

<b>SWALE RURAL FORUM</b>	<b>Agenda Item:</b>
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<b>Meeting Date</b>	<b>9 MARCH 2010</b>
<b>Report Title</b>	<b>ENFORCEMENT ACTION ON SITES THAT HAVE NOT YET BEEN DEVELOPED</b>
<b>Portfolio Holder</b>	<b>COUNCILLOR GERRY LEWIN</b>
<b>SMT Lead</b>	<b>PETE RAINE</b>
<b>Head of Service</b>	<b>JAMES FREEMAN</b>
<b>Lead Officer</b>	<b>PETER HINCKESMAN</b>
<b>Key Decision</b>	<b>No</b>
<b>Classification</b>	<b>Open</b>
<b>Forward Plan</b>	<b>Reference number: N/A</b>

<b>Recommendations</b>	1. No decision to be made. The report is for information only.
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## **Purpose of Report and Executive Summary**

- 1.1 This report is for information only due to a request from Members of the Forum for details on the actions available in respect of development sites where work has not commenced.

## **2 Background**

- 2.1 I would initially refer to the report submitted to the Rural Forum on 12 January 2010 in respect of this item. May I apologise to the Forum for the brevity of the initial report which was due to a mis-communication between Officers which is regretted.
- 2.2 It is likely that the principal planning legislative powers available to the Council in these situations would be under Section 215 of The Town and Country Planning Act 1990. This provision specifically targets any land that, using the words of the Section, “adversely affects the amenity of the neighbourhood”. Subject to any appeal, the notice requires such steps to be undertaken to remedy the condition of the land within such a period as is specified in the Notice, that period being not less than 28 days after service of the Notice.
- 2.3 As Members will appreciate, whether the condition of land would justify the issue of a Notice under Section 215 is very subjective in nature. The fact that the land may have the benefit of planning permission for future development would not

necessarily be a consideration affecting the service of a Notice. Procedurally, Planning Enforcement or Development Control Officers would inspect any land that has been brought to their attention and after due consideration would make a judgement whether or not the condition of the land was such as to justify the service of a Notice. It is essential for such judgements to rest with Officers as, ultimately, if the land is not improved after service of a Notice, it will be Officers who will need to justify such action when the matter is taken before the local Magistrates' Court, which is usually the first step in seeking compliance with the requirements of the Notice.

- 2.4 As a last resort, if action in the Magistrates' Court does not succeed in the land being improved, the Council does have what are best described as "direct works" powers. Essentially, the Council can instruct contractors to enter the land and carry out the work required by the Notice. A charge can then be registered against the land affected, which would be recovered on any subsequent sale of the land. However, such action does have potential substantial financial obligations and implications on the Council's budgets and would be taken only as a last resort.
- 2.5 The Forum should also be aware of powers available to the Environmental Health Department within the Council, the Environment Agency and Kent County Council in such matters. Insofar as the Environmental Health Department is concerned, their powers stem from environmental protection legislation and can cover situations similar to the planning Section 215 powers in relation to fly-tipping, rodent control, and areas considered insecure and a possible risk to the public. The Prevention of Damage by Pests Act 1949 allows the Environmental Health Department to serve a Notice and to take action if there are materials on land which does or could cause harbourage for pests (i.e. putrescible waste).
- 2.6 The Environment Agency also has powers to deal with potential land raising, and tipping issues which whilst being outside of the remit of both planning and environmental health powers may well involve the unacceptable condition of land generally. The Agency can be contacted directly in such cases on either 08708 506506 (Kent Area Office) or their "hot line" number 0800 807060.
- 2.7 Finally, Kent County Council, as the "Waste Authority" for this region can become involved in land upon which a waste activity may be occurring. Their powers would however be restricted to unauthorised activities causing land to be in an unacceptable condition. Their contact telephone number in the first instance is 0845 8247800.
- 2.8 It must however be recognised that if the condition of any land is being caused by the undertaking of work permitted by a current or valid planning permission or an approved waste activity, it would not be possible for the Authorities referred to in this report to take any remedial action.

### **3 Proposal**

3.1 None

### **4 Alternative Options**

4.1 None

### **5 Consultation Undertaken or Proposed**

5.1 None

### **6 Implications**

<b>Issue</b>	<b>Implications</b>
Corporate Plan	There will be site specific implications throughout the Borough, but since this is a general report it would be inappropriate to anticipate them at this stage.
Financial, Resource and Property	There will be site specific implications throughout the Borough, but since this is a general report it would be inappropriate to anticipate them at this stage.
Legal and Statutory	The information provided is based on the legislative requirements contained within the Town and Country Planning Act 1990 and the Prevention of Damage by Pests Act 1949
Crime and Disorder	There will be site specific implications throughout the Borough, but since this is a general report it would be inappropriate to anticipate them at this stage.
Risk Management and Health and Safety	There will be site specific implications throughout the Borough, but since this is a general report it would be inappropriate to anticipate them at this stage.
Equality and Diversity	There will be site specific implications throughout the Borough, but since this is a general report it would be inappropriate to anticipate them at this stage.
Sustainability	There will be site specific implications throughout the Borough, but since this is a general report it would be inappropriate to anticipate them at this stage.

### **7 Appendices**

7.1 None

**8 Background Papers**

8.1 None