

Memorandum regarding planning issues, prepared and submitted on behalf of the Pollokshield's Area Partnership by The Strathbungo Society; Pollokshields Heritage; and Pollokshields Community Council **including answers provided by Development and Regeneration Services** to various specific questions contained within the Memorandum.

The built form and quality of much of the Pollokshields Area Partnership area is formally and statutorily recognised by Glasgow City Council and the Scottish Government by way of planning policy, and specifically heritage, conservation area and other related policies.

Pollokshields Partnership area has among the highest levels of Conservation Area status of any Council ward and the implementation and enforcement of these policies contribute directly to maintaining and enhancing the area and retaining its unique, Scotland / UK-wide status as a superlative example of early Victorian garden suburb (Pollokshields) and an early railway suburb (Strathbungo). Taken together, Pollokshields ward contributes positively to Glasgow's heritage as the UK's most complete Victorian city – an asset that is regularly cited as a key reason for people to visit the city.

It is in this context – a predominantly Conservation Area ward – that Strathbungo Society, Pollokshields Heritage and Pollokshields Community Council have come together to review the existing application and enforcement of the Council's own specified planning policies for the ward.

Pollokshields Area Partnership and Planning

At the last meeting of the Pollokshields Area Partnership Planning staff were invited to speak but gave their apologies stating they were unsure of what issues members wanted to address. To help inform the Partnership and Planning officials, the Strathbungo Society, Pollokshields Heritage and Pollokshields Community Council have looked at a number of planning issues within the area and have jointly identified a number of questions (below) they would like the meeting to address. We have also provided some supporting evidence. The collection of this data has been complicated due to changes to the planning database over the past few weeks (there appears to have been an upgrade but for a time much of the functionality disappeared). This has meant that we have only been able to provide full background data for Strathbungo (where the data was extracted prior to the current changes) and the evidence for Pollokshields is more selective. All the evidence presented is in the public domain and is included at Appendix 1.

General Planning Questions

1) What is the current status of the Strathbungo and Pollokshields Conservation Area Appraisals and what parts if any of it have been replaced by developments in Council policy since they were approved? What plans are there to update the appraisals? Our understanding was following the approval of appraisals, a conservation area management plan should have been developed but there is no mention of these in the draft Local Development Plan. Can we have assurances that the conservation appraisals will be carried forward into the draft Local Development Plan?

- ***East Pollokshields Conservation Area Appraisal (CAA) was approved in Nov 2011***
- ***West Pollokshields CAA was approved in April 2010***
- ***Strathbungo CAA was part of the 1st phase of Appraisals, approved in 2005***

All CAAs are Supplementary Guidance in the context of considering Planning Applications, together with other relevant Policy such as City Plan 2 (2009), specifically DG/DES 3. Conservation Area Appraisals should be reviewed at 5 yearly intervals. City Design are progressing the remaining production of 4 No outstanding studies before considering an ongoing Review Strategy. Conservation Area Management Plans are mentioned as standard in all Appraisals as a way forward to promote and implement the recommendations and findings of Appraisal. It is noted that there are many common issues affecting Glasgow's 24 Conservation Areas and therefore it may be appropriate that an overall Management Plan be produced in the first instance (this has not been decided). The completion of the Appraisals programme and ongoing commitment to review and monitoring was noted in the Main Issues Report and is included in the proposed City Development Plan. The Conservation Area Appraisals will not form part of the plan but will continue to inform decision making.

2) What is the current status of the Design Guidance which is linked to conservation area appraisals? The Pollokshields Heritage cases show there is an inconsistent application of the design guidance. Why is this?

DG/DES 3 Design Guidance for Listed Buildings and Conservation Areas remains in place under City Plan 2 (CP2) and a similar replacement supplementary guidance is being developed for the proposed City Development Plan (CDP) will be applied to all applications affecting conservation areas. The development plan (CP2 and following on, the CDP) remains the starting point for decision making. There is a presumption in favour of the development plan unless material considerations indicate otherwise. Each application is decided on its merits; therefore to enable further discussion regarding inconsistencies, it would be necessary to provide the details of the cases involved.

3) More specifically, is the aim of the Council's planning policy still to improve streetscapes in conservation areas through the use of traditional materials? If so, what liaison mechanisms are in place, if any, with the roads section in Land and Environmental Services to ensure policy is "joined up" in this regard?

Although the aspiration of Policy is clear in its purpose to improve finishes within conservation areas where opportunity arises, in practical terms there is very little control over what can be achieved in the Public Realm. City design rely on LES to discuss their intended proposals in historic areas in relation to this. However, as discussed at the meeting, anything other than the minimum standard of maintenance can be costly and such constraints may therefore prevent policy aspiration from being factored into works carried out.

The background to these questions is that last year representatives of the Strathbungo Society met with representatives from the roads section of Land and Environment Services about new slurry seals which had been used to resurface pavements along Nithsdale Road and Nithsdale Street. The Strathbungo Society representatives were informed by LES staff that they pays no regard to conservation area appraisals when resurfacing streets and pavements, and that they operate on budgets which do not allow for pavement improvements as opposed to maintenance to take place and that any financing for pavement improvements was the responsibility of DRS. The Strathbungo Conservation Area Appraisal lists the traditional materials used in the area, which include granite slabs, whin setts and cobbles; and notes the existence of other more modern materials, including tarmac, but notes: "this does not mean their use is acceptable". It goes on to state:

- "...use of high quality traditional building materials contributes to the character of the Conservation Area"
- "The use of materials in any conservation area is another element of its character and appearance"
- "The quality and upkeep of the public realm within the conservation area is important".

Then under Development Policies and Design Guidance the Appraisal states that: "The re-introduction of quality surfacing should be encouraged"; and makes a specific reference to the policies at the time on footpaths and carriageways.

Planning Enforcement Questions

The Strathbungo Society, Pollokshields Heritage and Pollokshields Community Council have concerns regarding the vigour, consistency and application of planning enforcement in the Pollokshields Partnership area and seeks to engage positively and directly with Planning officials and the Council to help clarify and answer the following questions.

1) How is planning enforcement action initiated? We have received advice over the phone that for the Council to take enforcement action a formal complaint requires to be submitted via an online complaint form. This requires the complainer to lodge their name and address. However, on the GCC enforcement database for the Strathbungo area two enforcement actions are listed as "Internal referrals". While we can understand the need for openness, sometimes the requirement to lodge a name and address can have implications for the person complaining and we would like to know whether or if the Planning Officer is made aware of a breach, and evidence provided about this, whether they can initiate enforcement without someone outside the department (eg member of the public, elected official etc.) making a formal complaint

In order to instigate an investigation, it is necessary to provide details in a letter, or preferably through filling in the on-line complaints form. Exceptions to this requirement are for cases of the highest priority, such as works causing serious damage to listed buildings or works endangering public safety, details of which will be taken over the phone for urgent action. High priority categories of alleged breach are detailed in the Policy 4 of the Planning Enforcement Charter:

<http://www.glasgow.gov.uk/CHttpHandler.ashx?id=14639&p=0>

When a complaint is made by a member of the public, contact details are required in order to keep the complainant updated. However, the source of the complaint is kept confidential.

"Internal referrals" relate to situations where planning officers, or other officers of the Council (Building Control, Environmental health etc.) have been made aware through the course of their duties that a breach of planning control may have occurred which requires attention by the Planning Enforcement Team. Such cases will generally be given a lesser priority than complaints affecting the immediate amenity of members of the public (with the exception of cases where there is a need for urgent prioritised for action, as prescribed by Policy 4 of the Planning Enforcement Charter.

It is important to receive complaints from members of the public directly rather than via other sources, to ensure that the details of the complaint are reported accurately and also to give a better idea of how it affects a person's enjoyment of their amenity. Direct communication between Planning Enforcement officers and the complainant is important to ensure that matters may be clarified if necessary. Confidentiality is ensured at all times throughout the course the investigation.

2) Related to this, what is the duty of Planning Officers to act if, in the course of their duties, they come across obvious breaches of planning requirements? (An example is where a planning officer while out on visits spots uPVC windows or satellite dishes on the front elevation of houses in conservation areas).

It is not incumbent upon an officer to report a breach. However, if there is a situation which compromises the integrity of the system (for example, failure to adhere to negotiated aspects of planning permission which otherwise would not have been granted), then it is likely that the officer will raise this with the Planning Enforcement Team. Again, although it is not an officer's duty to report a breach where one exists many will do so because a breach is so significant that it would be negligent not to, or would compromise future actions by failing to do so (e.g. a situation where uPVC windows are installed in an otherwise unspoiled row of tenements in a Conservation Area.)

3) What arrangements are there for Building Control to alert Planning where they become aware of breaches of planning requirements in Conservation Areas?

Planning and Building Control functions are managed together by the Head of Planning and Building Standards. Consequently there is a lot of information sharing between officers of both disciplines regarding developments proposed and/or taking place throughout the whole of the city, not just inside Conservation Areas.

Building Standards officers often report issues which are likely to be of concern to Planning Enforcement, particularly where these may be blatant due to excessive size or some other aspect of inappropriateness. Likewise, the Planning Enforcement Officers looking at unauthorised development will often report building works to Building Standards in situations where it seems possible that a building warrant may be required.

4) What resources are available for planning enforcement now compared to five years ago in the Pollokshields Area Partnership area?

Three Enforcement Officers have retired from the team within the last five years. Despite this there has always been an enforcement officer to provide enforcement in the Pollokshields Area as well as other officers covering the rest of the city.

To counter the loss of technical officers over time, the work of the team has been enhanced by shifting the balance of staffing by bringing qualified and experienced Planners into the team. Planners are able to give a more rounded response regarding the planning merits of any development which takes place and what action may need to be taken as a consequence. The Enforcement Officers still have a very important role in gathering and assessing information in relation to the breaches, the Planner compliments this process by providing professional judgement as to the best course of action to take in the circumstances. The Planners in the team may also deal with any application or appeal work which comes from the Enforcement process.

There are now 4.3 equivalent full time planning enforcement officers and 3 planners working together to deal with enforcement work throughout the City. This balance is helping provide greater efficiency and consistency in decision making. There is a need for greater prioritisation of resources, therefore emphasis is placed on working smarter and being more focused in dealing with the worst problems in an effective and efficient way.

5) What are the procedures, rules and criteria for deciding to pursue planning enforcement action in cases where there has been a clear breach of planning requirements? (In other words what are the rules that have determined in the cases we have provided about whether action has been pursued or not?).

In accordance with Scottish Government guidance on the approach to planning enforcement, efforts must be made wherever possible to resolve the problem through negotiation; therefore, planning enforcement action is seen to be a last resort. However, where the breach is clear cut and conflicts with policy and surrounding amenity, there

should not be unreasonable delay. In order to avoid delay, there are Planners working within the team who carry out “deemed assessments” to help assess whether or not planning permission would be granted (if an application were to be submitted). This avoids the delay of asking for an application where the more appropriate step would be to remove the development or enter directly into formal action following a reasonable period of discussion.

At the opposite end of the spectrum there may be minor technical breaches which, on the whole, are acceptable although they do not benefit from planning permission. These are described as “de minimus” (which means in effect “of minor consequence”). In order to prioritise resources for more deserving causes there will be certain developments which are contrary to policy but with which the impact on amenity is low. Depending on the circumstances it may be considered that it is not in the wider public interest to pursue such cases. This would take into account the location of the breach (if it is not highly visible from the public domain then it may be considered expedient not to take further action).

More specifically:

a) It appears from our analysis that certain breaches (eg satellite dishes) are more likely to be remedied than others (eg installation of uPVC windows where in our area 9 cases have been closed without follow up action) – why is this? We also have evidence that the remedy in respect of satellite is not applied consistently – why is this?

There is a practical way forward to dealing with certain breaches of effective enforcement notices in the form of direct action. There needs to be money available to take action, although this can be recouped at a later date if the property comes to be sold. Direct action to remove satellite dishes was often taken in the past due to the relatively low cost of taking action, helped by the fact that logistically the exercise was less complicated than dealing with many other types of development. The cost of taking action to remove and replace UPVC windows with traditional sash and case windows is very expensive (estimates suggest £1,000 per window) and also carries logistical issues such as gaining access to the property and ensuring security of the property and safety of occupants whilst the works are being carried out. Therefore, the Council’s approach to the latter is to leave the Enforcement Notice as a blight on the property (which, again, may be picked up when the property again comes to be sold). This modus operandi is the consequence of the limitations of enforcement powers as well as a pragmatism necessitated by the high cost of direct action, the severe risk around implementation and the limited resources available.

b) Does the Council have any criteria for referring planning breaches on to the Procurator Fiscal and if so what are they and how is this working? What percentage of planning breaches that have not been remedied are passed on to the Procurator Fiscal? Were any of the 9 cases involving uPVC windows in Strathbungo that have been closed without remedy ever referred to the Procurator Fiscal?

Only the most severe cases of blatant disregard for planning control are referred to the Procurator Fiscal (PF) for prosecution. Currently the only case we have for consideration of action by the PF is the removal of a steeple from a former Church (Cat C Listed Building) in Sandbank Street, Maryhill. This case will provide some learning as to the regard the courts may have to breaches of planning control of such magnitude. One of the most important outcomes will be to learn whether a judge will prosecute for such a breach where clearly the power was available to take direct action. The Council’s argument for not doing so was the prohibitive cost, which has been estimated and detailed as part of the Council’s case. Prosecution in such a case is the only realistic way forward as it raises the prospect of criminality (which is proportionate to the breach in this instance). Whilst it may be also an offence to alter a listed building in a lesser

way, or to fail to comply with an Enforcement Notice, criminal prosecution is not seen to be proportionate to lower levels of breach (a view which is shared throughout the network of Planning Enforcement professionals in Scotland).

c) When the Council services an enforcement notice and the owner then applies for planning permission, we understand the enforcement action is suspended. We would request clarification of what then happens if planning permission is refused - are there any criteria which determine whether or not the planning officer reactivates the enforcement action?

Enforcement Action is normally held in abeyance pending a decision on a current application relating to the same development. Following refusal (if that is the decision) action may also be held in abeyance pending any appeal submitted against the refusal of planning permission. If an appeal is dismissed, then the Enforcement Notice will be served. Further appeal can be made against the Enforcement Notice, but not on the ground that planning permission should be granted. Grounds of appeal would be, for example, that the development did not require planning permission, or that the breach was immune from action at the time the Enforcement Notice was served.

6) We would welcome clarification of the meaning of terminology used in the data base and the criteria used for different decisions and more specifically:

a) Under Decision Reason, there appears "Justification from Manager" and "Justification from Planner". What constitutes justification and what procedures are there to determine when such cases need to be decided by the Manager rather than the Planner?

There is no great significance in the difference between these routes of approval. At the moment there are three Planners in the Enforcement Team who have authorisation to assess and determine the expediency of enforcement action. One of these Planners is the Team Manager (me); generally I will be involved in certain cases which have become contentious or more problematic for various reasons, or where the profile or priority of the issue has been raised to a higher level.

b) What are the criteria in use to determine the "not expedient" reason for taking no further action?

Expediency depends on many factors: conflict with development plan policy and impact on surrounding residential amenity being two of the most important considerations. Enforcement action must be proportionate to the breach, therefore there is consideration of the fact that low level breaches take time and resources away from other more damaging breaches. It must therefore be in the wider public interest to take enforcement action and in considering this, each case is taken on its own merits.

c) Why under status is the database showing so many cases as "Unknown" when previous status was recorded as "granted", "refused" or "pending"?

There is no known status, therefore this requires clarification

d) Why are so many reasons for closure given as "Not available"?

There should be a reason given, therefore this needs to be looked at by our support services team.

7) What factors determine the length of time it takes in cases where planning permission has been applied for retrospectively and then refused to initiate enforcement action? Is there a procedure which determines what actions are taken after what length of time?

It is not the case that all unauthorised development will be the subject to enforcement action as an automatic reaction, whether permission has been refused or if no application has been submitted in the first place. The Council always has to consider the expediency of taking action which takes into account a number of issues including the wider public interest issue, which I have mentioned before. Consequently, there is no set period within which action must be taken following the refusal of retrospective planning permission. In principle it would be a good idea to set a service standard which requires that action must be taken within a set period and if it is not to be, for justification to be provided. This will be considered as a possible new Service Standard for the new Planning Enforcement Charter which must be prepared for April 2016.

8) Where a property subject to enforcement action is sold, does the change in ownership have any effect on the enforcement action? More specifically how many enforcement actions have proceeded after a change of ownership?

As with planning permission, Enforcement action inures for the benefit of the property and land and therefore a Notice when served will remain on the property in perpetuity. New owners have been required to comply with the requirements of effective Enforcement Notices, although there are no statistics available for saying how many cases we have had where this has been the situation. Similarly there is no possibility of obtaining information in relation to actions which have taken place after a change in ownership. The record of an enforcement case or action should alert potential purchasers to a problem, therefore it is unusual for this situation to arise.

9) Our understanding is that enforcement action against breaches of planning permission in conservation areas that concern unlisted buildings cannot be pursued if four years or more has elapsed since the breach but there is no time limit for listed buildings. Is this correct?

Yes, the four year immunity rule applies to all unauthorised development apart from changes of use to any use which is not a single family dwelling (in which case the 10 year rule applies). It is technically possible to take action against any unacceptable breach of listing building control from the date the building was listed onwards. However, a reasonable approach must be taken with regard to changes made many years ago as the case is weakened with the passing of considerable periods of time.

10) Does failure to take enforcement action set any legal precedents in terms of the Council's ability to take actions against similar breaches in the future? (See Pollokshields example of uPVC windows on Melville Street and the Reporter's decision in Appendix 1). If so, what degree of non-action would set a precedent? (We can understand the Council might be unaware of a specific breach and that might explain a lack of action but are concerned that if for example a certain number of properties in a street have uPVC windows, it might become much harder for the Council to take action against similar breaches in future, not just on moral grounds of fairness but legal grounds too).

Each case is taken on its merits, although Reporters may from time to time refer to the high number of UPVC windows in a particular street. Reporters cannot grant planning permission on appeals against Enforcement Notices, therefore the Council wins the majority of appeals where it has been successfully demonstrated that a breach has occurred and that the action does not exceed what is necessary to remedy the breach.

11) Have there ever been any cases of breach of planning requirements in the Pollokshields and Strathbungo Conservation Areas which have been prosecuted?

Yes, the removal of internal panels from a listed building in Pollokshields was referred to the Procurator Fiscal for prosecution, a case which ran for many years. Ultimately

despite the great endeavour of the Council's solicitor and other officers, the case was unsuccessful and the artwork panels were never recovered.

12) Has any enforcement action ever been taken in respect of felling or pruning of trees that has taken place without appropriate reasons in the conservation areas?

Yes, it is commonplace for Tree Replacement Notices to be served where this occurs. Only felling of a Tree Protection Order protected tree would result in prosecution. Although past experience has resulted in derisory fines being imposed, unauthorised and unjustified TPO protected fellings will continue to be referred to the PF for consideration of prosecution.

Strathbungo Society
Pollokshields Heritage
Pollokshields Community Council
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Recommendation

It is recommended that the Area Partnership notes the contents of the Memorandum and the advice received.