

REPORT TO: Environment and Urban Renewal Policy
and Performance Board

DATE: 11th September 2013

REPORTING OFFICER: Strategic Director - Policy and
Resources

PORTFOLIO: Physical Environment

SUBJECT: Use of Section 215 Notices under the Town
and Country Planning Act 1990

WARDS: All

1.0 PURPOSE OF THE REPORT

- 1.1 Powers are available under Section 215 of the Town and Country Planning Act 1990 to require the owner and occupier of land which the Authority considers is in such a condition as to adversely affect the amenity of the area to take steps to remedy that adverse condition. This takes the form of a formal Section 215 Notice and 28 days notice has to be given. Failure to comply with such a notice is a criminal offence, and the Act also makes provision for the Council to carry out works in default and recover its costs from the landowner.
- 1.2 The Authority has not used these powers fully in recent years, but the S215 Notice represents an effective means of requiring owners and occupiers to maintain their land in a reasonable condition and there are cases where it would be appropriate to apply them. The Authority must always be prepared to follow up the notice with Court action and potentially actually undertake the works required. In this way, the service of the Notice will be viewed as a credible threat to achieve improvements.
- 1.3 The purpose of this report is to appraise Members of these powers in order that they may be aware of the purposes and implications should they request these powers be exercised.

2.0 RECOMMENDATION: That the Board note the powers available to the Council under Section 215 of the Town and Country Planning Act together with the potential financial and resource implications of applying them.

3.0 SUPPORTING INFORMATION

Section 215 of the Town and Country Planning Act 1990

- 3.1 The use of powers under S.215 is discretionary and it is up to the Council to decide whether or not it is appropriate to take action in a particular case, taking into account local circumstances. Considerations should be given to the condition of the land and buildings, the impact on the surrounding area, and the scope of the powers. In some circumstances, S.215 notices may be used in conjunction with other powers, for example, repair notices in respect of listed buildings or dangerous structure notices.
- 3.2 Where it appears to the Authority that the amenity of any part of the area is adversely affected by the condition of any land it can serve on the owner and occupier of the land a notice which requires steps to be taken to remedy the adverse condition of the land. At least 28 days notice has to be given. If the steps as specified in the notice are not complied with the owner or occupier of the land may be guilty of the offence which carries a fine of up to £1,000.
- 3.3 The person served with the notice has the defence to show either that they are no longer responsible for the land or that the condition of the land is due to some other person.
- 3.4 Section 219 provides the Council with default powers to enter the land and carry out the steps required in the notice (S.215). The Council can also recover any reasonable expenses in doing the work from the owner of the land. This can be achieved by registering a land charge on the property. However it may be a long time before the expenses can be recovered.

Appeal to the Magistrates Court

- 3.4 A person on whom such a notice is served may, before it takes effect, appeal to the Magistrates Court on the following grounds:
 - (a) the condition of the land to which the notice relates does not adversely affect the amenity of the Authority's area;
 - (b) that the condition of the land is the ordinary consequence of implementing a planning provision;
 - (c) that the requirements of the notice are excessive;
 - (d) that the period specified for compliance is too short.
- 3.5 Pending an appeal the notice is suspended.

4.0 POLICY IMPLICATIONS

Use of the Power

- 4.1 The power is available in respect of land which is affecting the amenity of adjacent owners or occupiers. It is typically used for untidy garden land, commercial premises with accumulations of rubbish or other

material, and not unknown to be used for derelict buildings, semi-complete development as well as rundown residential property.

- 4.2 In view of the ground of appeal (b) in 3.4 above it cannot be used where the condition of the land is consequent on the reasonable implementation of a planning permission. For example a scrapyards is bound to have a certain amount of accumulated debris, the standard of maintenance of garden land can reasonably vary and agricultural uses typically include random storage of materials.
- 4.3 It may also not be appropriate to use the notice where the accumulation of material is a breach of planning control. For example if premises were being used for the storage of scrap material without benefit of planning permission, the appropriate course in most cases would be to issue an Enforcement Notice.
- 4.4 The procedure does enable action to be taken to improve the visual amenity of an area. As with a Breach of Condition Notice failure to comply leads directly to prosecution in the Magistrates' Court. However, unlike a Breach of Condition Notice there is a right of appeal to the Magistrates' Court, who could be asked to consider planning issues under appeal ground (a) in 3.4 above.
- 4.5 In default of compliance the Authority has the power to enter the land, carry out works in default and re charge the costs to the owner, as with enforcement notices.
- 4.6 The Section 215 powers are a useful addition to the statutory enforcement powers available to the Authority and there are cases in which they should be used. There are, however, also a number of informal routes which can be taken, involving negotiation with individuals. It has been, and remains, the practice of the Authority to seek to resolve cases firstly through negotiation and informal means. Any increased use of Section 215 powers will not affect the principle of this approach.

5.0 OTHER IMPLICATIONS

Financial Implications

- 5.1 The preparation and service of notices will in be covered by the existing arrangements with the Council's Scheme of Delegation. Any legal costs associated with the preparation of notices or any appeals to the magistrates' court will have to be met. There is no existing budget for this within the Planning service budgets.
- 5.2 The most significant financial implication would be any carrying out of works in default, at least pending recovery of such costs from the person responsible. The Authority would consider such action on a

case by case basis and take into account the financial implications at that time. Again, there are no existing identified budgets for this work.

- 5.3 There are resource implications in terms of officer time associated with the serving of any S215 Notices and any subsequent actions resulting from them and these have to compete with other Planning and Legal Services priorities.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

6.1 Children and Young People in Halton

None identified

6.2 Employment, Learning and Skills in Halton

None identified

6.3 A Healthy Halton

None identified

6.4 A Safer Halton

Improvement of untidy sites can improve perceptions of safety within an area.

6.5 Halton's Environment and Regeneration

Section 215 notices can be used to improve the appearance of an area and can help support regeneration.

7.0 RISK ANALYSIS

- 7.1 The procedure is useful to secure improvements in visual amenity.
- 7.2 Breach of the notice immediately enables the Authority to prosecute. In that sense the notices provide a rapid enforcement mechanism for unsightly or untidy land. There are powers for the Authority to carry out works in default.
- 7.3 There is, however, a right of appeal for the person served to challenge the effect on amenity and therefore such issues may have to be argued before Magistrates.

8.0 EQUALITY AND DIVERSITY ISSUES

None identified

9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document**Place of Inspection****Contact Officer**

Town and Country Planning Act 1990 Section 215. Best Practice Guide. Office of the Deputy Prime Minister	Municipal Building	Tim Gibbs
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