

ABERDEEN CITY COUNCIL

COMMITTEE	Planning Development Management Committee
DATE	18 th April 2019
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Breach of Planning Control at Inchgarth House
REPORT NUMBER	PLA/19/242
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 formation of an unauthorised chimney to the north-west gable of Inchgarth House, Inchgarth Road; and seek authorisation to commence enforcement action, and if necessary, redress in the Courts as deemed appropriate.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 Authorise the serving of an Enforcement Notice upon the owner/ occupier 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 chimney on the north-west elevation of the application property, or other scheme agreed in writing by the Planning Authority.

3. BACKGROUND

Basis of the Report

- 3.1 In August 2017 retrospective applications for planning permission (DPP) (Ref: 170929/DPP) and Listed Building Consent (LBC) (Ref: 170928/LBC) were submitted in relation to the construction of an additional external chimney on the North West elevation of Inchgarth House; a category C listed building, located within the Pitfodels Conservation Area.

- 3.2 Following dialogue with Officers no acceptable solution was agreed and both listed building consent and planning permission were refused on the 9th November 2017 and 15th November 2017 respectively. These decisions were subject to an appeal to the Planning and Environmental Appeals Division of the Scottish Government (LBC) and a review sought via the Local Review Body (LRB) (DPP). Both were unsuccessful, with confirming refusals issued in March (DPP) and May 2018 (LBC) respectively.
- 3.3 No works to rectify the works have taken place since the latter of these final decisions in May 2018 and the Council therefore seeks to take formal enforcement action to rectify the breach of planning control on site.

The Enforcement Position

- 3.4 Section 127(l) 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. Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities to pay special attention to the desirability or preserving or enhancing the character or appearance of conservation areas.
- 3.7 The application for planning permission was refused as it was considered that "*The proposed dummy chimney fails to comply with Policies D1 (Quality Placemaking by Design), D4 (Historic Environment) and NE2 (Green Belt) in*

that the design and scale of the proposal would not maintain the special architectural and historic interest of the listed building and would have a negative impact on the character of the conservation area and on the green belt. There are no material planning considerations that would outweigh the above policy position and warrant approval of the application.”

3.8 The application for listed building consent was refused as it was considered that *“The proposed dummy chimney fails to comply with Policies D1 (Quality Placemaking by Design) and D4 (Historic Environment) in that the design and scale of the proposal would not maintain the special architectural and historic interest of the listed building. There are no material planning considerations that would outweigh the above policy position and warrant approval of the application.”*

4. FINANCIAL IMPLICATIONS

4.1 Financial costs may be incurred should the Enforcement Notice not be complied with, such as to either take direct action or seek 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 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 will 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

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8. IMPACT ASSESSMENTS

Assessment	Outcome
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: 170929/DPP), listed building consent application (Ref: 170928/LBC), the Local Review Body decision of the 7th March 2018 and the Planning and Environmental Appeals Division of the Scottish Government decision of the 1st May 2018

Planning Application Details (Including LRB Decision Notice):

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OU3T3YBZMMN00>

Listed Building Consent Details:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OU3NK4BZMMG00>

Planning and Environmental Appeals Decision Document (Listed Building Consent):

<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=118450>

10. REPORT AUTHOR CONTACT DETAILS

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