

REPORT TO: DEVELOPMENT QUALITY COMMITTEE - 19 MAY 2008

REPORT ON: PLANNING ENFORCEMENT AND TREE PROTECTION PERFORMANCE 2007/2008

REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION

REPORT NO: 238-2008

1 PURPOSE OF REPORT

- 1.1 To inform Members of the nature and extent of planning enforcement activity for the year 2007/2008 together with information for the same period on tree preservation work. The report complies with the Service Standard indicated at paragraph 2.4 of the Council's Enforcement Charter 2007.

2 RECOMMENDATION

- 2.1 It is recommended that the Committee notes the contents of this Report and reaffirms its approach to planning enforcement and tree preservation.

3 FINANCIAL IMPLICATIONS

- 3.1 Expenditure arising from any direct enforcement action taken by the Department will be met from within the Planning and Transportation Department's Revenue Budgets.

4 BACKGROUND

Core Enforcement Activity

- 4.1 Planning enforcement is a key part of the relationship between development planning and development control which together make up the statutory planning process.
- 4.2 The powers available to local planning authorities in respect of the enforcement of planning control were greatly enhanced through the Planning and Compensation Act 1991 and subsequently incorporated into Part VI (Sections 123-158) of the Town and Country Planning (Scotland) Act 1997 supported later by Circular 4/1999 and Planning Advice Note 54, 1999. These provisions are to be further enhanced by the Planning Etc (Scotland) Act 2006 as explained below.
- 4.3 Attention is drawn to the Minutes of the Development Quality Committee of 18 June 2007 (Report Ref 219-2007), wherein reference is made to enforcement and tree protection activity in previous years.
- 4.4 The Table below indicates the levels of core enforcement activity undertaken by the Council over the past 4 years.

Table 1 - Enforcement Activity

Appeals	2004/2005	2005/2006	2006/2007	2007/2008
Enforcement Enquiries Received	369*	380*	400* (est)	460* (est)
Planning Contravention Notices Served	14	30	32	20
Breach of Condition Notices Served	0	0	0	0
Enforcement Notices Served	5	24	66**	20
Stop Notices Served	0	4	0	0
Amenity (Wasteland) Notices Served	6	0	0	0
Direct Action Authorisations by Committee	3	0	0	0
Advertisement Enforcement Notices	3	0	4	2
Listed Building Enforcement Notices	3	0	66**	1
Enforcement and Amenity Notice Appeals	4 (4)	3 (3)	2 (1)	5
Enforcement and Amenity Notice Appeals Outstanding	2	4	0	1
Number of cases where Conditions monitoring is active	N/A	N/A	N/A	80
Number of cases where monitoring has led to approaches to applicant/agent	N/A	N/A	N/A	15
Tree Replacement Notice Public Inquiry	0 (0)	1 (1)	-	0

*Total number of enforcement enquiries received, considered and investigated. Includes telephone enquiries, correspondence, and more formal complaints which are recorded on departmental databases.

() = Dismissed

** 56 in respect of Whitehall Crescent

- 4.5 From the Table, Members will note that historic levels of enforcement activity are being maintained. The purpose of planning enforcement is to resolve the problem. Formal enforcement action is taken when a satisfactory outcome cannot be achieved through negotiation.
- 4.6 The relatively modest levels of formal enforcement activity (ie the service of statutory notices) follows on from a strategy of identifying potential breaches or being made aware of them by the general public or Members, following these complaints up quickly and discussing the issues with the parties involved to achieve resolution of

the complaint and avoid the need for more formal action. This is in line with Scottish Executive best practice advice and is consistent with the Council's Planning Enforcement Charter approved in June 2007.

- 4.7 The most significant change in the past year has been the introduction of a more focussed approach to the monitoring and enforcement of conditions. A part-time Enforcement Officer is now dedicated to this work. A database of decisions has been established as a basis for approaching applicants in receipt of permissions to remind them of the need to consider and attend to conditions before work begins on site. We have found that this has led not only to applicants being aware of this approach to enforcement but has led to an increased level of requests to discharge conditions. The power to serve Breach of Condition Notices is available in cases where this is warranted. However, we are finding that early communication and discussion is giving positive results without the need for formal enforcement action.
- 4.8 All our Enforcement Officers play a leading part in the work of the Scottish Enforcement Officer's Forum. Dundee hosted the March 2008 meeting of the Forum.
- 4.9 It has been determined that the Planning Enforcement Charter needs no adjustment at this time although the implications of the new Planning Act (see paragraph 5.1 below) will lead to a revised Charter when secondary legislation is approved.

Tree Protection

- 4.10 The Council has powers in terms of Part VII, Chapter 1 of The Town and Country Planning (Scotland) Act 1997 supported by The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas (Scotland) Regulations 1975 to protect trees through the designation of Tree Preservation Orders and the control of the felling and lopping of trees in conservation areas.
- 4.11 These duties in relation to trees are discharged via a teamwork approach involving the Enforcement Officers, the Council's Forestry Officer and the Legal Division. In the past year the team has administered requests from the public in respect of works to trees in Conservation Areas and in respect of TPO's.
- 4.12 During 2007/2008, 9 Tree Preservation Orders were confirmed (compared to 6 in 2006/2007) with a further 7 cases currently being progressed through their legal stages.

5 IMPLICATIONS OF THE NEW PLANNING (ETC) SCOTLAND ACT 2006 FOR ENFORCEMENT AND TREE PROTECTION

- 5.1 As required by the new Act, the Council has prepared, approved and made available an Enforcement Charter which sets out the Council's approach to planning enforcement. When secondary legislation is activated under the new act, enhanced enforcement powers will become available via new procedures for the receipt and enforcement of notifications for the initiation and completion of developments and related matters; the introduction of fixed penalty notices; and temporary stop notices. All these measures are designed to enhance the planning enforcement powers of Councils and will have fundamental implications on how these aspects of its responsibilities are undertaken. In this respect reference is made to Report 28-2008 which was considered by the Development Quality Committee on 18 February 2008.

- 5.2 Similarly, there will be minor changes to the manner in which TPO's are prepared, administered, reviewed and enforced.

6 POLICY IMPLICATIONS

- 6.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

7 CONSULTATIONS

- 7.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), Head of Finance and Assistant Chief Executive (Community Planning) have been consulted and are in agreement with the contents of this report.

8 BACKGROUND PAPERS

- 8.1 Planning and Transportation Enforcement Records.
- 8.2 Statutory TPO Register.
- 8.3 The Planning Etc (Scotland) Act 2006 and related consultation papers.
- 8.4 Report 219-2007 - Planning Enforcement and Tree Protection Performance 2006-2007.
- 8.5 Report 28-2008 - Planning Enforcement Regulations 2007.

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