

PLANNING ENFORCEMENT REPORT

PLANNING COMMITTEE

01 JUNE 2015

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

Parish:	KING'S LYNN
Purpose of report:	TO UPDATE MEMBERS IN RESPECT OF A CONTINUING BREACH OF PLANNING CONTROL AND TO SEEK A RESOLUTION IN RESPECT OF WHAT FURTHER ENFORCEMENT ACTION IS REQUIRED, IF ANY, TO REMEDY THE BREACH OF PLANNING CONTROL
Location:	Land at Garwood Close, King's Lynn, Norfolk
Site owner/occupier:	Ms Emma Louise Walker
<p>Summary – That Members of the Planning Committee:</p> <ul style="list-style-type: none"> 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 The wall is situated on land the east side of Garwood Close, King's Lynn, Norfolk ("the Land"). The wall forms the boundary treatment of the carpark area. Each owner within the immediate area has at least one parking bay allocated and registered with the property. A plan identifying the Land can be found attached to the Section 215 Notice at appendix 1.
- 2.3 It is apparent that the wall has been damaged for a considerable period of time and there has been no attempt to rebuild, repair or maintain it. At the request of the Planning Enforcement Team a section of the wall under

different ownership has been rebuilt. This is the remaining area of wall to be repaired.

- 2.4 I attach a photograph showing the condition of the wall at **Appendix 2**.

3.0 RELEVANT LEGISLATION

- 3.1 The following legislation is relevant:

- 3.1.1 Town and Country Planning Act 1990 (as amended) (“the 1990 Act”), Section 215 and 219
- 3.1.2 Law of Property Act 1925 (“the 1925 Act”), Section 103
- 3.1.3 Public Health Act 1936 (“the 1936 Act”), Section 276, 289 and 294

4.0 PLANNING CONSIDERATIONS

- 4.1 The following planning considerations are relevant:

- 4.1.1 National Planning Policy Framework
- 4.1.2 Planning Practice Guidance – Ensuring effective enforcement
- 4.1.3 Town and Country Planning Act 1990 Section 215: best practice guidance

5.0 PLANNING HISTORY

- 5.1 There is no specific planning history relevant to this matter.

6.0 THE BREACH OF PLANNING CONTROL

- 6.1 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.’

7.0 ENFORCEMENT HISTORY

- 7.1 The concerns of local residents about the condition of the wall and the impact on the character and appearance of the street were brought to the attention of the Planning Enforcement Team in September 2012.
- 7.2 Negotiations with two landowners resulted in partial compliance, i.e. a section of the wall has been rebuilt. However, Ms Walker, the owner of the wall that remains in a poor condition advised the Council that she is of ill health and with little financial means. To avoid the need to take formal enforcement action Ms Walker agreed to save the money over a considerable period of time and then rebuild the wall.

7.3 However, at the end of this informal compliance period Ms Walker was unable to save and rebuild and make good the wall. Authority was therefore granted and a formal notice under section 215 of the 1990 Act was served.

7.4 The Section 215 Notice required the following step to be taken:

a. Rebuild and make good the wall using material to match the existing.

7.5 The Notice was served on 01 October 2014, came into effect on 03 November 2014 and provided a one calendar month compliance period.

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, she shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

8.3 It is considered that this is not the most proportionate, appropriate and reasonable option. The court has no power to order compliance with the terms of the notice and Ms Walker's financial means will be taken into consideration when considering what sentence to impose. Under the circumstances it is therefore more likely than not that the court would sentence Ms Walker by way of a conditional discharge and only award partial costs, if any.

8.4 It is also considered that court action is unlikely to persuade Ms Walker to comply with the notice.

8.5 Option 2 – Injunction

8.6 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.

8.7 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 Ms Walker fails to obey the order they would be prepared to commit her to prison for contempt of court.

8.9 In this particular case it is considered that the Council will have some difficulty in persuading the court to grant injunctive relief, particularly as it is not the

only options open to them, nor is it the last report. Also, the court may consider that injunctive relief is a draconian and disproportionate tool under the circumstances and one that would put Ms Walker at an immediate risk of contempt given her limited financial means.

- 8.10 Members would therefore have to commit to the costs involved with obtaining and enforcing the order, with no realistic prospects of success. This option is therefore not considered to be the most appropriate and proportionate action to take.

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

- 8.12 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.

- 8.13 Enforcement action taken must be proportionate, necessary, reasonable, appropriate and justifiable, 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.

- 8.14 The condition of the Land is causing an adverse impact on the amenity due to the fact that the wall has not been rebuilt and made good, nor is it being properly maintained to prevent further deterioration. In its current state it is also at increased risk of further vandalism, which would potentially affect the work already undertaken. It is considered that the best option for remedying the continuing breach of planning control is to take direct action.

- 8.15 Paragraph 3 of the Section 215 Notice requires the following step to be taken:

a. Rebuild and make good the wall using material to match the existing.

- 8.16 In this particular case, it is considered that direct action pursuant to Section 219 of the Act is justifiably, 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.

8.17 Option 4 – Take No Further Action

- 8.18 The Section 215 Notice will remain extant indefinitely and therefore a decision to take formal enforcement action could be reconsidered at a later date. However Members must consider that whilst the LPA has a general discretion to take enforcement action, the continued failure to resolve the breach of planning control may affect public perception and confidence in the planning system. In addition, owners of other parts of the wall have rebuilt their sections, and there is an issue of fairness and equality in dealing with the case. Therefore, in this particular case, taking no further action is not considered the most appropriate and proportionate response to the continued breach of planning control.

8.19 Option 5 – Discretionary Extension of Compliance Period

- 8.20 Ms Walker has already been afforded an extended period of time to save the funds and carry out the works specified in the notice. This approach may therefore incorrectly be viewed as a negation of the notice. Moreover, there has been no indication from Ms Walker that extending the compliance period will result in compliance with the notice. In this particular case, extending the compliance period on the notice is not considered the best option as it is likely to result in a delay in the need to take further enforcement action.

9.0 COST IMPLICATIONS

- 9.1 The cost to rebuild and make good the wall is expected to be circa £1,000.
- 9.2 Members should note that the costs of taking direct action, including the establishment costs are recoverable. Therefore the costs associated with the taking of direct action must be reasonable and justifiable. In this respect, direct action will be carried out in accordance with the law, best practice and guidance, and the Council's own procedures.

10.0 THE HUMAN RIGHTS ACT AND THE EQUALITY ACT

- 10.1 The Council has a duty to consider Ms Walker'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. Therefore, 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 characteristic and people who do not share it.

- 10.4 It is not known whether Ms Walker falls within one of the protected characteristics. However, even if she did it does not follow from the PSED that formal enforcement action should not be taken. The adverse impact the condition of the wall is having on the amenity is demonstrable and therefore 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 and proportionate to remedy the ongoing breach of planning control by the taking of further enforcement action using the above options.

11.0 RECOMMENDATION

10.1 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.**