

ENFORCEMENT COMMITTEE REPORT

ENFORCEMENT REFERENCE:

18/00380/S215



THE SITE

76 Leighton Road, Upper Weston, Bath, BA1 4NG

THE ISSUE

Failure to comply with a Notice under Section 215 of the Town and Country Planning Act 1990 requiring the proper maintenance of land on land at 76 Leighton Road, Upper Weston, Bath, BA1 4NG (the “Land”).

RECOMMENDATION

The Planning Committee is asked to authorise the carrying out of works in default (including the recovery of its costs from the owner) under the powers conferred by Section 219 of the Town and Country Planning Act 1990 in respect of the failure to comply with the requirements of the Section 215 Notice served on the Land.

The Section 215 Notice (copy at appendix A) required both works to clear the front garden and works to maintain the garage door by stripping and repainting the door and replacing the fascia board. Upon recent inspection it was noted that the garage door is rotten and unlikely to be repaired to satisfy the terms of the Notice. As replacement of the garage door would be beyond the scope of the Notice, in execution of the terms of the Notice, Officers intend to carry out default works to the garden initially and will review whether default works to the garage door are possible.

RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

The works in default will have a cost implication to the Planning Department however we have obtained a quote from the Council's Parks Team who are able to execute the requirements of the Notice. This will be paid for via an internal transfer and so there will be no net external cost to the Council. Any costs incurred executing the requirements of the Notice which are not paid by the owner will form a local land charge on the Land and are recoverable together with any accrued interest upon sale of the Land.

The works will require supervision by a member of the Planning Enforcement Team however this is within the scope and remit of the job.

STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

The Council as the Local Planning Authority in issuing the notice under Section 215 considered that the amenity of a part of its area was adversely affected by the condition of the Land.

The Council has discretion whether or not to take further action if the Section 215 notice has not been complied with.

In deciding whether or not to take further action, the Council must pay due regard to the Human Rights Act and it will also need to have regard to its Equality Act duties.

THE REPORT

SITE DESCRIPTION

76 Leighton Road is a detached 3 bed dwelling situated above the highway and set back behind a terraced front garden. To the front of the site is a garage situated at road level.

The wider area is characterised by c.1950s detached dwellings forming a residential suburb to Bath.

The front garden is significantly overgrown with brambles, pampas grass and a mature tree. The vegetation during the summer months encroaches both neighbouring properties and the tree is overhanging the neighbour's access path.

BACKGROUND AND RELEVANT HISTORY

The Council first received complaints about the state of the land in July 2008. On investigation it was established that the property was vacant however the owner agreed to maintain the land and tidy the site. This was done and the case was closed.

In 2012 the Council received further reports concerning the condition of the land. The matter was investigated and the owner advised that failure to maintain the land could result in the issuing of a Notice under S.215.

In 2013 the owner took steps to again clear the land and sometime thereafter one of the two mature trees on site was removed.

In September 2018 the Council received a new complaint regarding the state of the land. On inspection it was noted that the windowsill masonry was falling onto a neighbouring property, brambles were encroaching both adjoining sites and the garden was detracting from the overall appearance of the streetscene.

The officer investigating the matter spoke to local residents who advised that whilst the owner previously attended site periodically to tidy the land, they had not visited for some time. It was also noted that there was a significant accumulation of post in the letterbox suggesting the property may be abandoned.

In October 2018 Officers wrote to the property owner at both the site address and also

the last know residential address. The letter was signed for as being received by the owner but went unanswered.

A further site visit was conducted in October 2018 to hand deliver a letter concerning the state of the property and advising that the Council may need to consider issuing a Notice under S.215 to require the proper maintenance of the land. This letter went unanswered.

In April 2019 the Council received complaints of rats at the site due to the condition of the land.

In May 2019 the Council issued a formal Notice under S.215 requiring the removal of all vegetation of the site, the re-seeding of the front garden to lawn, the regular maintenance of the land along with repairs to the garage door. The Notice was not appealed.

In November 2019 Officers re-visited the site and noted the condition of the site remained unchanged albeit some of the vegetation had died back for winter. It was noted that the garage door was beginning to rot.

In December 2019 Officers attended site with a member of the Council's Parks Department to obtain a quote to clear the site as per the requirements of the Notice.

RATIONALE

Section 215 of the Town & Country Planning Act 1990 (the Act) provides a local planning authority with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, notice may be served on the owner requiring that the situation be remedied. These notices set out the steps that need to be taken, and the time within which they must be carried out. The Local Planning Authority (LPA) also has powers under Section 219 to undertake the clean-up works themselves and to recover the costs from the landowner. The use of Section 215 by LPAs is discretionary and it is therefore up to the LPA to decide whether a notice under these provisions would be appropriate in a particular case, taking into account all the local circumstances.

Successful Section 215 action is one of a number of provisions available to the Council for maintaining and improving the quality of the environment, assisting in tackling dereliction and retaining land in productive use.

Section 215 is a relatively straightforward power that can deliver important, tangible and lasting improvements to amenity.

OTHER OPTIONS CONSIDERED

Consideration has been given to the following available options:

PROSECUTION

One option for further enforcement action is prosecution. Officers do not however believe it is in the public interest to prosecute the owners of the property for non-compliance with the Notice. Whilst successful prosecution could result in the owner being convicted and a fine levied, the level of any fine is capped at level 3 (£1000). Prosecution will not directly achieve the objective of bringing the garden back to an acceptable condition, it may motivate the owner to take steps to remedy the breach however as has been demonstrated previously, this issue has been investigated a number of times since 2008 and each time the garden has returned to its present overgrown state.

DO NOTHING

Doing nothing to enforce the Notice may be a valid outcome however this has to be weighed against the material circumstances of the case and the level of harm caused. In this instance the garden has been the subject of numerous complaints over the years and remains an eye-sore in the streetscene. The state of the property detracts from the character of the area and adversely impacts the amenities of all adjoining residents both in terms of its appearance and the encroachment onto adjoining land. Officers do not feel that the “do nothing” option would be appropriate in this instance as the adverse impact on amenity will only continue to worsen.

CONSULTATION

Internal consultation has taken place with the Parks Department who have provided a quote to undertake the works and with the Empty Properties Team who are keen to see this property back into habitable use.

No other consultations have taken place.

HUMAN RIGHTS AND EQUALITIES DUTIES

Article 8 and Article 1 of the first protocol to the Convention on Human Rights state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property. 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, the wider impact of the appearance of the land is considered to overrule the owner's convention rights.

The Council must have regard to its public sector equality duty under section 149 of the Equalities Act. The duty is to have regard to the need (in discharging its functions) to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics are age, disability, gender, reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Officers have had regard to the Council's obligations and consider that the recommendation in this report to execute works in default would not have an adverse impact on any protected characteristic.

The protection of the public interest cannot be achieved by means that are less interfering with the occupants' rights. They are proportionate and necessary in the circumstances and would not, therefore, result in violation of the owner's rights under the European Convention on Human Rights or any other Convention article.