

Briefing Note for Councillors on the Trowbridge Area Board

Proposals for the disused Peter Black building, Trowbridge

I have been asked to provide advice on the options available to the Council in dealing with the disused site of the old Peter Black Toiletries Factory on County Way, Trowbridge. There are a number of routes available to the Council in respect of sites such as this:

- Section 215 of the Town & Country Planning Act 1990 to clean up land or deal with the poor state of a building;
- Sections 76-79 of the Building Act 1984 for dealing with 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;
- Sections 79-82 of the Environmental Protection Act 1990 for abatement or prohibition of a nuisance;
- Compulsory Purchase Orders.

Section 215 (s215) of the Town & Country Planning Act 1990

This section provides the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of an area. If it appears that the amenity of part of an area is being adversely affected by the condition of neighbouring land and buildings, the Local Authority (LA) may serve a maintenance notice 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. If the owner or occupier does not comply with a maintenance notice the LA can, under s219, undertake the clean up works themselves and recover the costs from the landowner. They can also prosecute the owner or occupier (section 216, TCPA 1990). However, there is a right of appeal against the service of the maintenance notice to a magistrates' court.

The use of s215 by Councils is discretionary and it is therefore necessary to decide whether a notice under these provisions would be appropriate, taking into account all the local circumstances. It would be necessary to consider, for example, the condition of the site, the impact on the surrounding area and the scope of the powers. Section 215 action can be taken against land and buildings.

A maintenance notice can require a wide range of works to be carried out including:

- Planting.
- Clearance.
- Demolition.
- Re-building.
- External repairs.

Section 215 has been effectively used on large vacant industrial sites, town centre street frontages, rural sites, derelict buildings, and semi-complete development as well as rundown residential properties and overgrown gardens.

Sections 76-79 of the Building Act 1984

Other powers which could be utilised are those available under the Building Act 1984 (BA). Under this legislation the Council can require a landowner, where a danger arises from the condition of a building or structure, to carry out works to remove the danger, with an option for the landowner to demolish the building or a dangerous part (section 77, BA 1984). Also where a building is in a ruinous or dilapidated condition and is seriously detrimental to the amenities of the neighbourhood, the LA can require the landowners to repair or restore the building, with an option available to demolish the building or any part of it (section 79, BA 1984). If the person required by such a notice to execute works fails to execute them within the time limited by the notice, the local authority may itself execute the works and recover from that person the expenses reasonably incurred by it in doing so.

Section 29 of the Local Government (Miscellaneous Provisions) Act 1982

This section can be used where it appears to a LA that any building in their area is unoccupied or that the occupier of a building in their area is temporarily absent from it, and the building is not effectively secured against unauthorised entry or is likely to become a danger to public health. The local authority can undertake works for the purpose of preventing unauthorised entry to it, or for the purpose of preventing it becoming a danger to public health. However, before undertaking any works a notice has to be served on each owner or occupier of the building. This notice specifies the works in connection with the building which the LA propose to undertake. However, no such notice is needed where the LA consider that it is necessary to undertake works immediately. Where the local authority undertakes any works they may recover the expenses reasonably incurred from any person to whom notice was given.

Sections 79-82 of the Environmental Protection Act 1990 for abatement or prohibition of a nuisance

Section 79 of the Environmental Protection Act 1990 lists a number of matters which it declares to be statutory nuisances, one of these is any premises in such a state as to be prejudicial to health or a nuisance.

Local authorities are given power to serve abatement notices requiring the abatement of the nuisance and, if necessary, the execution of particular works within a specified timeframe. Failure to comply with an abatement notice without reasonable excuse is an offence.

The Local Authority may carry out works in default where a notice has not been complied with and may recover the expenses reasonably incurred from any person to whom notice was given.

Compulsory Purchase Orders.

A further option available to the Council might be purchase of the land either by agreement or by way of a Compulsory Purchase Order (CPO). However, a CPO can only be sought where legislation gives the Council the power to do so and all CPOs have to be confirmed by the Secretary of State for Communities and Local Government. The purpose for which an authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought and that, in turn, will influence the factors which the confirming Minister will want to take into account in determining confirmation.

It is for the authority to decide how best to justify its proposals for the compulsory acquisition of any land under a particular power. It will need to be ready to defend such proposals at any Inquiry (or through written representations) and, if necessary, in the courts. A compulsory purchase order should only be made where there is a compelling case in the public interest. An authority should also be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. The confirming Minister has to be able to take a balanced view between the intentions of the authority and the concerns of those whose interest in land it is proposed to acquire compulsorily.

The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be. But each case has to be considered on its own merits. If an acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire, and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale, it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss and the Human Rights Act reinforces that.

To conclude, it is worth noting, as I understand it, that the current site owners are in liquidation and this could present difficulties with the service of any notices and the requirement for works by owners or occupiers. Indeed, in practical terms it might mean that works ultimately have to be carried out by the Council itself. However, in all of the pieces of legislation noted above, the opportunity exists for the Council to carry out works in default of action by the owner/occupier and to recoup costs later, through court proceedings or the placing of a charge on the property.

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