

ITEM No ...3.....

REPORT TO: PLANNING COMMITTEE – 15 JANUARY 2024

REPORT ON: REQUEST FOR DIRECT ACTION TO REMOVE UNAUTHORISED DECKING FROM 127 KINGHORNE ROAD, DUNDEE, DD3 6PW

REPORT BY: EXECUTIVE DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 366-2023

1 PURPOSE OF REPORT

1.1 This report seeks authority to take appropriate action to seek compliance with an Enforcement Notice requiring the removal of unauthorised decking erected in the rear garden of 127 Kinghorne Road, Dundee, DD3 6PW.

2 RECOMMENDATION

- 2.1 It is recommended that the Committee:
- a authorises direct action under the terms of Section 135 of the Town and Country Planning (Scotland) Act 1997 as amended to allow the Council to enter the garden ground of 127 Kinghorne Road, Dundee, DD3 6PW and take the necessary steps to ensure the terms of the Enforcement Notice are complied with, following the non-compliance of its terms by the landowner; and
 - b authorises the Executive Director of City Development to recover any costs reasonably incurred by the Council in taking such action from the landowner.

3 FINANCIAL IMPLICATIONS

3.1 The Enforcement Notice requires the deck and framing to be removed where it exceeds 0.5 metres above the natural ground level upon which it is located. Structures below this height would not require planning permission. The ground level varies due to the slope on site and as such, it is difficult to measure exactly how much of the deck and framing requires to be removed until works commence and the natural ground levels are revealed.

3.2 It is therefore not possible to obtain an accurate quote for the proposed works at the current time. The estimate obtained from Dundee City Council's Construction Services represents a maximum worst case scenario and is subject to change once site access is authorised. The quote in these circumstances is estimated as being £9,570.84 plus VAT, broken down as follows:

Preliminaries	£1,830.00
Labour	£6,560.84
Plant	<u>£1,180.00</u>
Total	<u>£9,570.84</u>

3.3 The Council will seek to recover costs from the owner. The Town and Country Planning (Scotland) Act 1997 makes provision for the Planning Authority, in certain circumstances, to contribute to recovering costs by selling any materials removed. The Council would seek to recover any remaining debt through the debt recovery system.

4 BACKGROUND

- 4.1 This report relates to an area of decking in the rear garden of 127 Kinghorne Road. The Council received a complaint regarding the unauthorised decking due to overlooking issues. A summary of the planning history of the property is contained within Appendix 1.
- 4.2 Decking has been erected in the rear garden ground of the property which is of a height and in a location where its use has a detrimental effect on the neighbouring property in terms of overlooking.
- 4.3 An Enforcement Notice was served on the landowner on 2 June 2023 in accordance with Section 127 of the Town and Country Planning (Scotland) Act 1997 as amended.
- 4.4 The notice requires the landowner to remove the frame and decking boards which exceed 0.5 metres in height above the natural ground level upon which the said frame and decking boards are erected.
- 4.5 The notice gave 60 days for compliance. That period ended on 1 September 2023.
- 4.6 The frame and decking is still in situ and there are no apparent moves by the landowner to comply with the Notice. The Notice has not been withdrawn by the Council and is still legally binding.
- 4.7 Failure to comply with the requirements of an Enforcement Notice is a criminal offence and leaves both the tenant and landowner liable for prosecution and potentially a criminal record.
- 4.8 The Council has the following options to pursue the matter:
- a Direct Action - using the Council's powers under Section 146 of the Town and Country Planning (Scotland) Act 1997 as amended to enter the garden ground, remove the frame and decking and thereafter recover the costs from the landowner; or
 - b Prosecute - report the matter to the Procurator Fiscal which, if pursued, may result in a conviction against the landowner. However, the Procurator Fiscal might not report on a case unless every other avenue has been explored.
- 4.9 Option a (direct action) is recommended as the best solution available to the Council. It would have the greatest certainty of ensuring compliance with the terms of the Enforcement Notice.
- 4.10 In carrying out direct action, the Council will act in accordance with the advice and guidance contained in The Scottish Government's Circular 10/2009 "Planning Enforcement".
- 4.11 An agreement has been reached with Dundee City Council's Construction Services to enter the garden ground and remove the frame and decking. The Council would thereafter store the frame and decking materials for three days to allow the owner to reclaim them. If they are not reclaimed within three days of their removal, the Council has the right to sell or dispose of them and recover any expenses reasonably incurred.
- 4.12 If the Planning Committee approves direct action, Officers would seek to arrange for the works to be undertaken within 14 days. No special powers of entry will be required, as there is provision within Section 135 of the Act to allow any Officer duly authorised in writing by the Planning Authority to enter land to execute the necessary steps.

5 ENFORCEMENT ACTION

- 5.1 The Council's principal responsibility as the Planning Authority is to manage the development and use of land in the long-term public interest.
- 5.2 The integrity of the development management process depends upon the Council's readiness to take enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any apparent attempt by the planning authority to intervene.
- 5.3 Taking direct action to resolve this breach of planning control is an action of last resort and one that is proposed after a considerable amount of officer time and resource has been spent over the last two years trying to resolve the matter through other means.
- 5.4 The landowner has applied for planning permission for the decking but was advised that it would not be supported. The planning application was subsequently withdrawn before being determined. No further planning application was submitted for the decking.
- 5.5 It should also be noted that complaints have been received from members of the public raising concerns regarding overlooking from the decking into neighbouring property.
- 5.6 The unauthorised decking remains in situ.

6 POLICY IMPLICATIONS

- 6.1 This report has been subject to the Pre-IIA Screening Tool and does not make any recommendations for change to strategy, policy, procedures, services or funding and so has not been subject to an Integrated Impact Assessment. An appropriate Senior Manager has reviewed and agreed with this assessment.

7 CONSULTATIONS

- 7.1 The Council Leadership Team have been consulted in the preparation of this report and are in agreement with its content.

8 BACKGROUND PAPERS

- 8.1 None.

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27 November 2023

APPENDIX 1

Planning History for 127 Kinghorne Road, Dundee:

- 1 Planning application 21/00870/FULL - installation of wooden decking to the north and balcony on the south elevation (retrospective). Withdrawn prior to determination 15 February 2022.
- 2 Planning application 23/00030/FULL - installation of balcony at side of house (retrospective). Approved 6 April 2023.
- 3 Enforcement Notice served 2 June 2023, giving a 60 day period for compliance from 3 July 2023 when the Notice took effect.

APPENDIX 2

Site Photographs for 127 Kinghorne Road, Dundee



