

Decision Maker: Plans 4 Sub-Committee

Date: 17 June 2010

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **DIRECT ACTION UNDER S219 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) IN RESPECT OF 14 BROOMWOOD ROAD, ORPINGTON, KENT BR5 2JH**

Contact Officer: Gloria Waya, Senior Lawyer, Planning Litigation and Licensing
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Chief Officer: Mark Bowen - Director of Legal, Democratic and Customer Services

Ward: Cray Valley West

1. Reason for report

The purpose of the report is to notify Members of the decision made by the Portfolio Holder for Renewal and Recreation at a special meeting on 31 March 2010, to take direct action in this case, and to obtain Members agreement to the proposed action.

2. **RECOMMENDATION(S)**

Members are requested to agree to direct action by the Council under S219 of the TCPA 1990 in order to undertake the steps required by the notice, namely:

Remove all overgrown vegetation; old vehicles; car tyres; vehicle panels; corrugated roofing plastic drums; oil drums, plastics, rotting timber; building blocks; broken manhole covers; sanitary ware; cooker; concrete gas cylinders; corrugated plastics/iron sheets; pipes; car batteries and other miscellaneous rubbish.

Leave the land in a clean and tidy condition.

Also to recover the reasonable costs incurred as a result of the steps taken to comply with the notice, from the Owner or failing which, attach a charge to the land.

Corporate Policy

1. Policy Status: Existing policy.
 2. BBB Priority: Quality Environment.
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Financial

1. Cost of proposal: Estimated cost Agreed by Portfolio Holder
 2. Ongoing costs: Non-recurring cost.
 3. Budget head/performance centre: N/A
 4. Total current budget for this head: £N/A
 5. Source of funding: Costs to be recovered from owner or charge attached to the land
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Staff

1. Number of staff (current and additional): 2 Planning, 1 legal plus contractors staff
 2. If from existing staff resources, number of staff hours: 35 hours
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Legal

1. Legal Requirement: Statutory requirement.
 2. Call-in: Call-in is applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): The recommendation will allow the Council to rectify the breach of planning control.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No.
2. Summary of Ward Councillors comments: Will be reported to Ward Councillors

3. COMMENTARY

The enforcement history of this site can be summarised as follows:

- 3.1 The site is a semi detached dwelling house in a residential area. The land is unregistered and at the time of writing enquires are being made to ascertain whether there are any charges registered against the land. The owner does not reside at the property and there is evidence to suggest the property has been unoccupied for at least 15 years.
- 3.2 Following various complaints concerning the condition of the site a visit was carried out by one of the Council's planning enforcement officers on 8th June 2009. The front of the house was boarded at ground level and curtains were drawn across the first floor windows. Along the front of the house were stacks of building materials, a pile of full bin liners and a stack of other materials encased in roofing felt. The rear garden was shown to have heavy growth of vegetation, stacks of old tyres, vehicle body panels, dilapidated corrugated roofing including asbestos roofing, various plastics including large blue plastic drums and timber in various stages of decay.
- 3.3 Despite a number of requests to clear the site, the owner refused to do so. As a result authority was given to take enforcement action against the owner. On 4th September 2009 an s215 TCPA notice was served on the owner which (as per paragraph 2 above) required him to clear the site. The notice took effect on 5th October 2009 and required compliance by 2nd November 2009.
- 3.4 The owner refused to clear the site on the grounds that he has an established use certificate (granted on appeal on 22nd March 1985) to store building materials on the site. The certificate states:-

“Use for the storage for re-sale of building materials, machinery cars and vans for repair and/or dismantling such items, including welding, all such activity being on such a limited scale as to cause no material inconvenience to nearby residents due to noise, vibration, smell, fumes smoke, soot, ash, dust or grit: i.e. limited to light industrial use”

Although this is the case, it has no relevance here. The items on the site can clearly be distinguished from what is covered by the certificate. Further there is no justification to leave the site in an untidy condition.

- 3.5 The owner failed to comply with the notice within the required period. As a result on 26th January 2010, the Council commenced prosecution proceedings against him. The owner was subsequently prosecuted under S216 (2) of the TCPA on 17th February 2010 and ordered to pay a fine in the sum of £500 plus costs.
- 3.6 The condition of the site has deteriorated further and despite this factor the owner has still not complied with the notice in clear breach of planning control. Planning and Environmental Health have been heavily involved in this case, which has generated a number of complaints from local residents.

4. POLICY IMPLICATIONS

- 4.1 The adopted UDP contains a number of objectives related to the protection and improvement of the built environment and promotion of environmental quality. Policy BE1 of the UDP relates to the design of new development in general and requires a high standard of design and layout. The use of the site for long-term storage of a diverse range of items materially detracts from the

character and appearance and of the surrounding area. The nature of the use creates an overall sense of decay and neglect which has an adverse effect on the amenities of adjoining residents.

5. FINANCIAL IMPLICATIONS

The Portfolio Holder has agreed the financial implications.

6. LEGAL IMPLICATIONS

Section 219 (1) of the TCPA states 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

In the event that the Council is unable to recover from the owner the reasonable expenses incurred for taking the steps required by the Notice, the Council can attach a charge to the land, thus ensuring full cost recovery and base rate interest on sale. Expenses recoverable under S219 of the TCPA constitutes an automatic charge and is therefore binding on successive owners of the land. The charge takes effect as from the date of the completion by the Council of the steps required to be taken by the notice.

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4. FINANCIAL IMPLICATIONS

4.1 The estimated cost of the proposed works under S219 of the TCPA 1990 will be £30k. Written quotes will be sought in accordance with Financial Regulations to ensure value for money.

4.2 Officers will endeavour to recover from the owner of the land all expenses reasonably incurred by the Council for carrying out the works, including registering a charge against the land if necessary.

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Non-Applicable Sections:	PERSONNEL IMPLICATIONS
Background Documents: (Access via Contact Officer)	Enforcement File – Ref: 09/00366/UNTIDY