

ABERDEEN CITY COUNCIL

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| COMMITTEE | Planning Development Management Committee |
| DATE | 25 May 2023 |
| EXEMPT | No |
| CONFIDENTIAL | No |
| REPORT TITLE | Planning Enforcement Activity Report – April 2022 to March 2023 |
| REPORT NUMBER | PLA/23/112 |
| DIRECTOR | Gale Beattie |
| CHIEF OFFICER | David Dunne |
| REPORT AUTHOR | Gavin Clark |
| TERMS OF REFERENCE | 8.5 |

1. PURPOSE OF REPORT

- 1.1 To inform Members of the Planning Development Management Committee of the planning enforcement work that has been undertaken by the Planning Service from 1st April 2022 to 31st March 2023.

2. RECOMMENDATION(S)

- 2.1 That Members note the contents of this report.

3. CURRENT SITUATION

- 3.1 This report provides an annual update for the Planning Development Management Committee regarding the enforcement work that has been pursued by the Development Management Team in Strategic Place Planning.
- 3.2 Appendix 1 to this report identifies all planning enforcement 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 2022; and identifies 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 cases have been resolved through negotiation and discussion, without recourse to use formal enforcement action. In most circumstances, particularly where householder related matters 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 226 new cases have been investigated since 1st April 2022. This is a slight decrease from 261 in the previous reporting year. The majority of these (138) have been resolved without recourse for formal action. Resolution of these cases fell into one of the following categories: -
- By the submission and approval of a retrospective planning application.
 - By informal negotiation resulting in the breach being rectified by the offending party.
 - Constituting a minor breach where it would not be reasonable or economical to progress.
 - No breach of planning control had occurred.
- 3.5 The remaining 88 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 dis-amenity or threat to public safety. 12 formal enforcement related notices have been served during the current reporting period. Of the historic enforcement cases previously investigated (prior to 1st April 2022), 16 are still unresolved and may require formal action to ensure a satisfactory outcome. There would be financial costs associated with resolving these cases, which is discussed further below.
- 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. As these cases often do not relate to the priorities identified for action in the Council's Enforcement Charter (which are Union Street, properties in conservation areas, involving protected trees or raising issues of public amenity or public safety), 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 affected, often taking up a significant proportion of officers' time in investigating/resolving a dispute, disproportionate to the scale of the breach.
- 3.6 The most significant issue within the reporting period relates to the ability to proceed with direct action following the issue of Enforcement Notices, due to the financial implications associated with any direct action. As described above, a number of formal enforcement notices have not been complied with, and the next step for the Planning Authority would be to proceed with Direct Action to rectify breaches of planning control. This may for example involve commissioning a contractor or other Council service to remove unauthorised physical development. The enforcement team has sought to obtain quotes from other services within the Council to rectify these breaches but has been advised that there are no monies or budgets available to undertake such actions. A number of enforcement cases therefore remain paused in perpetuity due to being unable to move to the next stage of Direct Action.
- 3.7 This has resulted in a number of "paused" enforcement cases, where no further action can be taken. This includes a number of unauthorised shopfronts and signs on Union Street and unauthorised works throughout the city where no further action can be taken until such time as funding is available to take Direct Action to rectify breaches of planning control. It should be noted that, if funding was made available to take such action, then it would make a small but

significant contribution to addressing the poor physical appearance of parts of the built environment of Union Street pursuant to the aims and objectives of the City Centre Masterplan and the regeneration of the city centre.

- 3.9 The following table provides a summary of the enforcement caseload since 1st April 2021 and divides the cases into new and those within the previous reporting period.

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|-----------------------------------------------|--------------------------------------------------------------------------|-----|
| New Cases – 1st April 2022 to 31st March 2023 | Cases resolved & no further action required. | 138 |
| New Cases - 1st April 2022 to 31st March 2023 | Under investigation, being negotiated, or application decisions pending. | 88 |
| Enforcement Related Notices served | | 12 |
| Enforcement Notices currently being prepared | | 3 |

- 3.11 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 requires to be updated imminently. There have been updates on several occasions since 2009, with the most recent update taking place in July 2022. A copy of this document is appended at Appendix 2 for information. 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, however as outlined above, Direct Action is not being progressed at present due to budget constraints. Other costs include title searches relating to the serving of Enforcement Notices, which 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. ENVIRONMENTAL IMPLICATIONS

- 6.1 There are no environmental implications arising from this report.

7. RISK

| Category | Risks | Primary Controls/Control Actions to achieve Target Risk Level | *Target Risk Level (L, M or H) | *Does Target Risk Level Match Appetite Set? |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|---------------------------------------------|
| Strategic Risk | N/A | | | N/A |
| Compliance | N/A | | | N/A |
| Operational | N/A | | | N/A |
| Financial | Financial costs may be incurred should Enforcement Notices not be complied with and Direct Action is required | 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. | L | Yes |
| Reputational | There may be a negative impact if the Council do not decide to proceed with enforcement action, particularly in the city centre.. | Proceed with the enforcement action where required. | L | Yes |
| Environment / Climate | Not undertaking enforcement action could result in adverse impacts on the built and natural environment | Proceed with the enforcement action where required. | L | Yes |

8. OUTCOMES

| <u>COUNCIL DELIVERY PLAN</u> 2022-2023 | |
|-----------------------------------------------|---------------------------------------------------------------------------|
| Aberdeen City Council Policy Statement | The proposals in this report have no impact on the Council Delivery Plan. |

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| Working in Partnership for Aberdeen | |
| <u>Aberdeen City Local Outcome Improvement Plan (2016-2026)</u> | |
| 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 Stretch Outcomes | 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. |
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| Regional and City Strategies | N/A |

9. IMPACT ASSESSMENTS

| Assessment | Outcome |
|------------------------------------------|--------------------------------------|
| Integrated Impact Assessment | Full impact assessment not required. |
| Data Protection Impact Assessment | Not required. |

10. BACKGROUND PAPERS

10.1 None

11. APPENDICES

11.1 Appendix 1 – Enforcement Cases – April 2022 to March 2023

11.2 Appendix 2 – Enforcement Charter – July 2022

12. REPORT AUTHOR CONTACT DETAILS

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