


# **Business Bulletin**

## **Planning Committee**

**2.00pm, Wednesday, 24 April 2024**

## Planning Committee

Convener:	Members:	Contacts:
<p>Councillor James Dagleish</p> 	<p>Councillor Alan Beal Councillor Chas Booth Councillor Lezley Marion Cameron Councillor Neil Gardiner Councillor Tim Jones Councillor Martha Mattos Coelho Councillor Amy McNeese-Mechan Councillor Joanna Mowat Councillor Hal Osler Councillor Alex Staniforth</p>	<p><a href="#">Taylor Ward</a> Committee Services</p> <p><a href="#">David Givan</a> Chief Planning Officer and Head of Building Standards</p>

**Building Standards Performance**

	2022/23				2023/24			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Number of first reports	1,295	1,005	1,192	1,180	1,001	886	952	943
% issued within 20 day target	90%	91%	91%	95%	94%	94%	92%	93%
Number of warrants granted	1,374	1,144	1,248	1,168	1,085	884	871	899
% issued within 10 day target	91%	92%	90%	92%	93%	90%	89%	92%

The Building Standards Management Team is now operating at full capacity and operating performance has returned, as seen in the table above, to normal levels. Performance continues to be a priority moving forward.

On 1 April 2024, there was a significant change in Building Regulation. While there can be challenges in a temporary increase in numbers of applications associated with such changes, procedures have been implemented to address them.

**Planning Performance**

An update on Planning performance for Quarter 3 2023/24 is contained in Appendix 1.

**Seafield Update**

Work on the Seafield place Brief and Masterplan continues and in particular, work on flood risk. Discussions with SEPA indicate the need for further work on understanding wave action and how that informs development of the site. Officers will seek to bring draft consultative place brief and Masterplan documents to Planning Committee before September. Further community engagement will take place

**Contact:** [David Givan](#), Chief Planning Officer and Head of Building Standards

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**Contact:** [Iain McFarlane](#), City Plan Programme Director

<p>in late April or early May to inform this. The next Sounding Board will be held on 25 April.</p>	
<p><b>City Plan Update</b></p> <p><u>City Plan 2030</u> The report of examination was published on 5 April 2024. Its implications are being assessed and a report is expected to Planning Committee with subsequent referral to the Council in June 2024.</p> <p><u>City Plan 2040</u> Work continues on the evidence report preparation for City Plan 2040.</p>	<p><b>Contact:</b> <a href="#">Iain McFarlane</a>, City Plan Programme Director</p>
<p><b>Planning Appeals</b></p> <p>Appeal information is contained in Appendix 2. A summary of appeal cases decided in Quarter 4 2023/24 is included for this Business Bulletin.</p>	<p><b>Contact:</b> <a href="#">David Givan</a>, Chief Planning Officer and Head of Building Standards</p>
<p><b>George Cinema, Bath Street, Portobello</b></p> <p>Following the decision of the Council on 21 March 2024, officers are investigating the condition of the building and whether it is appropriate to take any action in respect of it. Officers will update ward councillors on these matters. A further update will be provided to Planning Committee via the business bulletin.</p>	<p><b>Contact:</b> <a href="#">David Givan</a>, Chief Planning Officer and Head of Building Standards</p>
<p><b>Short-term Lets</b></p> <p><u>Minister for Housing Letter</u></p> <p>The Minister for Housing, Paul McLennan MSP, wrote to the Council Leader regarding short-term lets (STLs) (Appendix 3) following a meeting between the Council Leader, the Ministers for Culture and Housing, the Fringe Society and officials from the Scottish Government and Council. The meeting discussed the effect of the STL licensing and planning regimes upon the ability to accommodate people performing at and attending Edinburgh festivals. The combined effect of the regimes is particularly impactful in the case of houses of multiple occupation being let over the summer period.</p> <p>In Edinburgh, when it agreed the STL Licensing Policy, Regulatory Committee exercised the discretion available to the Council and applied all mandatory and additional conditions, including what is known as mandatory condition 13 (MC13) to the requirement to temporary exemptions. A temporary exemption if granted lasts up to six weeks in any 12 month period. The effect of MC13 in Edinburgh is to</p>	<p><b>Contact:</b> <a href="#">David Givan</a>, Chief Planning Officer and Head of Building Standards</p>

require the holder of a license to either have applied for or have planning permission in place in circumstances where planning permission is required. The Minister confirms that the Council could decide to disapply any condition. If it were to do this, this would be a decision of Regulatory Committee.

The Minister goes on to note that the Council has discretion in exercising its planning enforcement powers and that the planning authority are not required to take any formal enforcement action should they consider that it is not in the public interest to do so. If Regulatory Committee were to make a change relating to MC13, that had planning impacts, these would be reported to Planning Committee along with consideration of how planning enforcement should be approached in respect of temporary exemptions.

#### Short-term Lets Working Group

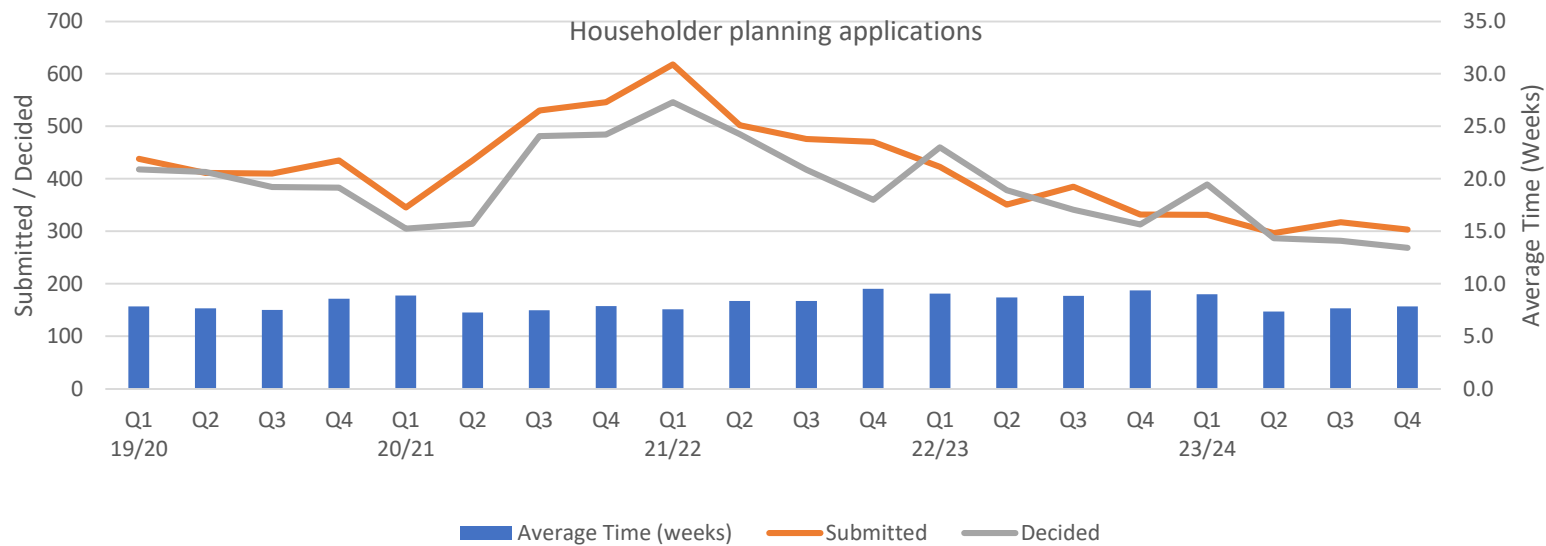
The Short-term Lets Working Group met on 22 March 2024. It considered the ASSC proposal which is separately reported to this Committee. It also considered the issue of festival lets. This is a matter that is in part addressed by the Minister's letter highlighted above.

#### Planning and Licensing Services

The Planning and Licensing services continue to work closely on the issue of short-term lets. Information is exchanged between service areas where required. The teams meet regularly to discuss operational matters and to ensure efficient use of resources (including staff time).

## Appendix 1 - Planning Time Performance Quarterly Bulletin - Q4 2023/2024

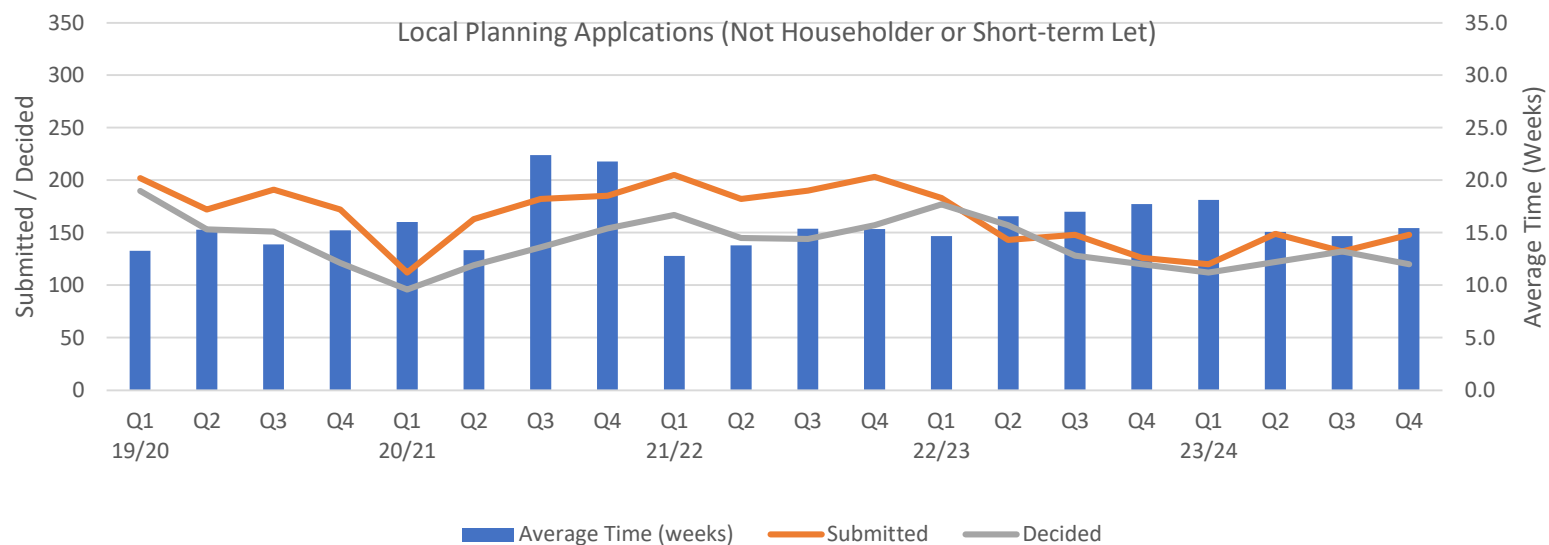
Householder																				
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4
Average Time (weeks)	7.8	7.6	7.5	8.6	8.9	7.3	7.5	7.9	7.6	8.4	8.4	9.5	9.1	8.7	8.8	9.4	9.0	7.3	7.7	7.9
Submitted	438	411	410	435	345	435	530	546	618	502	476	470	423	351	385	332	331	297	317	303
Decided	418	413	384	383	305	314	481	484	546	485	417	360	460	378	341	313	389	287	282	269
12 Month Totals:	Sub: 1694 Dec: 1598				Sub: 1856 Dec: 1584				Sub: 2066 Dec: 1808				Sub: 1491 Dec: 1492				Sub: 1248 Dec: 1227			
Decided over 2 months (no agreemets / extensions)	76	41	26	43	133	51	70	74	78	126	111	155	203	116	108	130	110	59	54	56
Appeals against non determination									0	0	0	0	0	1	2	0	0	1		



**Commentary:**

Average timescales for processing householder applications for Q3 was 7.9 weeks.

Local (Not Householder or Short-term Let)																				
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4
Average Time (weeks)	13.3	15.3	13.9	15.2	16.0	13.3	22.4	21.8	12.8	13.8	15.4	15.4	14.7	16.6	17.0	17.7	18.1	15.1	14.7	15.4
Submitted	202	172	191	172	112	163	182	185	205	182	190	203	183	143	148	126	120	149	132	148
Decided	190	153	151	121	96	119	136	154	167	145	144	157	177	157	128	120	112	122	132	120
12 Month Totals:	Sub: 737 Dec: 615				Sub: 642 Dec: 505				Sub: 780 Dec: 613				Sub: 600 Dec: 582				Sub: 549 Dec: 486			
Decided over 2 months (no agreements / extensions)	85	63	48	58	59	52	66	64	71	73	90	103	116	107	74	86	87	72	80	66
Appeals against non determination									0	0	0	0	3	0	0	0	3	4		



Commentary: The average time for progressing local applications that are not householder or short-term lets was 15.4 weeks.

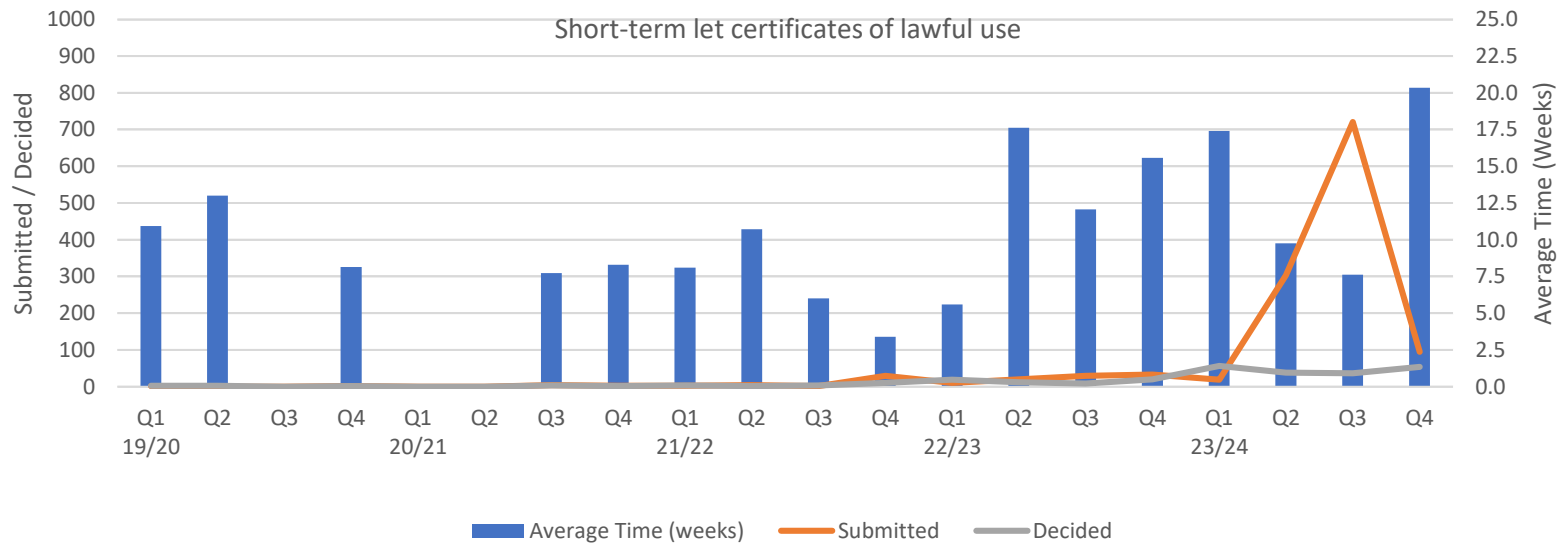
Short-term Let Applications for Planning Permission																				
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4
Average Time (weeks)	13.4	12.7		25.8	9.4	12.6	14.1	7.1	11.7	12.3	10.5	11.7	8.8	17.8	19.5	21.5	24.2	16.7	10.4	23.9
Submitted	4	0	3	2	4	3	3	6	7	7	6	103	66	71	88	53	40	158	175	51
Decided	3	2	0	3	1	2	3	1	6	4	3	5	13	19	81	31	102	76	106	37
12 Month Totals:	Sub: 9 Dec: 8				Sub: 16 Dec: 7				Sub: 123 Dec: 18				Sub: 278 Dec: 144				Sub: 424 Dec: 321			
Decided over 2 months (no agreements / extensions)	1	1	0	3	1	2	2	0	5	4	3	3	2	19	76	30	101	49	41	35
Appeals against non determination																				



Commentary: Average timescales for progressing STL planning applications has increased to 23.9 weeks. This is partly as a result of the large volume of applications the service has been progressing.

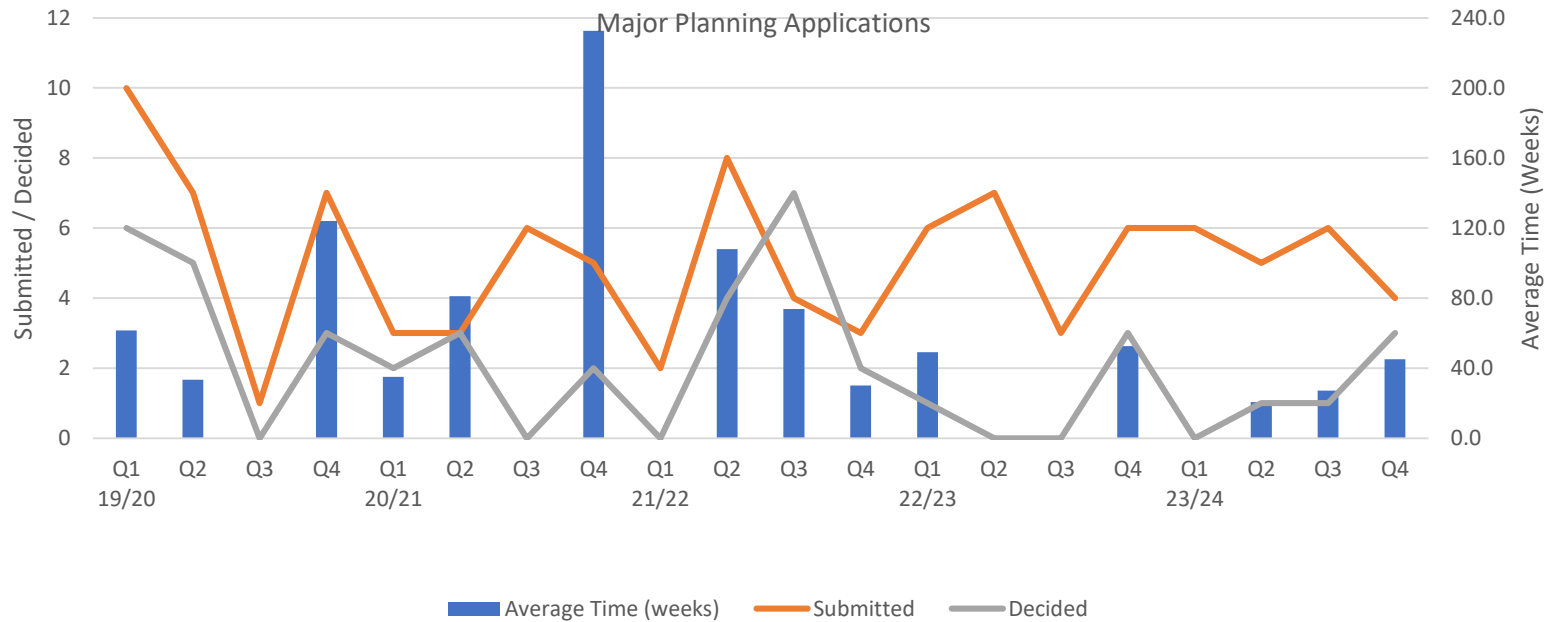


Short-term Let Applications for Certificate of Lawful Use																				
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4
Average Time (weeks)	10.9	13.0		8.1			7.7	8.3	8.1	10.7	6.0	3.4	5.6	17.6	12.1	15.6	17.4	9.7	7.6	20.3
Submitted	1	0	0	1	0	0	4	2	2	4	1	29	10	20	29	33	19	303	721	95
Decided	2	2	0	1	0	0	3	1	3	1	3	10	19	12	8	20	57	38	36	54
12 Month Totals:	Sub: 2 Dec: 5				Sub: 6 Dec: 4				Sub: 36 Dec: 17				Sub: 92 Dec: 59				Sub: 1138 Dec: 185			
Decided over 2 months (no agreements / extensions)	2	2	0	0	0	0	0	0	1	1	0	0	2	11	6	12	47	8	11	53
Appeals against non determination																				



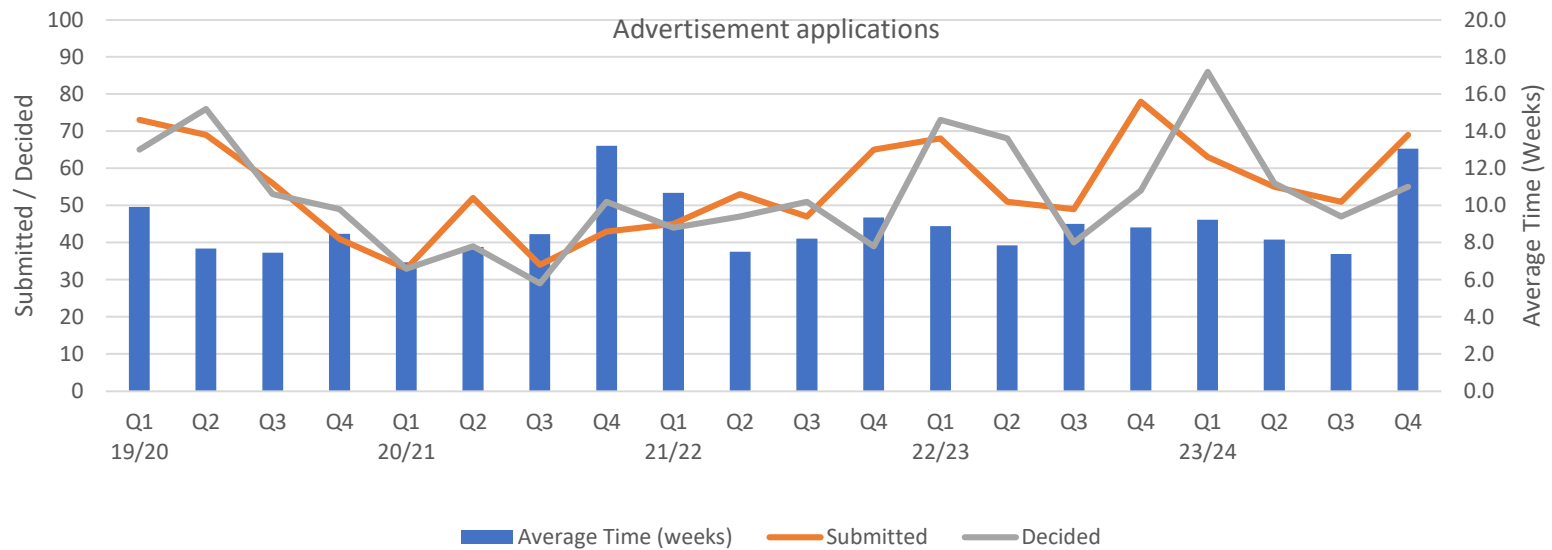
Commentary: There has been an increase in average times to progress STL certificates of lawful use applications. This is a result of the volume of these types of applications.

Major																				
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4
Average Time (weeks)	61.5	33.4		124.0	35.1	81.0		232.5		107.9	73.8	30.1	49.1			52.5		20.6	27.1	45.0
Submitted	10	7	1	7	3	3	6	5	2	8	4	3	6	7	3	6	6	5	6	4
Decided	6	5	0	3	2	3	0	2	0	4	7	2	1	0	0	3	0	1	1	3
12 Month Totals:									Sub: 17 Dec: 13				Sub: 22 Dec: 4				Sub: 21 Dec: 5			
Decided over 2 months (no agreements / extensions)	6	3	0	3	2	3	0	2	0	4	6	2	1	0	0	3	0	1	1	3
Appeals against non determination										0	0	1	0	1	0	1	0	1		



Commentary:  
Average timescales for determining major applications was 45 weeks.

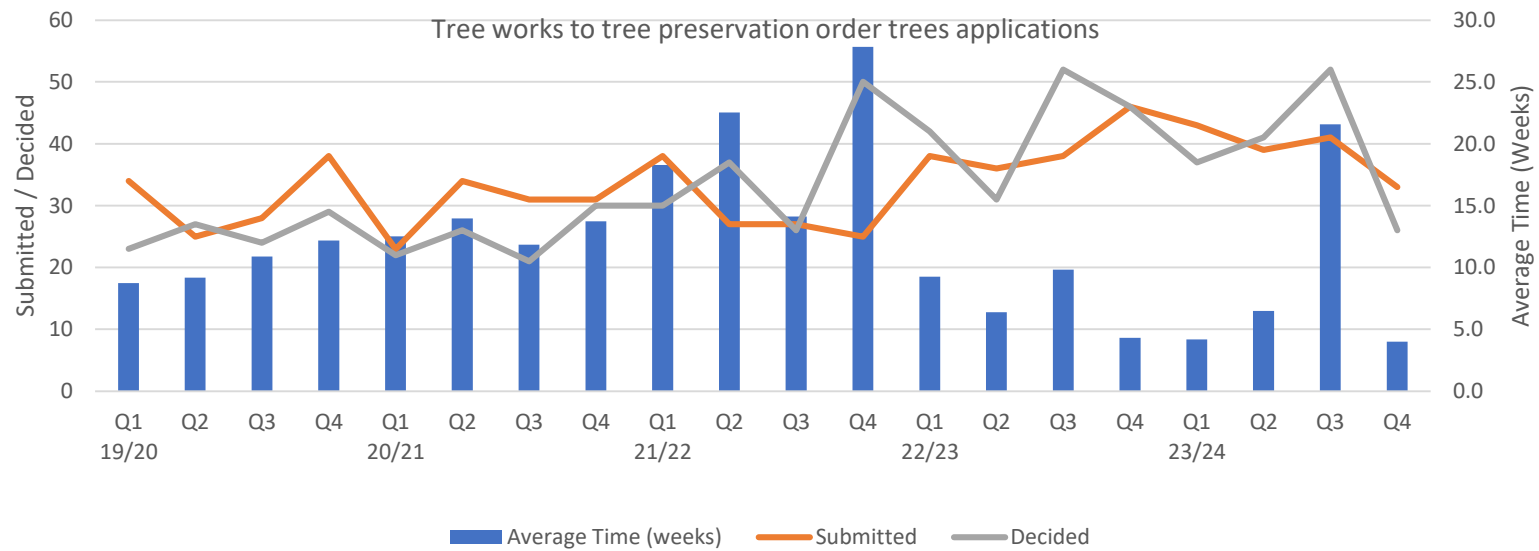
Advertisements																				
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4
Average Time (weeks)	9.9	7.7	7.5	8.5	6.9	7.8	8.5	13.2	10.7	7.5	8.2	9.4	8.9	7.8	9.0	8.8	9.2	8.2	7.4	13.1
Submitted	73	69	56	41	33	52	34	43	45	53	47	65	68	51	49	78	63	55	51	69
Decided	65	76	53	49	33	39	29	51	44	47	51	39	73	68	40	54	86	56	47	55
12 Month Totals:	Sub: 239 Dec: 243				Sub: 162 Dec: 152				Sub: 210 Dec: 181				Sub: 246 Dec: 235				Sub: 238 Dec: 244			
Decided over 2 months (no agreements / extensions)	17	15	7	7	4	8	4	22	14	13	12	19	21	16	10	17	43	18	11	14



Commentary:  
Average timescales for processing advertisement applications was 13.1 weeks. This is higher than normal and measures are being taken to reduce average timescales for future cases.



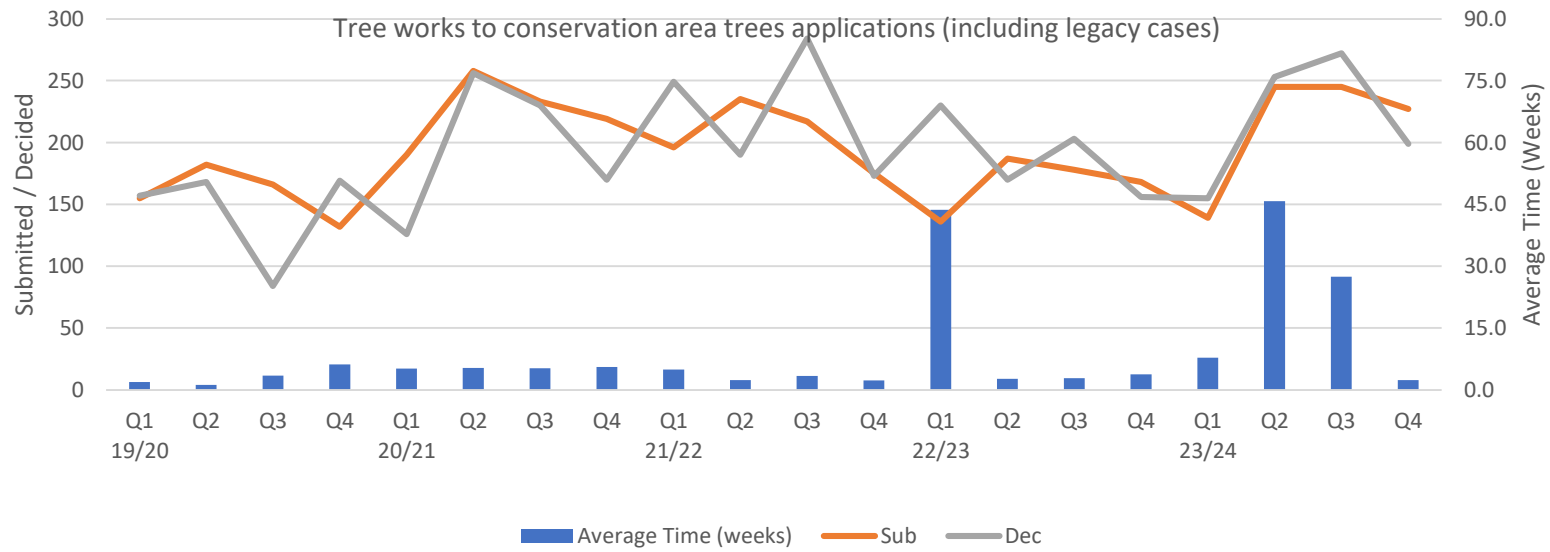
Tree works to Tree Preservation Order Tree																				
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4
Average Time (weeks)	8.7	9.2	10.9	12.2	12.5	14.0	11.9	13.7	18.3	22.5	14.1	27.8	9.2	6.4	9.8	4.3	4.2	6.5	21.6	4.0
Submitted	34	25	28	38	23	34	31	31	38	27	27	25	38	36	38	46	43	39	41	33
Decided	23	27	24	29	22	26	21	30	30	37	26	50	42	31	52	46	37	41	52	26
12 Month Totals:	Sub: 125 Dec: 103				Sub: 119 Dec: 99				Sub: 117 Dec: 143				Sub: 158 Dec: 171				Sub: 156 Dec: 156			



**Commentary:**

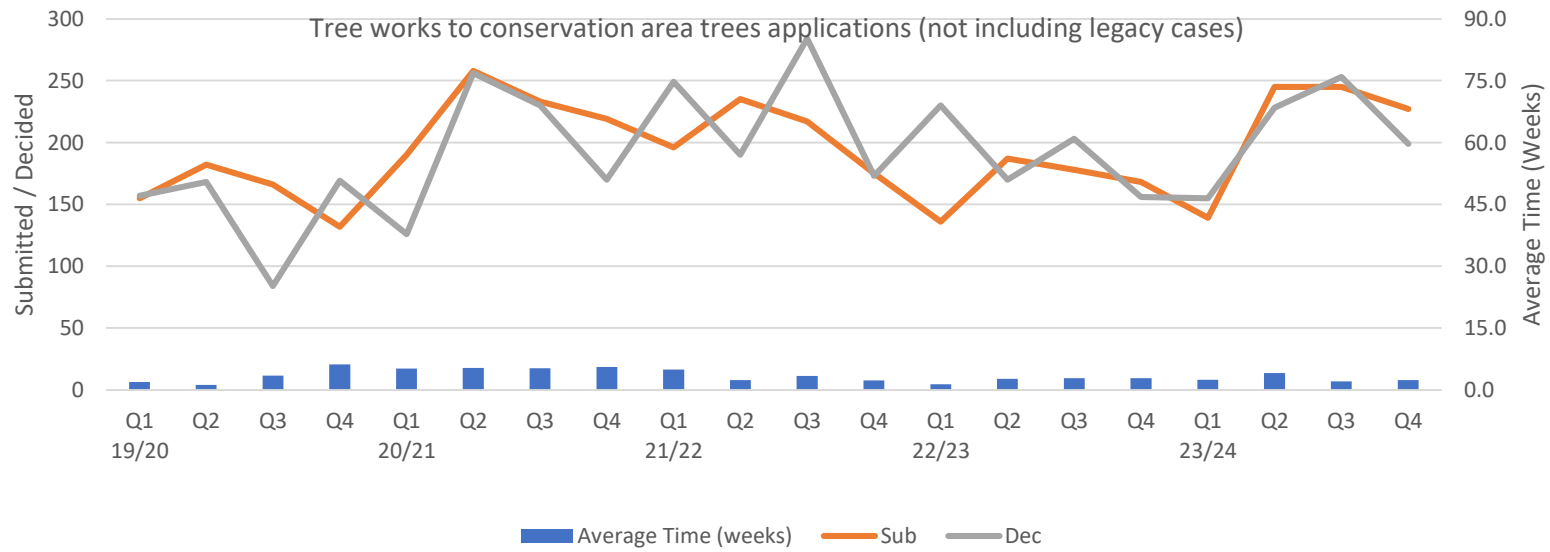
There was an decrease in timescales to progress tree works to tree preservation order trees to 4 weeks. This is the best average timescale for the last 5 years.

Tree works to Conservation Area Tree																				
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4
Average Time (weeks)	1.9	1.2	3.5	6.2	5.2	5.4	5.3	5.5	4.9	2.4	3.4	2.3	43.7	2.7	2.9	3.8	7.8	45.7	27.4	2.4
Sub	155	182	166	132	190	258	233	219	196	235	217	175	136	187	178	168	139	245	245	227
Dec	157	168	84	169	126	256	230	170	249	190	284	173	230	170	203	156	155	253	272	199
12 Month Totals:	Sub: 635 Dec: 578				Sub: 900 Dec: 782				Sub: 823 Dec: 896				Sub: 669 Dec: 759				Sub: 856 Dec: 879			



Commentary:  
Average timescale so for tree works applications for those trees that are in a conservation area reduced to 2.4 weeks.

Tree works to Conservation Area Tree					Legacy cases omitted															
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4
Average Time (weeks)	1.9	1.2	3.5	6.2	5.2	5.4	5.3	5.5	4.9	2.4	3.4	2.3	1.4	2.7	2.9	2.8	2.4	4.1	2.0	2.4
Sub	155	182	166	132	190	258	233	219	196	235	217	175	136	187	178	168	139	245	245	227
Dec	157	168	84	169	126	256	230	170	249	190	284	173	230	170	203	156	155	228	253	199
12 Month Totals:	Sub: 635 Dec: 578				Sub: 900 Dec: 782				Sub: 823 Dec: 896				Sub: 669 Dec: 759				Sub: 856 Dec: 835			



Commentary:  
Average timescale so for tree works applications for those trees that are in a conservation area and which are not legacy cases was 2.4 weeks

Enforcement Overall																				
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4
Received	258	286	195	195	116	267	188	160	259	225	169	156	198	235	202	185	272	262	190	165
Closed	62	116	86	87	38	69	93	57	136	107	198	174	173	190	219	186	186	182	275	238
Notices served	13	17	31	23	0	0	3	0	14	10	14	27	24	20	30	26	31	35	21	33
Served within target time	8	11	13	15	0	0	3	0	10	7	1	10	19	6	19	21	16	30	11	20
% in target time	62%	65%	42%	65%			100%		71%	70%	7%	37%	79%	30%	63%	81%	52%	86%	52%	61%

Enforcement Short-term Lets																				
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4
Received	68	67	52	44	6	64	19	6	26	52	19	13	31	66	52	40	74	84	66	29
Closed	6	20	29	17	16	5	19	6	5	12	26	37	12	24	50	47	29	48	81	64
Notices served	5	9	12	15	0	0	3	0	11	10	0	18	13	4	17	21	24	31	14	21
Served in 6 month target	3	9	6	13	0	0	3	0	9	7	0	9	13	3	16	20	16	28	11	18
% in target time	60%	100%	50%	87%			100%		82%	70%		50%	100%	75%	94%	95%	67%	90%	79%	86%

Enforcement Other cases - not short-term lets																				
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4
Received	190	219	143	151	110	203	169	154	233	173	150	143	167	169	150	145	198	178	124	136
Closed	56	96	57	70	22	64	74	51	131	95	172	137	161	166	169	139	157	134	194	174
Notices served	8	8	19	8	0	0	0	0	3	0	14	9	11	16	13	5	7	4	7	12
Served in 3 month target	5	2	7	2	0	0	0	0	1	0	1	1	6	3	3	1	0	2	0	2
% in target time	63%	25%	37%	25%					33%		7%	11%	55%	19%	23%	20%	0%	50%	0%	17%

**Commentary:**

There has been a continued high number of cases closed (238) and notices served (33). There remains a high volume of enforcement work given the large number of cases submitted this financial year.





Enforcement Cases																					
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4	Total % 2019 - 2024
Appeal Allowed	1	1									1		1	1	2	2		2			8%
Appeal Dismissed	3	5	2	9	3	2		2	1		8	4	5	9	3	6	7	8	16	6	71%
Uphold (application refused)																	1				1%
Not Uphold (application granted)																					0%
Mixed Decision			2																		1%
Notice Upheld with Modifications		1										1			1			3	5	1	9%
Notice Upheld								3								1			2	2	6%
Appeal or Review Withdrawn				1									1					1	1		3%
Appeal Withdrawn		1	1																		1%
Notice Not Upheld								1													1%
No DPEA remit																					0%
No Remit																					0%

LRB cases																					
	Q1 19/20	Q2	Q3	Q4	Q1 20/21	Q2	Q3	Q4	Q1 21/22	Q2	Q3	Q4	Q1 22/23	Q2	Q3	Q4	Q1 23/24	Q2	Q3	Q4	Total % 2019 - 2024
Appeal Allowed	1						2		1												1%
Appeal Dismissed													1								0%
Uphold (application refused)	12	15	14	10	5	9	5	10	8	6	4	7	9	14	20	22	17	30	35	11	76%
Not Uphold (application granted)	3	3	5	6	2	5	3	8	2	2	3	1	4	3	2	3	1		1	2	17%
Mixed Decision		2		1		2	2			1		1									3%
Notice Upheld with Modifications												1									0%
Notice Upheld																					0%
Appeal or Review Withdrawn										1									1		1%
Appeal Withdrawn					1								1								1%
Notice Not Upheld																					0%
No DPEA remit																					0%
No Remit							1			1								1	1	1	1%











Summary of DM Sub Cases - Q4 23/24

Site	Ref	Proposal	Date of DM Sub	Decision Notice Date	Appeal Deadline	Date of Appeal	Date of CEC Appeal Response	DMSC Reasons for Refusal	Appeal Outcome	Date of outcome
27 Arthur Street	22/06119/FUL	Demolition of existing buildings and erection of purpose-built student accommodation with associated landscaping, and cycle parking	21 Jun 23	21 Nov 23	21 Feb 24	21 Sep 23	21 Sep 23	The proposals will have a detrimental impact and further deterioration of residential amenity contrary to National Planning Framework 4 Policy 30(e) (i) and the Edinburgh Local Development Plan Policy HOU 7.	Appeal Allowed	19 Jan 24
11A James Court	23/00491/FUL	Proposed refurbishment of and extension to the existing retail /store unit	20 Sep 23	3 Oct 23	3 Jan 24	8 Dec 23	29 Dec 23	<p>The proposals would fail to protect the setting of the neighbouring listed building. By virtue of its form and close proximity to the neighbouring building, it would create an unsympathetic addition, which would adversely affect the listed building's special architectural interest. This is contrary to NPF 4 Policy 7 (c).</p> <p>The proposal would adversely affect the character of the immediate vicinity through the introduction of an unsympathetic and incongruous design form. It would fail to respect the character and appearance of the Old Town Conservation Area and would be contrary to NPF 4 Policy 7 (d).</p> <p>The proposal, by virtue of its proximity to the neighbouring residential flat to the east, would have an unacceptable impact on neighbouring residential amenity through the loss of outlook and the reduction in daylight enjoyed within the property. This is contrary to LDP Policy Des 5.</p>	Appeal Allowed	31 Jan 24



Site	Ref	Proposal	Date of DM Sub	Decision Notice Date	Appeal Deadline	Date of Appeal	Date of CEC Appeal Response	DMSC Reasons for Refusal	Appeal Outcome	Date of outcome
72 - 74 Eyre Place	23/04046/FUL	Erect 7x townhouses with associated amenity space, access, cycle parking, car parking and landscaping	6 Dec 23	19 Dec 23	19 Mar 24	21 Dec 23	18 Jan 24	<p>The application is contrary to the Edinburgh Local Development Plan HOU 3 a) as the proposals will fail to provide an appropriate level of outdoor greenspace.</p> <p>The application is contrary to the Edinburgh Local Development Plan Des 2 as the proposals have an impact on the coordinated development of the area.</p> <p>The application is contrary to the Edinburgh Local Development Plan Policy NPF 14 Design Quality and context and the proposals fail to respond appropriately to the character of the area and create a sense of place.</p> <p>The proposal, by virtue of its proximity to the neighbouring residential flat to the east, would have an unacceptable impact on neighbouring residential amenity through</p>	Appeal Allowed	8 Mar 24

Site	Ref	Proposal	Date of DM Sub	Decision Notice Date	Appeal Deadline	Date of Appeal	Date of CEC Appeal Response	DMSC Reasons for Refusal	Appeal Outcome	Date of outcome
72 - 74 Eyre Place	23/04048/FUL	Erection Of Student Accommodation With Associated Amenity Space, Access, Cycle Parking, Disabled Car Parking And Landscaping	6 Dec 23	19 Dec 23	19 Mar 24	21 Dec 23	18 Jan 24	<p>The application is contrary to the Edinburgh Local Development Plan Policy DES 1 Design Quality and context and the proposals fail to respond appropriately to the character of the area and a sense of place.</p> <p>The application is contrary to the Edinburgh Local Development Plan Des 4 as the proposals fail to have a positive impact on the immediate surroundings having regard to height, form and proportions.</p> <p>The application is contrary to the Edinburgh Local Development Plan Des 5 as the proposals will have an adverse impact on the amenity of the neighbouring community in terms of daylight and sunlight and the quality of the communal greenspace.</p> <p>The application is contrary to the Edinburgh Local Development Plan Des 5 as the proposals will fail to provide an appropriate internal amenity for future occupiers.</p> <p>The application is contrary to the Edinburgh Local Development Plan Policy NPF 14 Design Quality and context and the proposals fail to respond appropriately to the character of the area and create a sense of place.</p>	Appeal dismissed	8 Mar 24

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Councillor Cammy Day  
Leader of the City of Edinburgh Council

By email

12 April 2024

Dear Cammy,

Further to our meeting on 19 March with the Minister for Culture, the Fringe Society and officials from the Scottish Government and the Council, I agreed to write a letter setting out the information we discussed about the planning requirements for short-term lets. I have attached the previous letter Ms Robison sent to you on temporary exemptions, which is still relevant.

### Short-Term Let Control Areas

Under the provisions of section 26B of the Town and Country Planning (Scotland) Act 1997, certain changes of use are automatically considered to be material, which in planning terms means that a planning application is required and permission granted in order for the change of use to be lawful and not constitute a breach of planning control. However this applies only to changes of use where the property is situated within a designated short-term let control area and the existing lawful use of the property is as a dwellinghouse (including a flat) which is furthermore not covered by exemptions set out in legislation, either in section 26B itself or secondary regulations. Section 26B does not, for example, apply to the letting of an individual's principal home or part of it (section 26B(3)(b)). The application of section 26B is not retrospective; it does not apply to changes of use which took place before the short-term let control area was designated.

### Temporary Exemptions from Short-Term Let Licensing

As Ms Robison's letter of 16 March 2023 confirms, licensing authorities may decide to offer the option for hosts/operators to apply for a temporary exemption to the requirement to have a short-term let licence. Licensing authorities may decide which mandatory and/or additional conditions should apply to temporary exemptions. This includes where to disapply paragraph 13 of Schedule 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022. As highlighted above, this paragraph is not relevant to some short-term lets e.g. home-sharing and home-letting, but it would be relevant to secondary letting. The City of Edinburgh Council could therefore decide to set a temporary exemption policy that disapplies

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mandatory condition 13 meaning, in practice, that a person seeking a temporary exemption for a secondary let would not be automatically required to provide proof that any required planning permission was in place.

### Section 26 of the Town and Country Planning (Scotland) Act 1997

This means that, where a change of use to a short-term let is from any existing use other than those specified in section 26B, such as an existing House of Multiple Occupation, or the change of use relates to an individual's primary dwelling (for example room sharing, home-swapping or letting out a home while on holiday) the planning authority should consider whether the change of use constitutes development under section 26 of the 1997 Act. In other words, the test in such situations is whether or not the change of use in a particular instance is a material change of use for the purposes of planning. A non-material change does not require planning permission.

In the absence of a direct statement in legislation that a particular change of use is material, such as that set out in section 26B, there are no hard and fast rules as to what constitutes a material change of use. It is for the relevant planning authority to consider whether the change of use would be material taking account of the particular circumstances of each individual case. This consideration could include, but is not restricted to, factors such as the number of people who would be accommodated, the location of the property, whether there are shared communal areas in the case of a flat and whether the proposed use for short-term letting would be permanent or for a defined period such as a temporary exclusion under licensing legislation.

### Planning enforcement

Should a person commit a breach of planning control by implementing a material change of use without the required planning permission in place, it is open to the planning authority to consider enforcement action to require cessation of the unauthorised use. While there are a range of enforcement powers available to a planning authority, the use of any of these powers is a discretionary matter for the planning authority and there is no statutory requirement to use any particular power in any case. Planning enforcement is founded on the principle that enforcement action is taken where necessary to remediate or mitigate any harm to amenity arising from the breach and that any formal enforcement action is proportionate to the scale and impact of the breach of planning control it seeks to address. As the use of powers is discretionary, the planning authority are not required to take any formal enforcement action should they consider that it is not in the public interest to do so.

I hope the above information is useful and enables you to brief members about the actions you proposed to discuss with them in connection to your temporary exemptions policy.

Yours sincerely,



**PAUL MCLENNAN**  
**Minister for Housing**

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