

ABERDEEN CITY COUNCIL

COMMITTEE	Planning Development Management Committee
DATE	18 th April 2019
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Breach of Planning Control at 18 Home Farm Gardens, Bridge of Don
REPORT NUMBER	PLA/19/241
CHIEF OFFICER	Gale Beattie
REPORT AUTHOR	Gavin Clark
TERMS OF REFERENCE	15 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 unauthorised erection of timber decking along rear boundary with associated steps and handrails at 18 Home Farm Gardens, Bridge of Don.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 Authorise the serving of an Enforcement Notice upon the owner of the property, to rectify the breach of planning control.
- 2.2 Agree that the breach should be remedied by the removal of the unauthorised timber decking with associated steps and handrails along rear boundary.

3. BACKGROUND

Basis of the Report

- 3.1 Following the planning service being made aware of the unauthorised works and undertaking an enforcement investigation, in August 2018 a retrospective application for planning permission (DPP) (Ref: 181431/DPP) was submitted seeking authorisation for the above works.
- 3.2 Following dialogue with Officers no acceptable solution was agreed and the application was refused under delegated powers on the 19th October 2018. This

decision was then subject to a review via the Local Review Body (LRB), which was unsuccessful with the delegated decision of officers upheld and a reflective refusal decision notice issued on the 5th March 2019.

- 3.3 No works to rectify the situation have taken place since the 5th March 2019 and Officers therefore seek authorisation to take formal enforcement action to rectify the breach of planning control.

The Enforcement Position

- 3.4 Section 127(1) 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.

- 3.7 In these regards the related application for planning permission, both under delegated powers and then by the Local Review Body, was refused as it was considered: *"The raised deck as erected, represents a visually prominent and intrusive structure, out of character with the surrounding area that does not take into consideration its immediate context and relationship with neighbouring dwellings, and therefore makes no positive contribution to the wider residential area, contrary to Policy D1 (Quality Placemaking by Design). As a result of its height and dimensions, it has an adverse impact on residential amenity by reason of an unacceptable loss of privacy to the immediately adjacent dwelling houses, as it offers direct views into their rear windows and overlooks their private amenity spaces, as well as offering wider views over the rear gardens of several further properties within the terrace. The raised decking therefore*

fails to comply with the Supplementary Guidance: Householder Development Guide and with Policy H1 (Residential Areas) of the Aberdeen Local Development Plan. There are no material planning considerations which would warrant approval of consent in this instance.”

4. FINANCIAL IMPLICATIONS

4.1 Financial costs may be incurred by Aberdeen City Council should the Enforcement Notice not be complied with, such as in association to: any direct action undertaken to address the breach; or action seeking 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. Costs may be incurred in relation to both Place and Governance staff if action is required to secure compliance with the Enforcement Notice.

6. MANAGEMENT OF RISK

	Risk	Low (L), Medium (M), High (H)	Mitigation
Financial	Financial costs may be incurred should the Enforcement Notice 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, which may 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 proposal is unlikely to significantly contribute or result in a negative impact on the economy of Aberdeen.
Prosperous People	The proposal is 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 proposal will have no impact on sustainable communities
Enabling Technology	The proposal will 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
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Equality & Human Rights Impact Assessment	Full EHRIA not required.
Data Protection Impact Assessment	Not required
Duty of Due Regard / Fairer Scotland Duty	Not applicable.

9. BACKGROUND PAPERS

Background papers include written correspondence, emails and the associated planning application (Ref: 181431/DPP), and the Local Review Body decision of the 27th February 2019 (issued on the 5th March 2019).

Planning Application Details (Including LRB Decision Notice):

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PD8RVXBZGFV00>

10. REPORT AUTHOR CONTACT DETAILS

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