

ITEM NO.

Report to: **Development Control and Regulatory Panel**

Date: **29 May 2007**

Report of: **Head of Planning and Building Control**

Subject: **Planning Investigations Report**

Ward: **Blackhall ; Hawthorn; Deaf Hill**

1. 73 Middle Street and 1A Seventh Street, Blackhall Colliery.

1.1 Purpose of the Report

1.1.1 After a lengthy period of disuse both properties' appearance has significantly deteriorated. This report analyses the relevant issues and recommends serving notice under s. 215 of the Town and Country Planning Act 1990.

1.2 Consultation

1.2.1 The specialist planning solicitor appointed to advise upon legal proceedings under the Act advised formal action is warranted.

1.3. Background

1.3.1 The properties were drawn to the Council's attention in 2002. Alternative uses and external improvements were suggested without result. Attempts to negotiate under the Settlement Renewal Initiative also failed. Ownership subsequently changed and more recent negotiations did result in some external improvements but the properties generally continue to have a run - down appearance. No progress is apparent since last year.

1.4 Position Statement and Option Appraisal

1.4.1 Amenity Considerations

Nos. 73 and 1A are adjoining and are located at the southern end of a block of six properties fronting Middle Street. They therefore occupy a very prominent location directly visible from highways and neighbouring commercial and residential property.

1.4.2 The front elevation of no. 1A benefits from a new white upvc window and door but other former openings remain breeze blocked and boarded up. Fascia board and render is missing and there are holes in the elevation above the window lintel. Boarding in this area is partially missing too. Overall the elevation is of very poor appearance despite the new upvc fittings.

1.4.3 No. 73's front elevation faces directly onto Middle Street. It features a roller - shutter but the brickwork below it is sub - standard and requires improvement. The corner door is boarded and the south elevation features boarding, brickwork, render and a missing fascia. The roof facing Middle Street has been re - tiled, however.

1.4.4 At the time of writing correspondence requesting implementation of works to satisfactorily overcome the poor appearance remains unanswered. The properties appearance is unacceptable for the reasons outlined above, and it is consequently considered that resort to legal action is now warranted.

ITEM NO.

1.5 Financial Implications

- 1.5.1 A s.215 notice can be appealed to Magistrates' Court. Legal costs are generally around £1000 and are normally recovered if the Court upholds the Council's case. Decisions can be appealed to higher courts but this has only rarely occurred. The need for additional expenditure would be reviewed as and when necessary.

1.6 Legal Implications

- 1.6.1 Enforcement action is a complex area of local government activity. The "checks and balances" in the enforcement regime reflect the wider legal system. The following summary is included to place this case in context, and for Members' general information.
- 1.6.2 Planning enforcement action is undertaken under the provisions of the Town and Country Planning Act 1990 (as amended). A local planning authority must also follow government guidance and have regard to case law. Failing to do so opens any action to potential successful legal challenge.
- 1.6.3 Section 215 of the Town and Country Planning Act 1990 allows service of a notice where it is considered either land or buildings adversely affect the amenity of their area. The notice must specify a minimum of 28 days before it comes into effect, and it is during this period that any appeal must be lodged with the local Magistrates' Court. An appeal results in the suspension of the notice.
- 1.6.4 If a notice is upheld by the Court, or not appealed against, it comes into effect. The notice must specify steps to overcome the adverse effect upon amenity and a reasonable compliance period. Failure to complete the specified steps by the end of the compliance period is an offence. Should a prosecution prove necessary this would be the subject of a further report.
- 1.6.5 In October 2000, the Human Rights Act 1998 transposed the European Convention on Human Rights into domestic United Kingdom law. The majority of rights are qualified and not absolute, thereby allowing interference in the public interest. Such interference will be unlawful unless it is prescribed by or in accordance with the law, is in pursuit of a legitimate aim and is necessary in a democratic society. Consequently a local authority is obliged to balance individual rights against the public interest prior to determining whether to act.
- 1.6.6 In this case it is considered that the poor appearance and prominent location of the properties have a significant negative impact on the local environment and consequently the amenities neighbouring occupiers and highway users would expect to enjoy. For these reasons it is concluded legal action is necessary. It is also in accordance with the law and satisfies a legitimate aim i.e improvement of the built environment in the public interest. Moreover it is proportionate because previous attempts to resolve the problem via negotiation were unsuccessful.

1.7 Policy Implications

- 1.7.1 The Easington District Local Plan policy 48 commits the Council to considering issuing a s.215 notice. Subsequently the policy addresses the possibility of prosecution.
- 1.7.2 In circular 2/98, "The Prevention of Dereliction through the Planning System", the then Department of the Environment, Transport and Regions identified the s.215 notice as a discretionary tool available to local planning authorities. Most recent government guidance is found in a Best Practice guide issued by the then Office of the Deputy Prime Minister in January 2005. Use of s. 215 is identified as appropriate to improve the quality of the environment and tackle dereliction. Local authorities are urged to use it widely.

ITEM NO.

1.8 Risk Implications

- 1.8.1 The action recommended below lies within the Council's "appetite for risk". This may change in the event of an appeal or other legal challenge containing new risks. A further risk evaluation would then be required, and a risk management plan put in place as necessary.

1.9 Communications Implications

- 1.9.1 The Head of Communications and Marketing (HCM) will be consulted should any communications issues arise.

1.10 Corporate Implications

- 1.10.1 This would normally be in terms of publicity which could be negative or positive depending upon the progress or outcome of the case. Again the Head of Communications and Marketing would be consulted as required.

1.11 Conclusion

- 1.11.1 Taking into account all material considerations it is concluded service of notice under s.215 of the Town and Country Planning Act 1990 is warranted on amenity grounds.

1.12 Recommend

1. Enforcement action is taken and notice is served under s.215 of the Town and Country Planning Act 1990;
2. The notice specifies measures to be drafted by the Head of Planning and Building Control Services;
3. The notice specifies a six week compliance period;
4. The Head of Planning and Building Control Services is authorised to take any other action deemed appropriate.

2. St. Michaels Rise, Hawthorn; Rydale Court, Deaf Hill.

2.1 Purpose of the Report

- 2.1.1 Both sites are residential developments where highways were not completed despite occupation of the houses a number of years ago. Similarly landscaping was not implemented. This report analyses the planning issues and recommends service of Breach of Condition Notices under s.187 of the Town and Country Planning Act 1990.

2.2 Consultation

- 2.2.1 The specialist planning solicitor appointed to advise upon legal proceedings under the Act advised formal action is warranted.

2.3 Background

- 2.3.1. The estates were the subject of complaints last year. Negotiations with the developers were commenced verbally and in writing but no further works commenced and it is currently unknown when planning permissions will be complied with.

2.4 Position Statement and Option Appraisal

- 2.4.1 Amenities and Safety Considerations

Both roads require provision of the top, wearing course. Residents within the developments and in the local areas have reasonable expectations that the highways will be completed to an adoptable standard in the interests of highway and pedestrian safety and the areas' appearance.

ITEM NO.

2.5 Financial Implications

- 2.5.1. A s.187 notice is not appealable. Failure to comply with it is an offence. Prosecution is undertaken in Magistrates' Court where costs should not exceed £1000. Normally all or a proportion of costs are recovered upon conviction, with the actual sum at Magistrates discretion. A further Panel decision would be required to prosecute.

2.6 Legal Implications

- 2.6.1 See paras.1.6.1, 1.6.2 and 1.6.5 in the previous report above for general background. In this particular case legal action is necessary for the amenity and safety considerations detailed above. It is also proportionate because negotiations did not result in a start on site.

2.7 Policy Implications

- 2.7.1 The relevant planning policies are found in the adopted Easington District Local Plan. The applicable policies are those governing general development principles (policy No.1), amenity (policy no. 35), and enforcement (policy 47). It is considered that the unfinished developments breach these policies for the reasons detailed in paras. 2.3 and 2.4 above.

2.8 Risk

- 2.8.1 See 1.8 in the previous report.

2.9 Communications

- 2.9.1 See 1.9 in the previous report.

2.10 Corporate

- 2.10.1 See 1.10 in the previous report.

2.11 Conclusion

- 2.11.1 It is concluded that service of Breach of Condition Notices is required to address the unfinished roads and the absence of landscaping.

2.12 Recommend

1. Enforcement action is taken and Breach of Condition Notices are served under s.187 of the Town and Country Planning Act 1990;
2. The notices specify measures to be drafted by the Head of Planning and Building Control Services;
3. The notices specify compliance periods to be drafted by the Head of Planning and Building Control Services;
4. The Head of Planning and Building Control Services is authorised to take any other action deemed appropriate.



Date 29 May 2007

**Graeme Reed
Head of Planning and Building Control**

Background Papers

ITEM NO.

The following background papers have been used in the compilation of this report;

Individual case files;
Human Rights Articles, Planning magazine;
DETR circular 2/98, "The Prevention of Dereliction through the Planning System"
ODPM 2005 Best Practice Guide s.215 Notices.

ITEM NO.