

**REPORT TO:** CITY DEVELOPMENT COMMITTEE – 24 NOVEMBER 2014

**REPORT ON:** 28 ROSEANGLE – PROPOSED REPAIRS NOTICE UNDER SECTION 43 OF THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT 1997

**REPORT BY:** DIRECTOR OF CITY DEVELOPMENT

**REPORT NO:** 413-2014

## **1 PURPOSE OF REPORT**

1.1 The purpose of this Report is to obtain Committee approval to serve a Repairs Notice under Section 43 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 on the owner of the property at 28 Roseangle, Dundee, DD1 4LY.

## **2 RECOMMENDATION**

2.1 It is recommended that the Committee approve the:

- a serving of a Repairs Notice under Section 43 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. A Repairs Notice can be found in Appendix 1; and
- b Schedule of Works outlined within the Repairs Notice (Appendix 1).

## **3 FINANCIAL IMPLICATIONS**

3.1 There are no financial implications for the Council in terms of this report.

## **4 BACKGROUND**

4.1 The property is a Category C Listed Building and is located in a prominent location within the West End Lanes Conservation Area. Historic Scotland included the property on the list of protected buildings on the 30 June 1989 and described it as being circa 1830s, 2-storey with basement, 3-bay sandstone villa, ashlar fronted, rubble-built sides and rear.

4.2 Section 64 - General Duty as Respects Conservation Areas in Exercise of Planning Functions - of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states “(1) In the exercise, with respect to any buildings or other land in a Conservation Area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”

4.3 The property was last used as a guest house for which it received Planning Permission for a Change of Use in 1984. The property was subject to a fire around 2005, and remained derelict since then.

4.4 The fire damage is still evident today and it would appear no substantial repair works have been undertaken to remediate this damage or the affects of extinguishing the fire.

4.5 Section 43 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 enables local authorities to serve a Repairs Notice on the owner of a listed building specifying those works which it considers reasonably necessary for the proper preservation of the building. If, after a period of not less than 2 months, it appears that reasonable steps are not being taken for its proper preservation, the local authority can begin Compulsory Purchase proceedings under section 42 of the Act. A Compulsory Purchase Order (CPO) requires to be confirmed by the Scottish Government.

- 4.6 Under section 45 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, this allows the Local Authority to make a "Direction for Minimum Compensation", if the listed building has been deliberately allowed to fall into disrepair. This direction means that all development value is excluded.
- 4.7 The property is located on the Buildings at Risk Register for Scotland, and is recorded as: Condition "Poor" and Category of Risk "Moderate". The property has been the target of vandals with numerous reportings of graffiti. Local Ward Members have expressed their concerns regarding the property's condition along with a number of local residents.
- 4.8 The property is in an extremely poor condition both internally and externally. The roof is in a poor condition with significant deslating, missing sarking and fire damaged roof timbers. This has allowed extensive damage to the fabric of the building as a result of being open to the elements for a prolonged period. Window openings have also allowed extensive water ingress.
- 4.9 The internal fabric of the building exhibits fire damage and subsequent water damage through the combined effects of fire-fighting measures and exposure to the elements. Timber floors are noted to be compromised in several areas, although access to investigate fully was limited, there is sufficient evidence of deterioration to suggest that timber decay is widespread.
- 4.10 In most rooms there is a build-up of fixtures and fittings predating the fire and these are unnecessarily adding to the load carried by the floor. Additionally, there are significant depositions of pigeon guano.
- 4.11 Section 48 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, states "where a planning authority acquire any building or other land under section 42(1) or 47(1)(a) or (b), they may make such arrangements as to its management, use or disposal as they consider appropriate for the purpose of its preservation."

## 5 POLICY IMPLICATIONS

- 5.1 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.

## 6 CONSULTATIONS

- 6.1 The Chief Executive, the Director of Corporate Services and Head of Democratic and Legal Services have been consulted and are in agreement with the contents of this report.

## 7 BACKGROUND PAPERS

- 7.1 Historic Scotland – Scottish Historic Environment Policy – December 2011.

Mike Galloway  
Director of City Development

Gregor Hamilton  
Head of Planning

GH/GK/KM

13 November 2014

Dundee City Council  
Dundee House  
Dundee

## Appendix 1

Dundee City Council – City Development

<b>IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY</b>
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**PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT 1997,  
SECTION 43 REPAIRS NOTICE**

<b>LISTED BUILDING REPAIRS NOTICE</b>
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ISSUED BY: Dundee City Council

ISSUED TO: **Mr John Cape  
14 Kilburn  
Newport on Tay  
DD6 8DE**

TAKE NOTICE THAT Dundee City Council, Dundee House, 50 North Lindsay Street, Dundee, the Planning Authority for the area of Dundee in terms of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 (hereinafter referred to respectively as the "Planning Authority" and "the Act") are satisfied that reasonable steps are not being taken to preserve properly 28 Roseangle, Dundee, DD1 4LY, shown outlined red on the plan attached to this notice, which is a Category C listed building.

In exercise of the powers conferred upon by Section 43(1) of the Act, the Planning Authority hereby specify the undernoted works in which they consider to be reasonably necessary for the proper preservation of the building. The effects of Sections 42 to 45 of which are detailed in Schedule 1 attached hereto.

Notes referred to: Rebuild all roofs to their original profiles with slates, flashings, gutter and downpipes, reinstatement of all windows to original including material (timber), glazing pattern and method of opening, all other openings to be secure, wind and watertight, remove all fixtures and fittings, remove all pigeon guano, repair structural fire damage, rot and decay, remove fungal growths in the form of sporing bodies and remove all infected timbers, treat using specialist techniques and reinstate to the original detail, boundary wall repaired and railing reinstated and stabilize all elements of the supporting structure.

Dated: .....

Signed: .....

On behalf of: .....

Dundee City Council

## REPAIRS NOTICE

Under Section 43 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997

<b>Organisation</b>	Dundee City Council
<b>Department</b>	City Development
<b>Subject</b>	28 Roseangle, Dundee, DD1 4LY
<b>Date</b>	

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Department: City Development     
 Originator : Gillian McKay     
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**SCHEDULE 1 (REFERRED TO IN THE FOREGOING LISTED BUILDING REPAIRS NOTICE)****EFFECTS OF SECTIONS 42 TO 45 OF THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT 1997****1 Section 42**

- Gives the Scottish Government power to authorise a Planning Authority (in this case Dundee City Council) to compulsorily acquire a listed building and any relevant land where it appears that reasonable steps are not being taken to properly preserve the listed building. The Scottish Government may not confirm a compulsory purchase order for acquisition of an affected listed building unless they are satisfied that it is expedient to do so.
- Allows anyone who has an interest in an affected listed building to apply to a Sheriff for an Order prohibiting further proceedings in the Compulsory Purchase order provided they do so within 28 days of service of the Statutory Notice intimating the Planning Authority's proposals to compulsorily purchase the listed building under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. If the Sheriff is satisfied that reasonable steps had been taken to properly preserve the listed building, he can grant an order to stop the compulsory purchase proceeding any further.
- Gives a right of appeal against the Sheriff's decision to the Court of Session by any aggrieved party but on questions of law only.
- Directs that that the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 is to apply to any compulsory acquisition under this section.

**2 Section 43**

- States that the Planning Authority shall not start proceedings for a compulsory purchase order under Section 42, unless 2 months previously they have served on the owner of the building a notice specifying the works which are considered reasonably necessary for the proper preservation of the listed building, and explaining the effects of sections 42-45 of the Act (now referred to as a "Repairs Notice").
- States that even where a listed building has been demolished the compulsory acquisition of the land may proceed in certain specified circumstances.
- Allows the Planning Authority to withdraw a Repairs Notice subject to immediately advising the person on whom the notice was served.
- Prevents the person on whom a Repairs Notice is served from serving a listed building purchase Notice until 3 months after the date of service of the Repairs Notice or if the Planning Authority begins compulsory acquisition within that 3 month period, until that acquisition is discontinued.

**3 Section 44**

- Relates to compensation.
- In assessing compensation it will be assumed that the Listed Building Consent would be granted for any works for the alteration or extension of the listed building, or for its demolition for the purposes of rebuilding.

**4 Section 45**

- States that if a Planning Authority is acquiring a Listed Building under Section 42 of the Act and is satisfied that the Listed Building has been deliberately allowed to fall into disrepair in order to justify its demolition and the development or redevelopment of the

site or any adjacent site, they can make a direction for minimum compensation which will have effect if the Order is confirmed.

- The notice advising the owner of the Planning Authority's intention to compulsorily acquire the listed building must include reference to the fact that a direction for minimum compensation has been made.
- Such a direction has the following effect:
  - For the purpose of assessing compensation it is to be assumed, notwithstanding anything to the contrary in the Land Compensation (Scotland) Act of 1963 ,the Town and Country Planning (Scotland) Act 1997 or the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997, that Planning Permission would not be granted for any development or redevelopment of the site of the building, and that Listed Building Consent would not be granted for any works for the demolition, alteration or extension of the building other than development or works necessary for restoring it to, and maintaining in, a proper state of repair.
  - If the Local Authority make a direction for minimum compensation and this is granted, any person having an interest in the Listed Building may, within 28 days after the service of the notice advising the owner of the Planning Authority's intention to compulsorily acquire the listed building, apply to the Sheriff for an Order that the Planning Authority's application for a direction for minimum compensation be reversed and if the Sheriff is satisfied that the listed building was not deliberately allowed to fall into disrepair to justify its demolition, he shall grant an order to this effect.
  - Anyone aggrieved by the decision of the Sheriff can appeal to the Court of Session but on a question of law only.
  - The right to apply to the Sheriff or to appeal the Sheriff's decision are in addition to the rights to apply to the courts specified under Section 42.