



**Report Reference Number:** S/19/10

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<b>To:</b>	<b>Scrutiny Committee</b>
<b>Date:</b>	<b>26 September 2019</b>
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**Title: Planning Enforcement and Section 215 Notices**

**Summary:**

This report explains the Local Planning Authority's (LPA's) power to issue as well as the scope of Section 215 Notices and discusses the practical implications and effectiveness of doing so. It also provides data on the use of such notices within the Planning Enforcement team and other authorities.

**Recommendation:**

**The Scrutiny Committee are asked to consider and comment on the report.**

**1. Background**

- 1.1 The Scrutiny Committee requested a report asking about performance in Planning Enforcement and detailing what action has been taken under Section 215 (s.215) of the Town & Country Planning Act (1990).
- 1.2 Research has been undertaken of the legislation, the Council's use of s.215 and benchmarking data collected from nearby authorities.
- 1.3 Service performance has been examined.

**2. Performance**

- 2.1 Service performance has been assessed with the additional resources committed in June running to October 2019. The backlog has reduced from 400 to 106 in that time. Formal complaints have reduced and the external and Member perception of the service has largely improved cemented by the agreement and implementation of the Planning Enforcement Management Plan

in January of this year. A sub-group is being set up to monitor enforcement performance.

### **3. Legal Powers**

- 3.1 Section 215 of the Town and Country Planning Act 1990 provides a discretionary power to LPA's to require the owner and occupier of the land to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. Where it is considered that the amenity of an area is being adversely affected a notice (s.215 notice) may be served on the owner and occupier requiring that the situation be remedied.
- 3.2 'Amenity' is not formally defined in the legislation or procedural guidance, and so it is a matter of fact and degree and common sense. As such judgement is subjective it is open to ready challenge. The Office of the Deputy Prime Minister's Best Practice Guide advises that negotiation or threat should be used to effect improvement and formal action taken only when this fails. SDC Planning Enforcement has a number of successful cases where threat elicited effective responses with no additional cost. To provide examples images will be shown at Committee. Each case investigated is different and what would not be considered amenity in one area might well be considered so in another. LPAs therefore need to consider the condition of the site, the impact on the surrounding area and the scope of their powers and resource in tackling the problem before they decide to issue a s.215 notice.
- 3.3 S. 215 can be an extremely effectively power and can be used to remedy the condition of large vacant industrial sites, town centre street frontages, rural sites, derelict buildings, and semi-complete development as well as the more typical rundown residential properties and very overgrown gardens. The scope of works that can be required in a s. 215 notice is wide and includes planting, clearance, tidying, enclosure, demolition, re-building, external repairs and repainting.
- 3.4 A s.215 notice is served on the owner and occupier. At least 28 days has to be given. It sets out the steps that need to be taken and the time within which such steps need to be carried out. In preparing notices it is critical that LPAs ensure that the works specified by a notice do not themselves result in a breach of planning control eg: unlawful works to a listed building or material alterations to premises for which planning permission should be sought.
- 3.5 If any owner or occupier of the land on whom the notice was served fails to comply with the steps set out in the notice within the timescales specified, they will be guilty of an offence and liable on summary conviction to a fine of up to £1000 on prosecution through Magistrate's Court. In addition, where any steps required have not been taken, the LPA may enter the land and take those steps, and recover from the owner of the land any expenses reasonably incurred by them in doing so (known as direct action or works in default). However, in practice such monies are often not recovered. Neighbouring authorities have advised there is often difficulty in establishing ownership or of owners having the funds to return costs. Where costs can be raised as a charge on the property this is only effective where the property is sold or where Council tax payments

are being met by an owner or occupier. In practice both Leeds and Doncaster LPA's no longer take such action because of the amount of unrecovered costs.

3.6 There is a right of appeal against a s. 215 notice to the Magistrates Court. The grounds of appeal are set out in statute as follows:

- The condition of the land does not detrimentally affect the amenity of the area;
- The steps required by the notice exceed what is required to remedy the detrimental effect on the amenity of the area;
- The condition of the land is as a result, in the ordinary course of events from, the carrying on of operations or a use of land pursuant to a lawful planning permission; or
- The time allowed by the notice to complete the required steps is not reasonable (i.e. is not sufficient).

Where an appeal is brought the s.215 notice does not take effect pending the outcome of the appeal. When determining the appeal the Magistrates' Court shall give directions to quash the notice, uphold it, or varying the terms of the notice in favour of the appellant. Such action incurs the cost of legal representation.

## **4. Principles**

### **4.1 S.215 Notices in practice**

4.2 The use of s.215 notices can be both complaint-driven and proactive. It is one of a number of provisions available to LPAs for protecting amenity. It can be carried out as a stand-alone process or in conjunction with other enforcement measures. It is a relatively straightforward power to use and can deliver extremely good results.

4.3 Prior to serving any notice it is good practice to enter into pre notice discussion with the owner and occupier of the land concerned (Office of the Deputy Prime Minister's Best Practice Guide). Whilst this may extend the time it takes to remedy the condition of the land, in practice there is evidence of high compliance prior to a notice being served and it is a useful defence in appeal considerations.

4.4 Whether to serve a notice should be determined on the specific facts of a situation taking into account local circumstances and the requirements of the notice should not exceed what is the minimum requirement to remedy the condition of the land whilst allowing sufficient time for those steps to be taken. This means that where a notice may be appropriate in one area for one circumstance it may not be in another area.

4.5 Whilst there are criminal penalties for non-compliance with a notice, this of itself will not result in the condition of the land being remedied where owners do not have the means. Conversely, whilst works in default will remedy the condition of the land, in practice they involve expenditure on the part of the LPA (for which a budget provision is required) and may result in no costs recovered.

4.6 In Selby the following number of s.215 cases have been logged since 2015:

- 2015 - 14
- 2016- 19
- 2017 - 14
- 2018 - 10
- 2019 – 10 to date

No s.215 notices have been served since 2016.

In addition we have looked in detail into the s.215 cases we have dealt with during 2018 and 2019.

2018 – 10 cases (of which 5 were unfounded, 2 were resolved through negotiation and 3 are ongoing).

2019 – 14 cases have been received so far this year (5 cases were unfounded, 2 resolved through negotiations and 7 are ongoing).

In addition Officers have worked with Empty Homes colleagues to resolve issues and are working with the Communities and Partnership team to address ASB problems in Selby Town Centre. Most of the above cases were resolved through negotiation by officers or threat of s.215 action. One alternative used by other authorities and recommended by the Office of the Deputy Prime Minister's Best Practice paper (2005) is 'direct action or works in default'. Whilst costs for this can technically be recovered it would require setting a budget for the works to be carried out and accepting that costs may never be recovered.

#### 4.7 **Benchmarking**

We have looked into the performance of other LPA's in relation to S215 Notices.

Leeds CC	6	2016
York	2	2016
Ryedale DC	0	2016
Selby DC	2	2016
East Riding	4	2016

2016 data was used as this is the only year that Selby has served s.215 notices in recent years and could therefore compare directly.

All of the above authorities advised that the threat of s.215 Notice was as effective as the service of notices in the majority of cases and that notices represented a last resort. LPA's such as Doncaster who have been cited by the Office of the Deputy Prime Minister Best Practice paper (2005) achieved this largely by the use of 'direct action' to carry out the works where negotiation failed. Notices and subsequent prosecutions were only used in a small number of cases where this failed. They report they have had limited success in recovering costs for this and have now lost their budget for such action due to financial constraints.

## **4.8 Other Powers**

The Anti-social Behaviour (ASB), Crime and Policing Act 2014 gives power to authorities to issue Community Protection Notices to any person whose conduct is unreasonable, persistent or continuing and detrimental to the quality of life of others in the area. These powers can be used by Communities and Environment Departments to tackle persistent rubbish issues and the powers are wider than s215 of the Town and Country Planning Act as they are conduct based rather than subjective judgements on amenity with high risk of challenge. Such challenge is heard in Magistrates Court and subject to non-planning interpretation and judgement. Failure to comply with an ASB notice can result in a Fixed Penalty notice and fine. These alternative measures face less risk of challenge and costs but need to be assessed against resources available and the appropriate authority.

## **5. Legal/Financial Controls and other Policy matters**

### **5.1 Legal Issues**

Serving notice under s.215 is a prescribed practice which officers use as a discretionary power exercised in accordance with any policy adopted and enforcement principles and priority as set out in the Planning Enforcement Management Plan. The legal position is set out in the body of this report.

## **6. Financial Issues**

- 6.1 The Planning Enforcement Management Plan (PEMP) sets priorities and working practice for Planning Enforcement within existing resource and action under s.215 sits within this. However, officer time associated with the serving of any s.215 notices and any subsequent actions resulting from them have to compete with other Planning Enforcement and Legal Services priorities.
- 6.2 Untidy sites are identified as medium to low priority in the PEMP unless relating to Conservation areas, Listed Buildings or protected trees establishing current practice within budget. The use of 'direct action' to take remedial action has proven to be very effective means of securing compliance of action under s.215 but this would require the allocation of a new budget as it is not always possible to recover costs and often incur delay in doing so. The LPA would consider such action on a case by case basis and take into account the financial implications at the time.
- 6.3 The increased serving of s.215 Notices is subject to appeal and would risk legal challenge with associated costs as such matters are heard in public courts. This would require additional budget.

## **7. Conclusion**

S.215 notices can be a proactive and effective enforcement tool to remedy the condition of land or buildings which are considered to be detrimental to the amenity of the area. Informal action has been found to be equally effective in most cases. Best practice identified that the most effective means of managing such cases is by means of 'direct action' but this would require an additional budget allocation. Depending upon the specific issue that needs addressing other enforcement tools may be more effective.

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