

**Planning Enforcement Plan: Section 215 Protocol**

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## **1. Introduction and Context:**

- 1.1 This Protocol supplements the information published in the adopted Tonbridge and Malling Borough Council's 'Planning Enforcement Plan'. It has been prepared having regard to the Council's corporate policies and plans, and relevant planning policy and guidance. The National Planning Policy Framework (NPPF) 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”.*

- 1.2 The Council has at its disposal a range of planning enforcement powers to ensure effective enforcement, including the power to serve a notice under Section 215 of the Town and Country Planning Act 1990 (as amended) requiring steps to be taken to where it is considered that the condition of the land is such that it has an adverse affect on the amenity of the area.
- 1.3 Such notices, when used properly and proportionately can assist in maintaining and improving the quality of the environment, tackle dereliction and respond positively to legitimate public concerns.
- 1.4 This protocol serves to provide details of the procedures in place which will be followed in considering such complaints and sets out the nature of assessment that will be carried out in order to establish whether formal action should be taken. It is intended to provide a comprehensive advice on how the Council will assess such matters and take appropriate and proportionate action.
- 1.5 The protocol should be read in conjunction with the adopted Planning Enforcement Plan, Direct Action Protocol and specific national guidance set out in the Planning Practice Guidance.

## **2. Aims and Scope**

- 2.1 The primary aims of this protocol are to:
- Acknowledge the principles of consistency, transparency and proportionality in the decision-making process and overall approach to the serving of Section 215 Notices;
  - Promote awareness of the relevant policies and procedures;
  - Ensure compliance with the Council's statutory duties including its equalities duties;
  - Ensure compliance with the Council's procurement rules and corporate procedures.

### **3. When action might be taken?**

- 3.1 'Amenity' is a broad concept and not formally defined in the legislation or procedural guidance, i.e. it is a matter of fact and degree. Untidy sites are rarely dangerous to public health but it is well understood that areas that are well cared for assist in making people feel safe and secure whereas areas that become neglected over time can feel unsafe and adversely impact upon enjoyment. That is not to say, however, that the Planning System has a legitimate role in policing certain ideals as to what a place should look like or requiring all residents to adhere to specified standards of routine maintenance of their own land.
- 3.2 The Council will only take action to improve the condition of land in the event that clear harm is considered to arise in any given case. This will always be a matter of judgement. Each case will be different and what would not be considered amenity harm in one part of the Borough might well be considered so in another. The Council must therefore consider the condition of the site, the impact on the surrounding area and the scope of our powers in tackling the problem before we decide that harm is arising sufficient to issue a notice.
- 3.3 The scope of works that can be required in such notices is wide and includes planting, clearance, tidying, enclosure, demolition, re-building, external repairs and repainting. In preparing notices it is critical that we ensure that the works specified by a notice do not themselves result in a breach of planning control e.g. unlawful works to a listed building, or material alterations to premises for which planning permission should be sought.
- 3.4 Many of the problems we receive complaints about are relatively easy to put right for example:
- blocked gutters and down pipes - water ingress will eventually destroy a building through frost and rot
  - fallen fences
  - dilapidated walls / broken windows / graffiti
  - land with fly tipping, industrial or demolition waste,
  - builders rubble,
  - dumped sofas/furniture,
  - abandoned vehicles,
  - dumped tyres or
  - Significantly overgrown gardens.

#### **4. Consideration of whether a Section 215 Notice should be served:**

4.1 Before deciding whether a Notice should be served an assessment will be undertaken as to whether this is an appropriate and proportionate course of action, having full regard to all of the circumstances of the case. This will include, but not necessarily be limited to the following considerations:

##### Assessment of the condition of buildings:

- Including the condition of brickwork, cladding, broken/missing windows and doors, damaged guttering and downpipes that might be causing water ingress and damage
- Evidence of whether the building is empty or occupied and the likelihood of that changing in the short term such as where properties are up for sale, going through probate.

##### Assessment of the condition of land:

- Including dilapidated boundary treatments, presence of graffiti, abandoned vehicles, dumped rubbish and significantly overgrown gardens

##### Key features/attributes of wider locality (context), for example:

- Proximity of listed buildings and whether harm is arising to the significance of their individual settings
- Formal designations such as Areas of Outstanding Natural Beauty and Conversation Areas where there is a duty for local authorities to preserve and enhance
- Character and appearance, having particular regard to any wider contribution the site makes

##### Relevant history of the site:

- Has previous informal negotiation been necessary and if so was it successful in remedying the breach in an effective manner?
- Does the land benefit from any extant planning permissions that are likely to be implemented in the short term thereby remedying the breach?

##### Whether there are any alternative, more appropriate powers available to the Council, such as:

- Sections 76 - 79 of the Building Act for defective premises, dangerous buildings, ruinous and dilapidated buildings and neglected sites;

- Section 29 of the Local Government (Miscellaneous Provisions) Act 1982 for works on unoccupied buildings;
- Section 79 - 82 of the Environmental Protection Act for abatement or prohibition of a nuisance;
- Listed building legislation such as Repairs and Urgent Works Notices
- Completion Notices; and
- Compulsory Purchase Orders.

4.2 Officers will proactively engage with other services across the Council to ensure that we are utilising the more appropriate skills and powers in any given case. In particular, this liaison will include with Building Control, Environmental Protection, Licensing and the Community Safety Unit as necessary and appropriate to do so.

*Whether any other contributory or mitigating circumstances exist:*

- Any personal circumstances or equalities issues that arise, in particular through liaison with other services that would indicate a different course of intervention.

4.3 In this respect, particular regard will be had to the Public Sector Equality Duty is set out at Section 149 of the Equalities Act 2010. In making any decision as to whether or not to take action under Section 215 of the Act, the Council in undertaking its role as Local Planning Authority will have full regard to this duty.

4.4 Each case will be considered on its merits, having regard to the facts and circumstances of the case. As necessary, enforcement officers will liaise with other Council services to establish whether there are any more appropriate powers or any limitations

4.5 In the event that requests to take such action are expressly made by elected Borough Councillors, the same process and procedures will be followed and a detailed evaluation will take place accordingly.

**5. When amenity is judged to be harmed:**

5.1 If it is determined by Officers that the condition of buildings or land **is** having an adverse affect on amenity that is capable of being addressed through Section 215 of the Act, in the first instance the Council will write to the owner of the land setting out what steps should be taken to resolve the problem, giving a reasonable period of time to allow for this to happen. The time period will inevitably depend on the nature of the works that are deemed to be necessary.

- 5.2 After that time period has passed, Officers will visit the site to establish whether the requested works have been undertaken. If they have not, a formal Notice can be served which will specify precisely what needs to be done to correct the situation, again within a given timescale. It is an offence not to comply with the notice within the specified period. If the requirements of the notice are not carried out in the required timescale the landowner could be fined and have a criminal record.
- 5.3 There is a right of appeal against a notice issued under this section to the Magistrates Court (not the Planning Inspectorate as is the case with Enforcement Notices). Failure to comply with the requirements of the notice constitutes a criminal offence subject on conviction to a fine not exceeding £1000.
- 5.4 The Council is also empowered to enter land to carry out the works specified in the notice and reclaim costs from the land owner in accordance with our Direct Action procedures.