

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

28 July 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 PLANNING ENFORCEMENT SECTION 215 PROTOCOL

Summary

This report seeks approval for the adoption of a Planning Enforcement Section 215 Protocol which is intended to provide a clear and transparent framework in respect of how the Service will decide whether to take action to serve formal notices, in particular how sites will be assessed to establish whether such action is appropriate and proportionate and whether any other powers held by the Council should be called upon as an alternative. This will ensure that Council financial and personnel resources are properly focused given the high number of complaints the enforcement team receive on such matters.

1.1 Introduction

- 1.1.1 Matters relating to planning enforcement were last reported to the Board on 13 November 2019. At that time, officers reported that a key aspect of planning enforcement that causes a high volume of complaints across the Borough relates on untidy sites and powers afforded to the Council as Local Planning Authority under Section 215 of the Town and Country Planning Act 1990 (as amended).
- 1.1.2 Whilst there is mention of the circumstances when it might be appropriate to take action to remedy untidy sites within the adopted Planning Enforcement Plan, a review of cases since its adoption does indicate that complainants do sometimes find it difficult to understand when and how we might look to take such action.
- 1.1.3 Best Practice Guidance on a national level does exist albeit in a dated form (published by the ODPM, January 2005) and initial research indicates the Local Planning Authorities across the country rely on this to provide guidance to their local residents. Clearly, matters have moved on somewhat since publication of this document, particularly since the production of the NPPF and associated PPG. Whilst the published guidance does continue to provide some useful, high level advice on best practice, and this should not necessarily be simply replicated at a local level, it is considered that a Borough specific protocol which sets out plainly

how this Council will respond to complaints would be a beneficial tool to all parties involved in the process.

- 1.1.4 As such, and in order to improve transparency concerning how these cases will be dealt with it, is considered that a further protocol to sit alongside the main Planning Enforcement Plan and Direct Action Protocol would be appropriate. The draft protocol is attached in full at **[Annex 1]**.

1.2 Relevant policies and guidance:

- 1.2.1 The Council's objectives in producing a Section 215 Protocol are consistent with the National Planning Policy Framework (2019) (NPPF).

- 1.2.2 Paragraph 58 of the NPPF relates to the enforcement of planning control and states:

'Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.'

- 1.2.3 The proposed protocol does not conflict with the contents of the Council's wider enforcement policy or with legislation or Government guidance.

1.3 Key themes of the Protocol

- 1.3.1 The protocol sets out in detail what detailed assessments officers will make in establishing whether formal action is necessary and proportionate in light of all the prevailing circumstances of a case. These assessments will be focused on the following criteria:

- Assessment of the condition of buildings;
- Assessment of the condition of land;
- Key features/attributes of wider locality (context);
- Relevant history of the site;
- Whether there are any alternative, more appropriate powers available to the Council; and
- Whether any other contributory or mitigating circumstances exist.

- 1.3.2 In terms of the condition of land and buildings, it is important to recognise that before any formal action should be taken any identified harm arising must be greater than simply an untidy garden or building that neighbours would *prefer* was maintained in a better condition. Similarly, context is everything in this respect

and the circumstances of the site and the nature of the specific surroundings must play a key role in assessing the level of harm arising.

- 1.3.3 Equally, it must be recognised that the Council has other powers available to it that might mean planning enforcement action simply is not the most appropriate route to resolve a situation. The protocol makes these clear and officers will always seek to liaise with colleagues across the Council to ensure the most appropriate powers are utilised in any given case. Most commonly, this liaison will take place with Building Control, Environmental Protection, Licensing and the Community Safety Unit.
- 1.3.4 Similarly, officers will always be mindful that there might be occasions where other contributory factors mean it would simply not be appropriate to take planning enforcement action. Examples of this include where there are issues surrounding our statutory equalities duties or where the health and well-being of individual residents may be interrelated. Where officers believe this may be the case, they will always firstly liaise with the Community Safety Unit to establish a best course of action.
- 1.3.5 Having considered each of those aspects, the protocol advocates the importance of engaging in informal negotiations to seek improvements in the first instance in order to give landowners an opportunity to rectify a situation or explain of any genuine mitigating circumstances we might not be aware of. We will only seek to engage in informal negotiations on occasions where the condition of the land is such that amenity is being adversely affected sufficient to justify further action. The route of informal negotiation is not intended to enquire as to whether those untidy sites which are less than harmful could be tidied up. Rather, it is a precursor to more formal action taking place.
- 1.3.6 **[Annex 2]** of this report sets out some practice examples of investigations in these respects.

1.4 Legal Implications

- 1.4.1 Without an adopted protocol in place setting out when such action might be taken, such decisions may be subject to legal challenge through the Courts. A formal protocol also assists good governance and transparency in decision making.

1.5 Financial and Value for Money Considerations

- 1.5.1 The protocol will ensure that Council resources are properly focused on appropriate cases, which is important given the high volume of complaints received.

1.6 Risk Assessment

- 1.6.1 The adoption of a clear protocol by which decisions will be made will reduce the risk of any challenge as it clearly sets out the process and procedures the Council will adhere to in seeking to take such action.

1.7 Equality Impact Assessment

- 1.7.1 The protocol as drafted will need to make clear that any decisions made will have full regard to the Public Sector Equality Duty as set out at Section 149 of the Equalities Act 2010.

1.8 Recommendations

- 1.8.1 It is recommended to Cabinet to **APPROVE** the following proposals with effect from 01 September 2020:

- 1) Adopt the Planning Enforcement Section 215 Protocol as attached at **[Annex 1]**.

The Director of Planning, Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

contact: Emma Keefe

Planning Enforcement Section 215 Protocol
Section 215 Action Case Studies

Eleanor Hoyle
Director of Planning, Housing and Environmental Health