

Policy Development and Review Committee Meeting	
Meeting Date	24 February 2016
Report Title	Planning Enforcement Report – Section 215 Action.
Cabinet Member	Cllr Gerry Lewin, Cabinet Member for Planning
SMT Lead	Kathryn Carr – Director of Regeneration
Head of Service	James Freeman – Head of Planning
Lead Officer	Andrew Jeffers – Development Manager
Key Decision	No
Classification	Open
Forward Plan	Reference number:
Recommendations	1. To consider the report from the Head of Planning, and make recommendations to the Cabinet Member for Planning regarding the future approach and resourcing of Section 215 Notices

1 Purpose of Report and Executive Summary

- 1.1 This report considers the current situation in respect of cases referred to the Enforcement Section under Section 215 of The Town and Country Planning Act 1990 (the Act).
- 1.2 This section of the Act was initially intended to tackle land that was detrimentally affecting the “amenity” of the area. Amenity is not a defined term under planning legislation, but was clearly intended to tackle gardens or land that was seriously overgrown, and was therefore affecting the attractiveness of the area in general.
- 1.3 There are increasing incidents of premises being left in an untidy condition, mainly arising from an increasingly elderly population. As with all enforcement action, the Council would be expected to take a proportionate approach in tackling such issues, and in some cases using direct works powers to resolve situations may not be considered appropriate. Section 215 works often involves removal of overgrown vegetation etc, and once removed will return over time potentially leading to further Section 215 action.
- 1.4 At this stage, the costs involved in Section 215 powers have been met from the existing Planning Services’ budget. However, should the situation further deteriorate, or the demands for action to be taken increase, consideration will need to be given as to how increased service requirements will be resourced.

2 Background

- 2.1 Although essentially intended to tackle gardens or land, action has been successfully taken in respect of buildings that have become in such bad condition that they fall within the definition of detrimentally affecting the amenity of the area, and are thereby capable of action being taken under Section 215.
- 2.2 Procedurally, on receipt of a complaint or information received in respect of land or buildings, a site inspection will be undertaken by planning enforcement officers. The situation will be noted, with a number of photographs taken. Officers will then meet and consider the situation, and determine if it would justify action being taken under Section 215.
- 2.3 Decisions on these cases need to be carefully handled as the perception of the effect of overgrown land upon the “amenity” of an area is necessarily subjective in nature, and may involve persons with an unusual or eccentric lifestyle.
- 2.4 Where the complaint was received from a Councillor, he/she would be kept informed of progress, and consulted on a decision on the way forward, as with any other complainant.
- 2.5 Where enforcement action is considered to be appropriate, the enforcement case officer will then undertake an HM Land Registry search to identify the freehold owner of the land, and will send a first letter advising the owner that the situation would justify the service of a notice under Section 215.
- 2.6 The owner will be requested to improve the condition of the land or building over a timescale varying from one month up to possibly six months (if a building is involved) depending on the extent of the work required.
- 2.7 If no agreement or response is received to this first letter, a notice under Section 215 will be prepared and served. This puts the expectations of the work required on a formal and legally-enforceable basis.
- 2.8 The notice will identify a set timescale for the work specified in the notice to be completed. Failure to comply with a valid notice (which does carry appeal procedures) is a criminal offence, prosecutable in the Magistrates Court.
- 2.9 If normal procedures are followed and the works required under the notice are not carried out, evidence would be sent to the Legal Team requesting the matter be taken before the Magistrates Court.
- 2.10 Depending on the outcome of the court action, and if appropriate, the land or building owners will be allowed a short period of time to comply with the requirements of the notice. Failure to comply with the notice after this extended period would bring a second Magistrates court action.

3 Issues and Proposals

Residential Properties

- 3.1 As identified later on in this report, many cases are now coming to light where the owners of properties are old, ill, or infirm, such that they are not able to carry out the required work. The reputation of the Council would be tarnished if such persons were seen to be prosecuted by the Council for the criminal offence of not maintaining their gardens.
- 3.2 In extreme cases, the Council does have powers under the Act to undertake the required work, charging the costs of so doing to the land/building owner via a charge against the land or property involved (using Direct Work powers under Section 219 of the Act). Repayment of such charges may be problematic if, for example the value of the land/property concerned has fallen into a negative equity situation. In such cases, the Council's charge against the land/property will not be a first charge, and may not therefore ever be repaid. The possible ramifications of the Council taking this action are examined later on in this report.
- 3.3 Alternatively, there is the possibility of undertaking work required under the notice via the ACT Prison Scheme, where the person involved is elderly, infirm, receives care assistance, has limited money, and is facing eviction (eg possibly homeless) due to the offence. This is, however, a community service, and hence is not available to resolve matters where able-bodied residents are not prepared to undertake the work themselves. Essentially appropriate prisoners are allowed to undertake the work required under careful supervision. Agreement for prisoners to undertake work under this scheme must first be obtained from the land/property owner.
- 3.4 It is important to be clear that, in order for the work to be carried out under Section 219 of the Act as referred to above, the Council would have to specify in each case that the ACT Prison Scheme is undertaking the work on behalf of the Council, and so is equivalent to the Council undertaking the work under Section 219 of the Act, as there is no legislative right under the Act to employ such persons to carry out such works. This raises legal concerns about insurance etc, which are examined later on in this report.
- 3.5 It is becoming increasingly obvious that it is the age, infirmity and illness of the property owners, limiting their physical ability to undertake any work to prevent land from becoming overgrown in the first place, that is causing the increase in such cases. Similarly, there is an increase in property being found to be empty, with investigations identifying that the owners have been admitted into a care home, or have passed away leaving no family. The need to investigate is causing problems and delays in dealing with these cases.

- 3.6 In such cases the Council has little alternative but to consider undertaking the required work under Section 219 of the Act. Currently the Council has no budget to undertake any works under a Section 215 Notice. Repayment of any charges incurred undertaking this work is potentially problematic as identified above.
- 3.7 The Council's Legal Team has raised several concerns including possible liabilities, insurance, Human Rights issues, and rights of entry when undertaking direct works action. As the Council would be undertaking work under Section 219 of the Act, there is strictly no need to obtain the consent of owners prior to the Council undertaking the work. However, the legal advice suggests that there may be possible objections from owners and neighbours regarding prisoners employed under the ACT Prison Scheme carrying out work in back gardens on adjacent properties if used formally under Section 219 Direct Works powers.
- 3.8 In terms of the rights of entry on to land and property, Section 219 is silent about what might happen if any damage is caused to land or chattels in the exercise of a right of entry. It is possible that the Council could be liable for compensation to the person suffering the damage if it was considered to be excessive or unreasonable. If, however, the damage is the inevitable result of the taking of action under the Section 215 notice, there would be no liability so far as the Council was concerned.
- 3.9 Furthermore, under Section 219, there is no ongoing responsibility or obligation for any continuing maintenance of land once remedied. Once the work has been completed the case can be closed. However, and inevitably, where the property is empty, or the owners too ill or too infirm to undertake work in subsequent years, a fresh Section 215 notice would need to be served and the process started again at a later date. This is creating a significant ongoing work load.

Commercial Properties

- 3.10 The service does encounter problems with commercial sites - the site at Newington Working Men's club has often been raised as a prime example. A notice under Section 215 was previously served on the owners of this site, and work to improve the appearance of the site was undertaken at the time. However, over the following months, the site became overgrown, again and a second section 215 notice was served. After a number of contacts with the site owners, some work to improve the appearance of the site has been undertaken, although generally the site remains in an untidy condition.
- 3.11 It appears likely that further Section 215 Notices would need to be served every time the site becomes overgrown. In this particular case, however, it should be remembered that this site did have planning permission for substantial residential redevelopment, and a recent request for pre-application advice is currently pending.

Potential Financial Implications

- 3.12 Although it is difficult to judge how many such cases are being dealt with by the Enforcement Team each year, it has been noted that these cases are significantly increasing year-on-year. In 2015, approximately 40 Section 215 cases were investigated by the Team. It is estimated that the costs to undertake direct work action would be in the region of £1,500 to £2,000 per case. Extrapolating these figures, if only five to ten of these cases fell into a situation requiring direct work action, the costs to the Council could amount to £15,000 to £20,000 per year, with no guarantee of full recovery.
- 3.13 At this stage, the costs involved in Section 215 powers have been met from the existing Planning Services' budget. However, should the situation further deteriorate, or the demands for action to be taken increase as highlighted above, consideration will need to be given as to how increased service requirements will be resourced.
- 3.14 Initially the objective will be to meet additional costs from the Planning Services base budget. If costs cannot be contained within this then bids will be made against one off reserve funds to support the activity.

4 Alternative Options

- 4.1 The report includes references to potential means for handling Section 215 cases. This Committee may wish to recommend potential alternative approaches for the Cabinet Member for Planning to consider.

5 Consultation Undertaken or Proposed

- 5.1 This report has been prepared in consultation with the Cabinet Member for Planning. At this stage no further consultation is currently planned.

6 Implications

Issue	Implications
Corporate Plan	S.215 Notices would involve tacking land which is currently having a detrimental impact on local amenity and would therefore contribute towards improving the local environment in accordance with the objective of being a Borough to be proud of.
Financial, Resource and Property	See paragraphs 3.11 and 3.12
Legal and Statutory	See section 3 of main report.

Crime and Disorder	Untidy exterior areas can lead to an area being perceived as being a low priority, and so increase the likelihood of increased environmental crime and emerging anti-social behaviour.
Sustainability	None identified.
Health and Wellbeing	None identified.
Risk Management and Health and Safety	See section 3 of the main report
Equality and Diversity	There is a major issue in relation to untidy properties in the ownership or occupation of some elderly residents. The Council needs to demonstrate that it takes a proportionate approach to handling such issues.

7 Appendices

7.1 None.

8 Background Papers

8.1 None.