE Planning Development Management Committee

DATE 21 June 2018

INTERIM DIRECTOR: Gale Beattie

TITLE OF REPORT: Planning Enforcement Activity – April 2017 to March 2018

REPORT NUMBER SPP/18/

1. PURPOSE OF REPORT

- 1.1 To inform Members of the planning enforcement work that has been undertaken by the Strategic Place Planning Service from 1st April 2017 to 31st March 2018.

2. RECOMMENDATION

- 2.1 That Members note the contents of this report.

3. FINANCIAL IMPLICATIONS

- 3.1 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.

4. OTHER IMPLICATIONS

- 4.1 Normal Health & Safety at Work considerations apply. If successful enforcement action is not carried out, there may be 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 in accordance with the expectations of the Town and Country Planning (Scotland) Act 1997, as amended, "The Planning Act". The long term credibility of the planning service is also dependent on effective enforcement activity. Effective enforcement could further 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.

5.0 REPORT

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 2017, advised of the enforcement work that had been pursued by the Development Management Section for the 12 months up to 31st March 2017.
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; updates cases that were under investigation prior to April 2017; and those that have required formal enforcement action. It also lists cases which were investigated prior to April 2017 and have yet to be resolved. The attached spreadsheets provide a summary of the complaint / alleged breach and an update of the current status and any related action.
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.
4. A total of 166 new cases have been investigated since the last report. The majority (114) 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 (i.e. it was not proportionate or reasonable to undertake enforcement action following initial investigation). The remainder (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 disamenity or threat to public safety. Eleven enforcement notices have been served during the current reporting period. Of the historic enforcement cases previously investigated, 27 are unresolved and may require formal action to ensure a satisfactory outcome.
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). As these cases often do not relate to properties in 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 officers' time in investigating / resolving a dispute.

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. However, in certain cases the duty to have regard to planning policy objectives (e.g. protection of the green belt) and related environmental considerations may be of overriding importance in terms of justifying enforcement action. An example of this was the service of an enforcement notice in relation to an unauthorised plant hire business located in the green belt at Perwinnes Farm. A recent appeal against the service of this notice was unsuccessful, with the reporter agreeing that action by the council was warranted.
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 14 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. Successful enforcement action was taken in relation to unauthorised signage at 150 Union Street (Eclectic Fizz) and 15 Union Street (Brewdog) including the service of enforcement notices and related appeals. Discussion with the relevant agent is ongoing in relation to resolution of this latter breach, although the option of direct action may be required to secure removal of the signage in the event that the owner fails to resolve the breach of control. Although an enforcement notice was served in relation to an unauthorised roller shutter at 82 Union Street (Ecigs) an appeal against this notice was successful and no further action was taken in this case, as listed building consent has been granted by the reporter for the work.
8. Concerns regarding the neglected condition of upper floor properties is to be progressed with relevant Council and third party colleagues. This has been identified as a relevant matter in relation to a number of premises on Union Street (e.g. above the Archibald Simpson public house and at 26 Union Street where action was taken by the owners to address the poor condition of the upper floors). 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.
9. Notwithstanding the challenging economic situation and submission of a low number of major planning applications in the reporting period, the scale and number of major developments, which previously 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. 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 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.

10. The deteriorating condition of the nationally important complex of former mill buildings at Broadford Works is a continuing area of concern, however, it is encouraging that further planning and listed building consent applications have recently been submitted. In light of ongoing discussions between the Council and the landowner / developer, no enforcement action has been undertaken. However, given the potential risk of loss of these buildings and their major historic / architectural importance, monitoring and review of this position is required.
11. The following table provides a summary of the enforcement caseload since the July 2017 report and divides the cases into new and those included in the previous report.

<i>New Cases – 1st April 2017 to 31st March 2018</i>	<i>Cases resolved</i>	<i>114</i>
<i>New Cases - 1st April 2017 to 31st March 2018</i>	<i>Under investigation or being negotiated</i>	<i>52</i>
<i>Update of cases from previous reports</i>	<i>Cases resolved and/or closed</i>	<i>50</i>
<i>Update of cases from previous reports</i>	<i>Being negotiated, awaiting planning application/appeal decisions, or referred for enforcement.</i>	<i>27</i>
<i>Enforcement Notices served</i>		<i>11</i>
<i>Enforcement Notices in process of being prepared</i>		<i>3</i>

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 and there have been updates on a number of occasions since 2009, with a further review and update process ongoing. This 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. 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) Team Customer Service Excellence accreditation, the Enforcement Charter is updated regularly with minor changes made to reflect recent revision of the wider DM Charter.

6.0 SERVICE & COMMUNITY IMPACT

Corporate - The enforcement of planning control links to the Council's core value that "Aberdeen City Council will strive to enhance the high quality of life within the City" and corporate objectives that "Aberdeen City Council will continually review, update and enforce the Aberdeen Local Plan in order to maintain the balance between development pressures and the need to conserve and enhance the City's natural environment." The planning enforcement function also relates to the Single Outcome Agreement 12 "we value and enjoy our built and natural environment and protect it and enhance it for future generations."

Public - 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.

7.0 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=118508>

Perwinnes Farm, Scotstown Rd – Enforcement Notice Appeal – dismissed - 15/5/18

<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=118482>

15 Union Street (Brewdog) – Enforcement Notice Appeal – dismissed -23/4/18

<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=118254>

64 Queens Rd – Enforcement Notice Appeal – no jurisdiction to consider – 19/1/18

<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=118165>

82 Union Street – Listed Building Enforcement Notice Appeal – allowed – 9/10/17

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

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

The Council's Planning Enforcement Charter and DM Charter, which are referred to in section 5 above, are available 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/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>

8.0 REPORT AUTHOR DETAILS

Robert Forbes, Senior Planner
Tel: (01224) 522390
Email: rforbes@aberdeencity.gov.uk

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	Midsocket/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