

**REPORT TO: PLANNING & TRANSPORTATION COMMITTEE –  
13 NOVEMBER 2000  
PERSONNEL & MANAGEMENT SERVICES COMMITTEE –  
13 NOVEMBER 2000**

**REPORT ON: PLANNING ENFORCEMENT POLICY AND RESOURCES**

**REPORT BY: DIRECTOR OF PLANNING AND TRANSPORTATION AND  
DIRECTOR OF PERSONNEL & MANAGEMENT SERVICES**

**REPORT NO: 623-2000**

## **1 PURPOSE OF REPORT**

- 1.1 To seek the Committee's approval of the Planning Enforcement Policy set out in the appendix to this report and to the proposal to appoint an assistant enforcement officer.

## **2 RECOMMENDATIONS**

- 2.1 It is recommended that the Planning & Transportation Committee:
- a adopts the Planning Enforcement Policy as set out in the Appendix to this report;
  - b publishes the policy as a Report to be made available to the public free of charge;
  - c reviews this policy on an annual basis (March);
  - d endorses the establishment of a Direct Action budget as detailed in the policy statement
- 2.2 It is recommended that the Personnel & Management Services Committee:
- a approves the deletion of the vacant post of Professional Trainee, graded AP1-4 (£14,811-£21,636);
  - b approves the establishment of the post of Assistant Enforcement Officer, graded Tech 2-4 (£11,951-£19,224).

## **3 FINANCIAL IMPLICATIONS**

- 3.1 The proposed Policy Statement contains a proposal that a fund within the Planning and Transportation Department's Revenue budget for 2000/2001 be established and set against income from planning application fees.
- 3.2 This provides for a contingency sum of £5000 be reserved to allow for direct action initiatives to be taken by the Council as a last resort in support of its enforcement policies. Costs would be recharged to those against whom the actions had been taken in accordance with the provisions of the Town & Country Planning (Scotland) Act 1997 and related legislation.

- 3.3 Any additional costs arising from the Recommendations will be minimal and will be contained from within the Planning & Transportation Department's Revenue Budget.

#### 4 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 The Council's enforcement powers are available to support decisions taken by the Council to promote various key Dundee 21 themes but in particular:

"Places, spaces and objects combine meaning and beauty with utility".

#### 5 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 Robust yet fair enforcement policies help to ensure that all Dundee's citizens benefit from an enhanced environment and are protected from the adverse effects of unauthorised developments.

#### 6 BACKGROUND

- 6.1 Planning enforcement is a key part of the relationship of development plans, development control and enforcement which together make up the statutory planning process.

- 6.2 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 (Secs 123-158) of the Town and Country Planning (Scotland) Act 1997 supported later by Circular 4/1999 and Planning Advice Note 54, 1999.

- 6.3 The table below indicates the levels of enforcement activity undertaken by the Council.

	1996/97	1997/98	1998/99	1999/2000	2000/ 2001 Apr-Aug
Enforcement Cases Investigated	148	168	145	100	147
Planning Contravention Notices	66	30	26	23	12
Breach of Condition Notices	7	2	0	0	1
Enforcement Notices	2	10	5	4	2

Source: Planning and Transportation Department Records and Scottish Executive Returns

- 6.4 In a recent survey of Members in connection with the Best Value Review of the Development Quality service, all members responding considered the enforcement function of the Council to be either "important" or "very important".

#### 7 ENFORCEMENT POLICY STATEMENT

- 7.1 PAN54 advises planning authorities on best practice and recommends that Councils adopt an Enforcement Policy Statement in the absence of a plan-led approach to

enforcement in Scotland. By adopting explicit and clear enforcement policies the following objectives would be met:

- raise awareness about enforcement as a key component of the planning framework;
- provide a clear policy basis for the application of discretionary powers;
- assist a clear, consistent and fair approach to pursuing breaches of planning control;
- reinforce enforcement as a mechanism for implementing planning policy, as well as planning law;
- locate planning enforcement activity within the local development and environment context;
- provide a clear indication of the Council's commitment to enforcement;

7.2 Accordingly, it is recommended that the Council adopts the Enforcement Policy Statement outlined in the Appendix to this report.

## **8 ENFORCEMENT RESPONSIBILITIES AND RESOURCES**

8.1 Planning enforcement responsibilities are varied with the caseload increasing in scope and number over time, as the table in Para 6.3 illustrates. The Council employs a single Enforcement Officer (compared to 2 in Aberdeen, 8 in Glasgow and 7 in Edinburgh).

8.2 The duties of the Enforcement Officer may be listed as follows:

- Receiving, registering, investigating and reporting on verbal and written planning enforcement complaints from Councillors and members of the public.
- Initiating and prosecuting formal enforcement action (Enforcement Notices, Breach of Condition Notices and Wasteland Notices)
- Monitoring the effectiveness of enforcement action.
- As necessary, the preparation of court or inquiry evidence and appearing as a witness.
- Monitoring planning conditions (see below).
- The maintenance of the Statutory Enforcement Register.
- Advising the Licensing Committee and Board on the planning aspects of cases.
- Contributing to the enforcement of the new Houses in Multiple Occupation Licensing and anti-flyposting scheme

- Administering, in conjunction with the Council's Forestry Officer and legal staff, the designation of Tree Preservation Orders.
  - Administering requests for lopping of trees in Conservation Areas or sites the subject of TPO's.
- 8.3 The workload is wholly reactive in nature and requires not only attention to detail and accuracy for legal reasons but firmness combined with an understanding and appreciation of the complainer's viewpoint.
- 8.4 The workload is now outstripping the capacity of the manpower resource. Although the approval of the Policy Statement appended to this report will assist in establishing the Council's approach to planning enforcement the staffing resource issue deserves some attention.
- 8.5 As a result of a heavy and increasing reactive workload, insufficient emphasis is being placed on the monitoring of conditions imposed by the Council. The following extract from the 1999/2000 Annual Report of the Local Government Ombudsman in Scotland is worthy of note:
- "A regular source of complaint throughout my period in office has been alleged breaches of planning conditions arising from the apparent inaction on the part of planning authorities to development which is contrary to the permission granted. Conditions are imposed for a purpose, in some cases to render acceptable development which would otherwise be refused. While I accept that the onus is on applicants to comply with conditions the role of the planning authority does not end with the grant of consent. I expect authorities to follow through on conditions which require to be discharged and to respond timeously to breaches of consent. The City of Edinburgh Council, in the aftermath of a formal report, have tightened their monitoring arrangements and it would be in the interests of all authorities to ensure that their current procedures are adequate."
- 8.6 Whilst all complaints properly notified to the Council should be investigated it is equally if not more important to lay even greater emphasis on the monitoring of conditions. This has not proved possible with existing staff resources.
- 8.7 In order to rectify this unacceptable situation the following solution is recommended. A vacant post within the establishment of the Building Quality Division exists for a Professional Trainee which has not been filled to date. The conversion of this post to that of Assistant Enforcement Officer would ensure that a more appropriate balance between reactive and pro-active enforcement action is re-established in order that the Council's statutory responsibilities for planning enforcement can be efficiently and effectively delivered.
- 8.8 A summary of the financial implications of this proposal are outlined above and it is recommended the subject to the endorsement of this approach by this Committee that a fuller report be prepared for consideration by the Personnel Committee.

## 9 CONSULTATIONS

- 9.1 The Chief Executive, Director of Finance, Director of Support Services, Director of Corporate Planning, Director of Housing, Director of Economic Development, Director of Public Relations, Legal Manager and the Chief Constable, have been consulted and are in agreement with the contents of this report.

## **10 BACKGROUND PAPERS**

Town and Country Planning (Scotland) Act 1997 Part VI  
Circular 4/1999  
Planning Advice Note 54, 1999

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Director of Personnel & Management Services

24 October 2000

IGSM/IAR/RJ

Dundee City Council  
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## **APPENDIX**

### **DUNDEE CITY COUNCIL**

#### **PLANNING ENFORCEMENT POLICY**

##### **Background**

The Council has a general discretion to take enforcement action against any breach of planning control if it considers such action to be expedient having regard to the provisions of the Tayside Structure Plan 1993, Urban Nature Conservation Subject Plan 1995 and the Dundee Local Plan 1998 all of which together constitute the development plan.

Part VI of the Town and Country Planning Act 1997, Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, The Town and Country Planning (Enforcement of Control) (No 2) (Scotland) Regulations, 1992 Circular 4/1993 and Planning Advice Note 54 together provide the basis for the Council's enforcement responsibilities.

##### **Need for a Policy Statement**

To ensure that Council Members, officers, external agencies and the general public are aware of the Council's approach to its enforcement responsibilities.

##### **Objective of the Council's Enforcement Policy**

To ensure that developments are undertaken which conform to existing planning legislation or in the case of planning and related consents, that developments occur with the approved plans and with any relevant conditions.

##### **Responsibilities**

The Council's enforcement powers are delegated to the Development Quality Committee and under the terms of Standing Orders to the Director of Planning and Transportation and the Director of Support Services.

The Council's enforcement responsibilities will be administered on a daily basis by the Director of Planning and Transportation through the Enforcement Officer (01382 433315) in close liaison with the Director of Support Services, nominated staff.

The Development Quality Committee will annually receive a report from the Director of Planning and Transportation on enforcement activity, when the opportunity will be taken, if necessary, to amend its enforcement policies.

##### **Guiding Principles**

In considering the appropriateness of taking enforcement action, the Council will:-

- assess each identified or reported breach of planning control without undue delay.

- assess the breach with regard to the provisions of the development plan and whether the breach would adversely affect public amenity or the use of buildings meriting protection in the public interest.
- Instigate enforcement action commensurate with the breach to which it relates.
- treat each potential breach on its individual merits taking the above points into account with the responsibility for determining priorities and scope of action being delegated to the Enforcement Officer in consultation with relevant colleague officers.
- where there is an identified unauthorised development; firstly attempt by negotiation to provide the owner/occupier to voluntarily remedy the breach.
- not permit such negotiations to hamper to delay formal enforcement action where required.
- initiate formal enforcement action, where necessary, as rapidly as possible taking into account the circumstances of each case.
- acknowledge and record in a Register all notified potential breaches indicating details relating to investigation and action. This Register will be a document available for view by the general public.

### **Monitoring**

- It will be the general responsibility of Planning and Transportation staff to notify an Enforcement Officer of any potential unauthorised development.
- On a risk assessed basis developments with planning permission will be monitored and inspected.

### **The Development Plan**

The future review of the Dundee Local Plan will incorporate policies which provide a guide to enforcement priorities and practice and serve as a basis for the effective deployment powers, all in accordance with Para 14, of PAN 54.

### **Basis for Enforcement Action**

For unauthorised developments and breaches of conditions the following stages of enforcement action will apply:-

- a Anonymous written and telephone complaints will not normally be investigated.
- b All written and telephone complaints will be registered. Written notifications will be acknowledged in writing.
- c On notification of a confirmed breach of planning control the Enforcement Officer will, in writing, require the breach to be regularised within one month.

- d If the breach is not regularised to the satisfaction of the Council, enforcement action will be instigated firstly with the service of a Planning Contravention Notice to establish that the formal action will be taken against the appropriate person(s). This will be served within 7 days of the appropriate expiry of the time period specified for the regularisation of the breach. Failure to reply to this Notice is an offence which will be prosecuted by the Council.
- e If expedient to do so (in terms of this Policy Statement), where the breach has not been regularised, an Enforcement Notice or Breach of Condition Notice will be served within 7 days of the expiry of the Planning Contravention Notice.
- f The Notices will specify a date for compliance. The breach will be inspected within 7 days of the compliance date and significant steps must have been taken to rectify the breach within a further period of 10 days. If this 10 day period is breached, or if no efforts have been made at all to remedy the breach, then the Council will report the circumstances to the Procurator Fiscal.

### **Urgent Action**

Where there is an immediate threat to public health and safety Stop Notices (and accompanying Enforcement Notices) will be used, subject to legal advice.

In circumstances where the Council considers that immediate action is required to halt or remedy a breach of planning control it may, subject to legal advice, seek an interim interdict from the Sheriff Court and/or exercise its powers to enter the land or building concerned to undertake work to rectify the breach and subsequently recover the costs from the offender.

The Council will establish, within the Planning and Transportation Revenue Budget, a rolling contingency fund of £5,000 per annum in relation to this commitment.

### **Enforcement Manual**

In accordance with the advice given in Planning Advice Note 54 the Council will prepare and keep under constant review Procedures Manual for use by officers involved in the enforcement service

### **Performance Indicators and Best Value**

At present there are no Accounts Commission performance indicators relating to enforcement.

The next review of the Planning and Transportation Business Plan 1999-2002 will make provision for a Best Value review of the enforcement service.

### **Review**

This document is not a definite statement of the Council's legal position on enforcement matters nor should it be taken to be an authoritative interpretation of the law.

The Council reserve the right to review and alter its enforcement policies at any time.