

PLANNING ENFORCEMENT REPORT

PLANNING COMMITTEE – 8 NOVEMBER 2021

Report of the Executive Director of Environment and Planning, pursuant to the Scheme of Delegation

Parish:	TERRINGTON ST CLEMENT (ENF REF - 19/00464/UNTIDY)
Purpose of report:	TO UPDATE MEMBERS IN RESPECT OF A CONTINUING BREACH OF PLANNING CONTROL AND TO SEEK A RESOLUTION IN RESPECT OF FURTHER ENFORCEMENT ACTION TO REMEDY THE BREACH OF PLANNING CONTROL
Location:	Land at Marlian House, Church Road, Terrington St John, PE14 7SA
Site owner/occupier:	Miss Joanne Hardy
Summary – That Members of the Planning Committee: a) Note the update in respect of the continuing breach of planning control; b) Grant authority to the Executive Director of Environment and Planning for the implementation and execution of direct action under Section 219 of the Town and Country Planning Act 1990 (as amended) to comply with requirements set out in paragraph 3 of the Section 215 Notice; and	

1.0 INTRODUCTION

1.1 This report is brought to the Planning Committee so that Members can note the continuing breach of planning control and for a resolution to remedy the breach of planning control following non-compliance with a Section 215 Notice. I attach a copy of the Section 215 Notice at **Appendix 1**.

2.0 THE LAND

2.1 Marlian House, Church Road, Terrington St John PE14 7SA (“the Land”) is located on the western side of Church Road. A plan identifying the Land can be found attached to the Section 215 Notice at **Appendix 1**.

2.2 The Land is approximately 580 square metres (0.058 hectares) and consists of a vacant dwellinghouse that has not been occupied residentially for a large number of years, set in a large area of overgrown garden land. The dwellinghouse itself (Marlian House) is the northern half of a pair of semi-detached dwellings, with the attached dwelling currently being occupied.

2.3 It is apparent that the property has not been maintained for a long period of time, which has resulted in the land becoming overgrown with vegetation.

2.4 5 photographs showing the condition of the Land are attached at **Appendix 2**.

3.0 RELEVANT LEGISLATION

3.1 The following legislations are relevant:

Town and Country Planning Act 1990 (as amended) (“the 1990 Act”),
Sections 215 and 219

4.0 PLANNING CONSIDERATIONS

4.1 The following planning considerations relevant:

4.1.1 Planning Practice Guidance – Ensuring effective enforcement dated 06
March 2014

4.1.2 Town and Country Planning Act 1990 Section 215: best practice
guidance published 31 January 2005

5.0 THE BREACH OF PLANNING CONTROL

5.1 The breach of planning control is set out in paragraph 1 of the Section 215
Notice as:

*‘This notice is served by the Council under section 215 of the Act because it
appears to them that the amenity of a part of their area is adversely affected
by the condition of the land described below.’*

6.0 ENFORCEMENT HISTORY

6.1 The site was brought to the attention of the Planning Enforcement Team in
August 2019 by a member of the planning department.

6.2 Records show that a notice pursuant to section 215 TCPA was previously
served in May 2012 (10/00579/UNTIDY) due to the condition of the property
at that time.

That Notice was eventually complied with and the land cleared.

6.3 In relation to the current file, contact was made with the landowner requesting
works were undertaken to remedy the harm caused by the condition of the
property. The owner was contacted by telephone and letter on numerous
occasions but no remedial work was carried out.

6.4 As these requests were not actioned the section 215 notice (Appendix 1) was
served.

6.5 The land is registered with Land Registry NK129108, with the proprietor
shown as, Joanne Hardy.

- 6.6 The Section 215 Notice required the following works to be undertaken:
- (a) Remove all overgrown vegetation from the front and side garden areas
 - (b) Remove all climbing vegetation from the front and side elevations of the house
 - (c) Remove all overgrown vegetation from the front fence bordering the road

The Notice was served on 1st September 2020, came into effect on 19th October 2020 and provided a period of three calendar months to comply with its requirements.

- 6.7 Please refer to appendix 1 for a copy of the Section 215 Notice.
- 6.8 Although the notice was served during the Covid-19 pandemic which undoubtedly caused members of the public difficulties with travelling and appointing contractors etc, it is the council's opinion that that issues were not insurmountable and sufficient time was provided to arrange for the works to be carried out.

7.0 OPTIONS FOR REMEDYING THE BREACH OF PLANNING CONTROL

7.1 Option 1 – Prosecution

- 7.2 Section 216(2) of the 1990 Act provides that if any owner or occupier of land on whom a notice was served fails to take steps required by the notice within the period specified in it for compliance with it, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- 7.3 This option has already been pursued and on 28th July 2020 in the King's Lynn Magistrates Court Miss Hardy, was in her absence successfully convicted of failing to comply with the requirements of the section 215 Notice. A fine, costs and victim surcharge were imposed by the Magistrates Court.

- 7.4 Following the conviction a letter was sent to Miss Hardy requiring her to now take urgent action to remedy the breach by complying with the Notice. To date no work has been carried out.

7.5 Option 2 – Injunction Relief

- 7.6 Section 187B(1) of the 1990 Act provides that where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the high court or the county court for an injunction, whether or not they have exercised

or are proposing to exercise any of their other powers under Part VII (Enforcement) of the 1990 Act.

- 7.7 Whilst an application may be made to the court in respect of the above breach of planning control, the court would need to be satisfied that the granting of an order to force compliance will achieve the required aim and that intervention is as a last resort. This is because the court would also need to be satisfied that if Miss Hardy fails to obey the order they would be prepared to commit her to prison for contempt of court.
- 7.8 In this particular case it is suspected the Council will have some difficulty in persuading the court to grant injunctive relief. This is because Miss Hardy might recite the difficulties with travelling and appointing contractors etc, and an order and injunctive relief cannot at this time be said to be the only option or last resort to remedying the breach of planning control.
- 7.9 Members would therefore have to commit to costs involved with obtaining and enforcing the order, with limited realistic prospects of success. This option is therefore not considered to be the most appropriate and proportionate way forward.

7.10 Option 3 – Direct Action (Section 219 of the 1990 TCPA)

- 7.11 Section 219(1) of the Act provides that if, within the period specified in a notice under section 215 in accordance with subsection (2) of that section, or within such extended period as the local planning authority who served the notice may allow, any steps required by the notice to be taken have not been taken, the local planning authority who served the notice may:

(a) enter the land and take those steps, and

(b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

- 7.12 Enforcement action taken must be appropriate and proportionate to any risks posed and commensurate to the breach of planning control. Some incidents or breaches of regulatory requirements have the potential to cause serious risks to the public, environmental damage or loss of public or residential amenity. One of the Council's responsibilities is to protect the public and prevent harm to the environment from occurring or continuing.
- 7.13 The condition of the Land is causing an adverse impact on the amenity, and due to the fact that the property is not being maintained further neglect will ensue. It is considered that the best option for remedying the continuing breach of planning control is to take direct action.
- 7.14 Paragraph 3 of the Section 215 Notice requires the following works to be undertaken:

- (a) Remove all overgrown vegetation from the front and side garden areas
- (b) Remove all climbing vegetation from the front and side elevations of the house
- (c) Remove all overgrown vegetation from the front fence bordering the road

7.15 Based on the contents of this report and in this particular case, it is considered that direct action pursuant to Section 219 of the Act is justifiable, reasonable, appropriate, proportionate and necessary and the best option open to Members to remedy the breach of planning control, to protect the public, amenity and prevent harm to the environment from occurring or continuing.

8.0 COST IMPLICATIONS

8.1 For information two quotations have been received from contractors to carry out the works.

- £3100.00 + VAT
- £2500.00 + VAT

As the quotations are less than £5000.00 the Council's Contract Standing Orders Policy does not require more to be sought in this instance.

8.2 From the council's point of view, the costs of taking direct action are recoverable, and a charge can be placed on the land. It is however also relevant for the landowner as the Council should demonstrate that the costs incurred are reasonable and justifiable. In this case it is considered to be the case, based on the two quotes above.

9.0 THE HUMAN RIGHTS ACT AND THE EQUALITY ACT

9.1 The Council has a duty to consider the landowner's rights under the Human Rights Act (HRA), in particular Article 8 and Article 1 of the first protocol to the Convention on Human Rights, which state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property.

9.2 However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In this case it is considered that the wider adverse impact due to the condition of the land outweighs the landowner's right under the HRA.

9.3 The Council must also have due regard to the provisions of the Public Sector Equality Duty (PSED) contained in the Equality Act 2010. Amongst other things, this requires consideration to be given to the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality

of opportunity and foster good relations between people who share protected characteristic and people who do not share it.

- 9.4 It is not known that the landowner falls within one of the protected characteristics and moreover it does not follow from the PSED that formal enforcement action should not be taken. Given the adverse impact the condition of the land is having on the amenity, it is not considered that the requirement to have due regard to meet the needs of people with protected characteristics is of sufficient weight in this instance to justify taking no action.

10.0 RECOMMENDATION

10.1 That Members of the Planning Committee:

- a) Note the update in respect of the continuing breach of planning control;**
- b) Grant authority to the Executive Director of Environment and Planning for the implementation and execution of direct action under Section 219 of the Town and Country Planning Act 1990 (as amended) to comply with requirements set out in paragraph 3 of the Section 215 Notice.**