

PLANNING ENFORCEMENT REPORT

PLANNING COMMITTEE

20 July 2022

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

Parish:	SALTERS LODGE (ENF REF 21/00280/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 2 Kemps Close Salters Lode PE38 0BB
Summary – That Members of the Planning Committee: a) Note the update in respect of the continuing breach of planning control; and 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.	

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 2 Kemps Close Salters Lode (“the Land”) is located on the western side of the A1122 in the centre of the village. A plan identifying the Land can be found attached to the Section 215 Notice at **Appendix 1**.

2.2 The Land consists of a privately owned dwellinghouse that has not been occupied residentially for a number of years, set in an area of overgrown garden land. The dwellinghouse itself is the southern half of a pair of semi-detached dwellings, with the attached dwelling owned by Freebridge Housing and currently 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 Photographs showing the condition of the Land are attached at **Appendix 2**.

3.0 RELEVANT LEGISLATION

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

4.0 PLANNING CONSIDERATIONS

- 4.1 The following planning guidance is considered to be particularly relevant.
- 4.2 National Planning Policy Framework (NPPF)
- 4.3 Planning Practice Guidance – Ensuring effective enforcement dated 06 March 2014
- 4.4 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 June 2021.
- 6.2 The land is registered with Land Registry under NK129108.
- 6.3 A site visit was carried out by a Planning Enforcement Officer in July 2021. It was noted that the land was badly overgrown with vegetation and that a considerable amount of rubbish was scattered around. The house had clearly not been lived in for a number of years and was in a state of disrepair. The Land is in the middle of the village and has a serious detrimental affect upon the amenity of neighbours and passers-by.
- 6.4 Enquiries were carried out in an attempt to trace the owner but with no success. Consequently, a Section 215 Notice was issued on 15 September 2021, with the Notice being prominently displayed on the Land.
- 6.5 The display of the Notice resulted in the owner contacting the council in October 2021. The contents of the Notice were fully explained to him together with the relevant compliance period. The owner then agreed to carry out the work.

- 6.6 The Section 215 Notice required the following works to be undertaken:
- (a) Cut down and remove all overgrown trees, shrubs and vegetation from the front, side and rear gardens
 - (b) Remove all tyres, building materials, glass, and other rubbish from the Land
 - (c) Cut down and remove all ivy, brambles and other vegetation growing up the walls, doors and windows
 - (d) Cut back all overgrown vegetation encroaching onto the public footpath at the front of the property

The Notice was served on 15 September 2021, came into effect on 18 October 2021, and provided a period of 30 days to comply with its requirements.

- 6.7 I refer you to appendix 1 for a copy of the Section 215 Notice.
- 6.8 Regular contact was kept with the owner throughout the winter. Some works were carried out by him but another site visit in May 2022 established that the Notice had not been complied with in full, and that a substantial amount of overgrown vegetation and rubbish remained. It also appeared that the Land had been subjected to recent fly tipping in addition to the rubbish already there.

8.0 OPTIONS FOR REMEDYING THE BREACH OF PLANNING CONTROL

8.1 Option 1 – Prosecution

- 8.2 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.

- 8.3 This option has been considered by the council. However, it is considered that in this case a prosecution is unlikely to remedy the situation. Proceedings would take months to reach court but the visual dis-amenity will remain and only get worse. In this case it is considered that more immediate action is required.

8.4 Option 2 – Injunction

- 8.5 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.

8.6 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 the owner fails to obey the order they would be prepared to commit them to prison for contempt of court.

8.7 In this particular case it is suspected the Council will have some difficulty in persuading the court to grant injunctive relief. This is because the owner is likely to recite personal difficulties, 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.

8.8 Members would therefore have to commit to costs involved with obtaining and enforcing the order, with little realistic prospects of success. This option is therefore not considered to be the most appropriate and proportionate as an application has no realistic prospect of success.

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

8.10 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.

8.11 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.

8.12 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.

8.13 Paragraph 3 of the Section 215 Notice requires the following works to be undertaken:

- (a) Cut down and remove all overgrown trees, shrubs and vegetation from the front, side and rear gardens
 - (b) Remove all tyres, building materials, glass, and other rubbish from the Land
 - (c) Cut down and remove all ivy, brambles and other vegetation growing up the walls, doors and windows
 - (d) Cut back all overgrown vegetation encroaching onto the public footpath at the front of the property
- 8.15 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 only option open to Member to remedy the breach of planning control in the short-medium term, to protect the public, amenity and prevent harm to the environment from occurring or continuing.
- 8.16 Care will need to be taken when removing the vegetation that nesting birds are not affected, and that the work is carried out in accordance with other relevant legislation.

9.0 COST IMPLICATIONS

- 9.1 An assessment of the costs to comply with the requirements of the Section 215 Notice are expected to be less than £5,000, considerably less than the value of the property. The landscaping costs to comply with the Section 215 notice have been quoted as £2,700 plus VAT, with any remaining costs related to the removal of the rubbish.
- 9.2 From the council's point of view, the costs of taking direct action are somewhat irrelevant as they are recoverable. It is however relevant for the landowner, insofar as the Council would have to demonstrate that the costs incurred are reasonable and justifiable. In this respect, it is considered that the costs are reasonable and proportionate. Also, as with all other direct action cases, the council scrutinise the costs to ensure they are justifiable.

10.0 THE HUMAN RIGHTS ACT AND THE EQUALITY ACT

- 10.1 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.
- 10.2 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. On balance, it is

considered that the wider adverse impact due to the condition of the land outweighs the landowner's right under the HRA.

- 10.3 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 characteristics and people who do not share it.
- 10.4 It is not known if 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.
- 10.5 On balance, it is considered justifiable to remedy the ongoing breach of planning control by the taking of further enforcement action using one of the above options.

11.0 RECOMMENDATION

11.1 That Members of the Planning Committee:

- a) **Note the update in respect of the continuing breach of planning control; and**
- 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.**