

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

DEVELOPMENT & PLANNING AUTHORITY

PROPOSAL FOR PROVISIONS TO ADDRESS LAND WHICH IS AFFECTING THE AMENITY
OF AN AREA

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Proposal for Provisions to Address Land Which is Affecting the Amenity of an Area” they are of the opinion:-

1. To agree to give the Development & Planning Authority a power to serve civil notices on owners and occupiers of land, requiring the owner and occupiers to take steps to remedy the condition of their land, other than in relation to certain redundant glasshouses and related structures, where the Authority considers the condition of that land is adversely affecting the amenity of the area; and to agree to make the following related provision for-
 - a) appeals to the Planning Tribunal against the service of such a notice;
 - b) offences in relation to a contravention of a requirement of such a notice;
 - c) the Development & Planning Authority to have powers to enter land and to carry out required steps where a requirement of a notice is not met; and
 - d) the Development & Planning Authority to have powers to recover costs and apply to the Royal Court for a charge over the land similar to those which currently apply in relation to compliance notices under planning legislation,

as further detailed in section 5 of that Policy Letter and to provide for all necessary related provisions as set out in that section.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

The above Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1)(c) of the Rules of Procedure of the States of Deliberation and their Committees.

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DEVELOPMENT & PLANNING AUTHORITY

PROPOSAL FOR PROVISIONS TO ADDRESS LAND WHICH IS AFFECTING THE AMENITY
OF AN AREA

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

18th October, 2022

Dear Sir

1 Executive Summary

- 1.1 Section 46 of the Land Planning and Development (Guernsey) Law, 2005 (the "2005 Law") provides that the States may provide by Ordinance for the control of the use of land or any activity or omission in relation to land where it considers it expedient to do so. This provision expressly includes a power to control matters connected with the impairment of amenity in any locality including land in an unsightly condition. "Land" includes buildings¹. The Development & Planning Authority (D&PA) believes that it is expedient for the States to enact such an Ordinance now, to provide powers which are largely absent to enable the D&PA to tackle known eyesores in our urban centres and rural areas and thereby to support the Government Work Plan. Current available or proposed powers are focussed on other issues such as preserving protected buildings, illegal dumping of waste or housing standards which do not address many eyesore sites.
- 1.2 Examples of matters that could be addressed through powers provided by an Ordinance under section 46 include derelict premises in Town or unsightly redundant visitor accommodation establishments. Such powers would also play an important part in securing revitalisation and acting as a deterrent to prevent the future creation of eyesores through allowing dereliction and neglect.
- 1.3 The D&PA consulted with Island Douzaines in 2018 and the overall response was

¹ See the definition of "land" in the Schedule to the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.

supportive, with several problem areas identified by Douzaines which could be tackled under the proposed Ordinance. Some Douzaines identified possible opportunity for involvement at a Parish level to assist with the removal or remediation of eyesores.

1.4 Further consultation with the Island's Douzaines was undertaken in September, 2022 on the draft proposals contained in this policy letter. The D&PA has consulted with the Policy & Resources Committee, and with the Committee *for the Environment & Infrastructure* in relation to matters relevant to appeal procedures and the relationship of the proposals with environmental health policy and legislation. In relation to the latter, the proposals have been shared with the Committee *for Health & Social Care*.

1.5 The main provisions of an Ordinance under section 46 would relate to:

- Powers for the D&PA to serve civil notices (similar to planning enforcement Compliance Notices) on the owner and occupier of land in circumstances where it appears to the D&PA that the amenity of the area is adversely affected by the condition of that land, and to require the carrying out of steps for remedying the condition of the land as specified in the notice and within a specified period;
- provision for an offence to be committed in the event of non-compliance with any requirement of the notice and related penalties and procedures;
- Provision for a right of appeal against a notice to the Planning Tribunal for the person on whom the notice is served, to be brought within 28 days of service of the notice, on specified grounds;
- Powers for the D&PA in the event of non-compliance with the notice, to enter the land and undertake the work specified in the notice, and to recover its reasonable costs in doing so from the owner of the land;
- Provision for a register of notices and appeals.

1.6 Similar powers to those proposed already exist in England and Wales under section 215 of the Town and Country Planning Act 1990, in Jersey under the Planning and Building (Jersey) Law 2002, and, within the Bailiwick, in sections 18 and 19 of the Building and Development Control (Alderney) Law, 2002; these include civil notice powers for the taking of action in relation to unsightly things on land or certain movable structures, such as caravans, and for the carrying out of works in respect of dangerous or derelict land or certain movable structures.

1.7 The D&PA believes that expenditure and ongoing resourcing requirements to operate the proposed system will be minimal in the context of the existing work of the D&PA and the Planning Panel, and that opportunities for savings benefits to the States exist through tackling eyesore cases early through the proposed powers. Although there could be costs to the States in the event of non-

compliance with a notice, it should be possible to minimise States' expenditure in the rare event that direct action is required to resolve a significant impairment of amenity, for example by using States' controlled labour, and using established cost-recovery mechanisms.

2 Background

2.1 Section 46 of the Land Planning and Development (Guernsey) Law, 2005 (the "2005 Law") states that the States may provide, by Ordinance, for the control of the use of land or any activity or omission in relation to land where it considers it expedient to do so. References to "land" under the 2005 Law include buildings². This provision expressly includes a power to control matters connected with the impairment of amenity in any locality, including –

- the disposal of rubbish,
- the abandonment of any vehicle, substance or any other thing on any land,
- the presence of any dilapidated or ruinous buildings,
- land in an unsightly condition,
- the placing of caravans on land,
- the removal of turf, topsoil or sand from any agricultural land,
- the placing or removal of glasshouses on land and their use,
- the protection and preservation of cliff paths.

2.2 Amenity is understood as referring to the pleasantness of a place. The term is usually not defined in legislation as there is case law on its meaning. The Royal Court would have particular regard to any local case law and is likely to have regard to any English case law on similarly worded legislation. English case law has interpreted it as pleasant circumstances, features or advantages including appearance and layout. This meaning is reflected in the Island Development Plan where it means the "feel" of a place in terms of it being pleasant or agreeable including the visual pleasantness of a place or area (IDP Glossary, 2016).

2.3 The States approved the proposals of the former Island Development Committee (IDC) relating to review of the Island Development (Guernsey) Laws, 1966-90 in June 2002 (Billet d'État No. XI of 2002). The IDC's policy letter referred at paragraph 3.4.6 to Chapter 6: "Other Controls" of the proposed Land Planning and Development (Guernsey) Law, 2005 (the "2005 Law"), stating that:

"It is proposed to make provision for the IDC to control certain uses of land and activities that are the cause of nuisance or impairment of amenity. The detail of

² See the definition of "land" in the Schedule to the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.

how these powers would be used would be dealt with by Ordinance. This Ordinance will not be brought forward as part of the current package.” [This being the package of Ordinances that was required immediately for the bringing into effect of the 2005 Law which subsequently came into effect in 2009.]

- 2.4 In 2018, the D&PA expressed interest in introducing an Ordinance under section 46 of the 2005 Law. Consultation was undertaken with all the Island’s Douzaines at that time, the responses to which indicated general support for the proposal. Further detail of the consultation undertaken is set out in paragraph 4.1 to this policy letter. Proposals were however not progressed to a conclusion at that time, due to other legislative and policy priorities for the D&PA.

3 The current position

- 3.1 In developing its current priorities having regard to the Government Work Plan, the D&PA believes that it is important to introduce an Ordinance under section 46 of the 2005 Law now. Spatial planning is a key enabler in implementation of the Government Work Plan, in terms of helping to deliver actions to support the States’ priorities. Part of this role is in helping to make best and most efficient use of our existing Island resources, which includes the intrinsic attractiveness of our towns and countryside to Islanders, visitors and potential investors.
- 3.2 For example, Town regeneration and revitalisation is a key theme of the Government Work Plan. As well as having produced a Development Framework for three Regeneration Areas in St Peter Port, the D&PA is taking an active role in several initiatives designed to promote and facilitate regeneration of our Main Centres. In this context, introducing legislation to address untidy sites and derelict buildings will play an important part in securing revitalisation and disincentivising further dereliction of sites and buildings in our towns.
- 3.3 Likewise, outside of the Main Centres, an Ordinance under section 46 of the 2005 Law will also provide the D&PA with the tools necessary to tackle a number of eyesore sites which are a blot on an otherwise attractive rural landscape, such as derelict or dilapidated redundant visitor accommodation establishments or where land is in an unsightly state (e.g. due to the presence of large numbers of dilapidated vehicles on site). Such cases may be relatively limited, but they do have a disproportionately significant impact on the attractiveness, and ultimately the reputation, of our Island.
- 3.4 There are existing legislative provisions which deal with specific problems which can affect amenity or create an eyesore. However, none deal with unsightly land in a comprehensive way and they are primarily directed at issues other than amenity. A summary of relevant legislation is included in Appendix A to this policy letter. The D&PA currently has no comprehensive powers which can be used effectively to resolve such problems. It is therefore necessary for an

Ordinance to be introduced under section 46 to do so, as was envisaged when the 2005 Law was approved by the States in 2002.

- 3.5 For these reasons, the D&PA has agreed that it is a high priority to bring forward this policy letter for consideration by the States.

4 Consultation undertaken

- 4.1 As noted above, in 2018 during the last term of Government the D&PA undertook consultation with the Island's Douzaines on initial proposals for an Ordinance under section 46 of the 2005 Law. In the main, the responses received were positive and endorsed the principle of such an Ordinance. Several problem areas where amenity was being impaired were identified by Parish authorities which they considered could be addressed by the proposed Ordinance, most notably redundant hotel sites and abandoned vehicles. Some Douzaines also identified the possible opportunity for involvement at a Parish level to assist in the removal or remediation of the eyesore in question.
- 4.2 A media article was also published in June, 2018 concerning this matter. In response, two emails were received from members of the public. One correspondent expressed concern about the potential for "tidying" of sites which provide valuable ecological habitats, and suggested that the Ordinance should be worded to focus on "addressing instances in which man-made objects and derelict structures are on land in a state contrary to public amenity and the natural environment". The other representor was concerned that the proposed powers could be interpreted in a subjective and judgemental way by singling out particular sites, and that if applied to derelict greenhouses could remove opportunities for small-holding type growing and negatively impact wildlife.
- 4.3 Further consultation with the Island's Douzaines was undertaken in September, 2022 on the draft proposals contained in this policy letter. Responses were received from the Constables of the Vale, Castel, St Saviour and St Sampson. Copies of the letters received from these Parishes are included in Appendix B to this policy letter. The responses were generally supportive and included helpful comments concerning the scope of the proposals. All comments received have been considered carefully by the D&PA when bringing these proposals before the States.
- 4.4 The D&PA has consulted with the Policy & Resources Committee, and with the Committee *for the* Environment & Infrastructure in relation to matters relevant to appeal procedures and the relationship of the proposals with environmental health policy and legislation. In relation to the latter, the proposals have been shared with the Committee *for* Health & Social Care. Copies of the letters of response from the Policy & Resources Committee and the Committee *for the* Environment & Infrastructure are included in Appendix C to this policy letter. The

matters raised have been addressed by the D&PA within the proposals set out in this policy letter.

5 Key aspects of an Ordinance under section 46

- 5.1 Notwithstanding the intentionally relatively broad scope of section 46 of the 2005 Law, the D&PA proposes that an Ordinance under section 46 should be constructed to provide powers that will be effective in addressing known issues of blight on amenity such as those raised by the Island's Douzaines and arising from dereliction within areas of our Town; these would be exercised in a proportionate way addressing the particular circumstances of a site.
- 5.2 The D&PA also believes that the introduction of an Ordinance under section 46 of the 2005 Law would act as a deterrent to prevent the future creation of eyesores through dereliction and neglect. A similar powerful deterrent effect has been seen with the introduction of the High Hedges legislation in 2017.
- 5.3 The D&PA has decided not to include within this policy letter provisions specifically enabling application of the Ordinance powers to the remains of glasshouses and related structures situated on redundant glasshouse sites as defined in paragraph 3 of Supplementary Planning Guidance: Defining Redundant Glasshouse Sites, 2018 (the SPG). It is considered that it would be excessive and disproportionate to apply the notice powers to such glasshouse sites in view of other measures that exist under the Planning Law and the Island Development Plan to encourage removal of such redundant glasshouses and because issues connected with redundant glasshouse sites generally go well beyond the scope of spatial land use planning or effects on amenity. However, the Ordinance would enable redundant glasshouse sites to be tackled where they are being used for purposes other than agriculture and which detract from amenity, such as by disposing of items on site.
- 5.4 For the avoidance of doubt, and having regard to matters raised by Parish authorities through consultation, the proposed powers would not apply to the removal of turf from agricultural land.
- 5.5 To avoid an undesirable situation occurring where one States' Committee is issuing a civil notice against another, the D&PA proposes to include within the Ordinance an exemption from the provisions being used against the States themselves or individual Committees in respect of States' owned or occupied land. However, the option of acting against tenants of States land would remain. In proposing such an exemption, and having regard to matters raised by Parish authorities through consultation, the D&PA believes that it is incumbent on the States to maintain its land in a suitable manner that would not otherwise give rise to action under the proposed Ordinance. This approach would also be consistent with the current situation for land planning compliance notices as the

enforcement part of the 2005 Law does not apply to the States and States' Committees.

5.6 Consequently, the D&PA proposes that an Ordinance under section 46 should include the following main provisions which are similar to those in section 215 of the Town and Country Planning Act 1990 in England and Wales:

- Powers for the D&PA to serve civil notices (similar to planning enforcement Compliance Notices) on the owner and occupier of land in circumstances where it appears to the D&PA that the amenity of the area is adversely affected by the condition of that land;
- Powers to require within the notice the carrying out of such steps for remedying the condition of the land as may be specified in the notice and the period for taking those steps;
- Confirmation that the notice would take effect at the end of a period to be specified in the notice, this being not less than 28 days after the service of the notice;
- Provision for an offence to be committed, in the event of non-compliance, by any owner or occupier on whom the notice was served and by every person who is the owner of the land after the expiry of the compliance period and whilst the non-compliance continues, and related penalties and procedures. The intention is to have similar offence provisions to those in comparable UK legislation but adapted to correspond to existing Guernsey planning enforcement provisions;
- Provision for a right of appeal against a notice to the Planning Tribunal, for the person on whom the notice is served, to be brought within 28 days of service of the notice, on specified grounds including that: –
 - the condition of the land does not adversely affect the amenity of the area,
 - the condition of the land is attributable to and results in the ordinary course of events from the carrying out of lawful operations on the land which are not a breach of planning control; the intention is that this ground would not cover a situation where the unsightly state of the land was not the ordinary result of a lawful use,
 - the requirements of the notice are excessive,
 - the period specified is unreasonable,
 - the issue of the notice is (for any other reason) ultra vires or unreasonable;
- Powers for the D&PA in the event of non-compliance with the notice, to enter the land and undertake the work specified in the notice, and to recover its reasonable costs in doing so from the owner of the land, including, on application to the Royal Court, via a statutory charge on the land and/or through the sale of any items of value recovered from the land similar to the current provisions in sections 50 and 55 of the 2005 Law;

- Provision for a register of notices and appeals. Notices would be disclosed on responding to an application for an Immunity Certificate.
- 5.7 The Ordinance may provide for details of the above provisions to be contained in Regulations.
- 5.8 Examples of where the proposed powers under section 46 might be used, proportionately, by the D&PA include the following:
- A requirement to maintain, refurbish or rebuild derelict premises in Town, to improve the appearance of the site such that it no longer adversely affects the amenity of the street concerned;
 - Similarly, a requirement to undertake works to improve the appearance of a visitor accommodation establishment which is derelict having been unused for several years. Such works could include demolition of derelict structures;
 - A requirement to remove a large number of unsightly, dilapidated, vehicles from private land.
- 5.9 The process under the proposed Ordinance would generally commence by notifying the site owner and/or occupier that the D&PA was contemplating service of a Notice and inviting them to undertake the necessary works. If this informal approach was not successful, then a formal Notice could be served, specifying the works required and a timescale for completing them. This would be similar to a Compliance Notice or a Preservation Notice, both of which are currently used by the D&PA under legal powers contained within Part V of the 2005 Law and section 7 of the Land Planning and Development (Special Controls) Ordinance, 2007 respectively.
- 5.10 Within the Planning Compliance process, most cases are resolved through informal means whereby owners comply voluntarily with initial informal written approaches. Where this is not achieved, and cases proceed to service of Compliance Notice, most notices are complied with. Very few notices are appealed (three in 2018, three in 2019 and one in 2020) and even fewer cases proceed to prosecution (one in 2018, one in 2019 and four in 2020). No compliance cases to date have resulted in direct action by the D&PA to undertake the work itself.
- 5.11 In exercising the proposed powers, care would be taken by the D&PA to ensure that it did so in an objective and consistent way, but having regard to the particular facts of the case, and that any relevant issues were considered including relating to impact on ecology or wildlife. Consideration would also be given to circumstances where Building Control approval or planning permission might be required for remedial or maintenance works.

6 Existing similar legislation elsewhere

- 6.1 Similar powers to those described in section 46 of the 2005 Law exist in England and Wales under section 215 of the Town and Country Planning Act, 1990 (Power to require proper maintenance of land). This section gives English and Welsh Local Planning Authorities a power to serve a notice on an owner and occupier of land, requiring steps to be taken for remedying the condition, if it appears to it that the amenity of a part of their area, is adversely affected by the condition of land; an equivalent section has been in place in England and Wales since 1971 although the original section was narrower in scope. There are also broadly similar provisions in the Planning and Building (Jersey) Law, 2002, in particular in Part 6, chapter 6 of that Law. Within the Bailiwick, the Building and Development Control (Alderney) Law, 2002 includes civil notice powers in sections 18 and 19 for the taking of action in relation to unsightly things on land or certain movable structures, such as caravans, and the carrying out of works in respect of dangerous or derelict land or certain movable structures.
- 6.2 In relation to the practical application of the proposed powers, the 2005 guidance from the former UK Office of the Deputy Prime Minister entitled “Town and Country Planning Act 1990 Section 215 – Best Practice Guidance”, contained in Appendix D to this policy letter, is helpful in illustrating how the proposed powers, which will be very similar to those under section 215 of the Town and Country Planning Act in England and Wales, may be used and the benefits that they can bring in terms of environmental enhancement and regeneration.

7 Resource implications

- 7.1 It is recognised that there will be a resource requirement for the D&PA and the Planning Panel in adding further, different civil notice powers and appeals provisions on amenity issues. Administering even a relatively restricted regime applying only to a few cases a year will require input of time and resources especially to implement the new provisions.
- 7.2 However, the D&PA believes that expenditure and ongoing resourcing requirements to operate the proposed system will be minimal in the context of the existing work of the D&PA and the Planning Panel and so can be met from its existing budget. The D&PA also believes that savings benefits will accrue from the ability to act through the service of a notice at an early stage, and from the deterrent effect which should prevent future cases.
- 7.3 In the event of non-compliance with the civil notice, powers are proposed to enter the land and undertake the works, which would also introduce costs for the States that could be significant. However, powers are also proposed to recover those costs. Furthermore, it should be possible to minimise States’ expenditure in the rare event that direct action is required to resolve a significant

impairment of amenity, for example by using States' controlled labour, and using established cost-recovery mechanisms.

8 Conclusion

- 8.1 The D&PA believes that the introduction of an Ordinance under section 46 is important currently to support the Government Work Plan, particularly in respect of enabling opportunities for regeneration and revitalisation of the Regeneration Areas in St Peter Port, and to provide powers which are currently absent in order to enable the States to tackle eyesores in our urban and rural areas. Such powers will play an important part in securing revitalisation and acting as a deterrent to prevent the creation of future eyesores.

9 Compliance with Rule 4

- 9.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 9.2 In accordance with Rule 4(1)(a), the Propositions above contribute to the States' objectives within the Government Work Plan 2021-2025 by assisting regeneration and supporting environmental enhancement which in turn will assist the Island's economy.
- 9.3 In accordance with Rule 4(1)(b), consultation with other Committees and relevant stakeholders has been carried out as described in section 4 to this Policy Letter.
- 9.4 In accordance with Rule 4(1)(c), the Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- 9.5 In accordance with Rule 4(1)(d), the Propositions would of themselves have no direct financial implications to the States. The costs of administration of the proposed Ordinance would be minimal and would be met by the D&PA within its existing budget. In the event of non-compliance with a notice under the Ordinance, which would be a criminal offence, the D&PA would carefully consider the costs and benefits of entering the land and undertaking the work specified in the notice, and would be able to recover its reasonable costs in doing so from the owner or occupier of the land, including via a statutory charge on the land and/or through the sale of any items of value recovered from the land.
- 9.6 In accordance with Rule 4(2)(a), the Propositions are relevant to the duties of the D&PA in respect of land use and planning, and its duties under the Land Planning and Development (Guernsey) Law, 2005, as amended.

9.7 In accordance with Rule 4(2)(b), it is confirmed that the propositions above have the majority support of the D&PA. Please note that Deputy Taylor does not support the propositions.

Yours faithfully

V S Oliver
President

A W Taylor
Vice-President

J F Dyke
A Kazantseva-Miller
R C Murray

APPENDIX A
List of Related Legislation

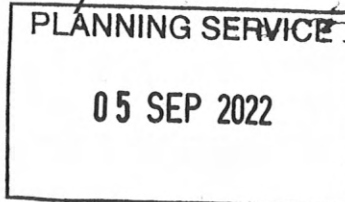
- a. **Preservation notices under section 7 of the Land Planning and Development (Special Controls) Ordinance, 2007** - to preserve or protect or prevent the deterioration of a protected building;
- b. **Litter and waste licensing legislation where eyesore is caused by litter/dumping** - dropping of litter on land in the open air and available for public use where not done with authority of occupier/other person having control of site and wrongful use of litter bins - offences under sections 2 and 3 of the Refuse Disposal Ordinance, 1959;
- c. **Loi relative a la Sante Publique, 1934 and Public Health Ordinance under it** - the definition of nuisance includes “premises in such a state as to be either a nuisance or prejudicial to health or any accumulation or deposit which is either a nuisance or prejudicial to health”;
- d. **Prohibitions relating to unlicensed deposit of waste on land, other than household waste disposed of within curtilage of dwelling in which it was produced, under section 21 of the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010** - this is the main fly-tipping offence so is only relevant to unsightly land;
- e. **Loi ayant rapport à la Réparation ou la Démolition de Murs, Fossés, Maisons et Bâtiments qui sont dans un état dangereux of 1919** - gives powers to the Douzaines and Constables of a Parish in relation to buildings which are a danger to persons in the vicinity; the owner can be required to return the property to a safe state and the Parish can apply to the Royal Court to demolish the building;
- f. **The Clearance of Ruins (Guernsey) Law, 1957** - the D&PA can require the demolition of a building in a ruinous condition and clearance of the land; and
- g. **The Housing (Standards and Regulation) (Enabling Provisions) (Guernsey) Law, 2021** - This is an enabling Law to address poor quality housing, approved by the States on 13th October, 2021 and which received Royal Assent in July, 2022 but which is not yet in force; it makes provision for minimum habitable standards, primarily through the regulation of the private rented sector.

APPENDIX B

**Copy of letters received from the Constables of the Vale, Castel, St Saviour and St
Sampson Parishes**



Constables of the Vale



*Douxaine Room,
Maraitaine Road,
Vale, Guernsey,
GY3 5QE.*

Tel: 01481 244155

Email: info@valeparish.gg

Deputy V Oliver
Development and Planning Authority
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey GY1 1FH

2nd September 2022

Dear Deputy Oliver,

Thank you for giving the Constables and Douzaine the opportunity to comment on the “proposal for provision to address land which is affecting the amenity of the area”.

The Constables and Douzaine of the Vale are fully supportive of this proposal which is much needed concerning fly tipping and abandoned vehicles.

The above mentioned sincerely hope that these proposals will include all land owned under the control of the various States committees. In the experience of the Constables of the Vale all of the reports and complaints regarding fly tipping and abandoned vehicles take place on land deemed to be public and therefore under the direct control of a States Committee. The truck in the Vale Castel car park being a case in point, where neither the Police nor Crown Officers are willing to act under existing legislation.

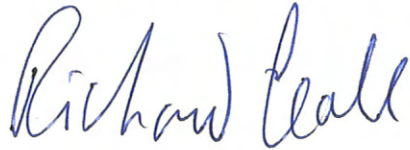
Therefore, introducing additional legislation is in the Constables and Douzaine of the Vale’s view necessary to curb and prevent these sorts of incidents. When people see rubbish piling up, they are more than happy to, it appears, add to it without fear of prosecution.

The section re dwellings being allowed to go to wrack and ruin is also most welcome as the parish has numerous properties that this applies to and despite our best efforts over the years, we have been unable to resolve these incidents.

Therefore, the Constables and Douzaine of the Vale have no hesitation in supporting the Development and Planning Authority's proposals.

Yours sincerely,

Richard Leale
Senior Constable.

A handwritten signature in blue ink, reading "Richard Leale". The signature is written in a cursive style with a large initial 'R' and a long, sweeping underline.



PLANNING SERVICE

13 SEP 2022

Deputy Victoria Oliver
President
Development & Planning Authority
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1 FH

9th September 2022

PROPOSAL FOR PROVISIONS TO ADDRESS LAND WHICH IS AFFECTING THE AMENITY OF AN AREA

Dear *Victoria*

The Castel Douzaine are grateful to have been invited to comment on the DPA's proposal to tackle known eyesores in various areas of the island and are in broad agreement with the detail contained in the Policy.

The tools to deal with land that affects the amenity of the area are paramount and to be applauded. However, we note that certain redundant glasshouse sites are to be excluded from the Ordinance on the basis that existing powers exist that should suffice to deal with such problems. We would therefore ask the following:

- a) what constitutes these 'certain glasshouses'?
- b) who decides on the classification?
- c) how many actions have been instituted under the existing powers alluded to in 5.3

We would also refer to condition 2.1 where mention is made of the removal of turf from any agricultural land. Whilst we understand that it is not desirable to continually remove turf from land as eventually the top-soil would be depleted, with the land then lost to agriculture. We would suggest that provision be made for turf to be considered a crop, and provided the producer replaced the loamy top layer taken with the turf, no problem should exist. We raise this point because it would be beneficial for a local producer of turf to provide this commodity, reducing the need to import.

We fully support the aim of regeneration and environmental enhancement both in our parish and other parts of our island, we are also encouraged that if the Policy Letter is approved, the DPA will have the power to serve civil notices to landowners where amenities are adversely affected by the condition of their land.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'David', with a stylized flourish extending from the end.

David Ozanne
Dean of the Douzaine

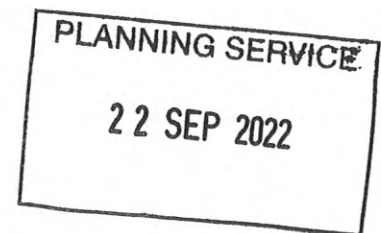
PAROISSE DE



SAINT SAUVEUR

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Deputy Victoria Oliver
President, Development and Planning Authority
States of Guernsey Planning Service
Sir Charles Frossard House
St Peter Port
Guernsey, GY1 FH



20TH September 2022

Dear Deputy Oliver

Proposal for provisions to address land which is affecting the amenity of an area

Thank you for your letter dated 18th August 2022 concerning the above. We would firstly like to thank you for the opportunity to express our views on the proposal.

Having read through the draft policy letter please see below our views:

1. The Douzaine would like to be approached PRIOR to civil notices being served on owners and occupiers of land within our parish in areas which have been identified. We would also like to have a continuous involvement in each case.
2. It is noted that redundant glasshouses and relevant structures are not covered by this proposal as they are covered under their own legislation. However, it is felt that this current legislation concerning glasshouses has not been used to eradicate the various eyesores around the island so therefore is it necessary to exclude from the new proposal?
3. In respect to abandoned vehicles, when this takes place on private land it is difficult for the landowner to contact the registered owner due to data protection. Has consideration been given to how information may be shared to enable the process of removal of abandoned vehicles from private land easier and at no cost to the landowner?
4. The Douzaine is concerned that in some cases the landowner may not have the means and circumstances to carry out steps for remedying the condition of the land as would be specified in the notice and within the specified time period. Has the States considered giving financial support, if necessary, in these cases? We are also concerned that a charge may be taken over the land to recover any expenditure incurred to clear the area. It is therefore important that Point 1 is put in place as the procedure outlined in 5.4 could cause unnecessary stress to parishioners if they do not have the means to sort the areas which are identified.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Connolly'.
Paul Connolly
Constable



PLANNING SERVICE

- 6 OCT 2022

The Constables of St. Sampson

Chambre de la Douzaine
Le Murier
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Deputy V Oliver
President
Development & Planning Authority
The Planning Service
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1FH

BY POST & EMAIL: planning@gov.gg

3 October 2022

Dear Deputy Oliver

Re: Proposal to address land which is affecting the amenity of an area

St Sampson Douzaine thank you for the opportunity to comment on the above proposal.

The general view was that it is a move in the right direction and to be welcomed but we do have certain reservations.

1. Why are vineries not included, which are much of what one might call the ugly side of the island and impose many dangers? These can be separated into four main areas:
 - a) The structural dangers, as many properties appear to be held up by the brambles and other vegetation plus old machinery, boilers and vehicles left within the property.
 - b) The danger of glass collapsing and injuring people, especially children, if people illegally enter the properties.
 - c) The vermin which inhabit the properties, especially when the space is filled with brambles and other growth. These can be a nuisance to neighbours and spread disease.
 - d) The dangers of land contamination and human health from asbestos insulation to piping and old boilers plus the lead paint and preservatives that many of the older wooden framed buildings would have been treated with.

Glasshouses and vineries are a major issue and although we appreciate that costs to demolish might be significant that should not be an excuse to ignore the eyesores that they are or the significant dangers they can pose.

2. Will the Crown and States of Guernsey be covered by the same rules and regulations? An example is that currently land owned or managed by the States, are major areas of concern regarding obnoxious plants, especially Japanese knotweed and ragwort. Both are not being

currently dealt with in a timely manner and are slowly spreading throughout the Island. Why should other landowners suffer because the States will not control a plant that should be by current legislation?

3. How will the Development & Planning Authority police the new proposal and ensure that it is applied fairly and consistently? We are concerned that having an abandoned car removed is not the same as having a building/land being made presentable, whatever presentable might mean.
4. If an islander claims that they cannot afford to undertake what is requested, what will happen, does the States of Guernsey go to court to recover monies spent for undertaking the works themselves? For a car perhaps not too greater cost but making a building 'presentable' could leave the States (taxpayer) with a sizable bill which the offender will not be able to pay.

We hope that you find our comments constructive and will take due regard of them.

Yours sincerely



P R Le Pelley



L A Le Tissier
Constables of St Sampson

APPENDIX C

**Copy of letters received from the Policy & Resources Committee and the Committee
*for the Environment & Infrastructure***



Policy & Resources
Committee

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By email

9 August 2022

Dear Deputy Oliver

PROPOSAL FOR PROVISIONS TO ADDRESS LAND WHICH IS AFFECTING THE AMENITY OF AN AREA

Thank you for your letter of 12th July inviting the Committee to consider the draft Propositions and supporting policy letter setting out recommendations for new land planning legislation to tackle known eyesores in the Island's urban centres and rural areas.

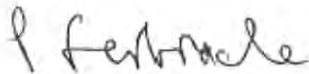
In considering the policy proposals, the Committee has been furnished with supplementary best practice guidance from the UK Office of the Deputy Prime Minister entitled *Town and Country Planning Act 1990 Section 215 – Best Practice Guidance*. It was helpful in illustrating in a practical way how the proposed powers may be used, which the Committee has been advised will be very similar to those under section 215 of the Town and Country Planning Act in the UK, and in particular the contribution that they can make to regeneration and environmental enhancement. As is generally the case with planning matters, it is presumed that similar Guernsey Planning Guidance will be available for Islanders.

The Committee was interested to understand the potential impact and risks for government assets and understands from officer discussions that the Authority's legal adviser is of the view that consistent with section 76 of the 2005 Law, and to avoid a situation where one States' Committee is issuing a civil notice against another, the policy and resulting provisions for the new amenity civil notices should provide for an exemption/disapplication/modification against the States themselves/individual committees in respect of States' owned or occupied land.

There are, it is understood, relevant powers in sections 46(2), 76(5) and 89 of the 2005 Law that would allow an appropriate exemption to be made which the Committee would ask that the Authority acts on positively in this policy letter in order to bring the situation beyond doubt.

In summary, and subject to the express exception with respect to the States of Guernsey, the Committee welcomes the introduction of powers that it understands are not uncommon in many jurisdictions. It is confident that the community will welcome action with respect to derelict premises in Town or unsightly redundant visitor accommodation and establishments. Such powers, effectively directed, should play an important part in securing the revitalisation and regeneration that the Government Work Plan envisages, just as the Authority has set out in its policy letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P Ferbrache', written in a cursive style.

Deputy Peter Ferbrache
President



Committee *for the*
Environment & Infrastructure

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2 September 2022

Dear Deputy Oliver

PROPOSAL FOR PROVISIONS TO ADDRESS LAND WHICH IS AFFECTING THE AMENITY OF AN AREA

Thank you for the opportunity to comment on your proposed Policy Letter regarding the above.

As you kindly pointed out in your letter of July 12 this has impact relating to the Committee's areas of mandate in Environmental Health and in the administration of the Planning Panel.

As such I have sought advice from officers working in those areas.

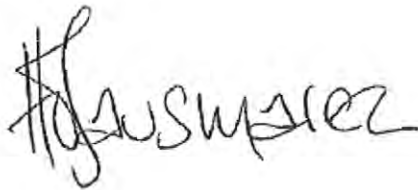
The Secretary of the Planning Panel has noted that resourcing implications are considered in the draft Policy Letter and has added one further comment in relation to section 5.4 (list of grounds of appeal) which I would like to bring to your attention. She said "It has recently been noted by the Planning Panel that a ground which appears in most other relevant legislation is missing from the High Hedge legislation ["the issue of the notice was (for any other reason) ultra vires or unreasonable"] and this has impacted on a recent case."

In terms of Environmental Health, the Director of Environmental Health and Pollution Regulation is supportive of the propositions. As noted in the Policy Letter, there is potentially some cross-over in relation to Public Health, waste and housing legislation but this is seen as an additional tool to address the problem rather than a duplication of legislation, especially as the scope of the proposed legislation goes beyond existing powers. From an operational perspective, the Committee would need to ensure that there is not duplication of actions or conflicting instructions on a land owner but this is not

different to other existing situations and can be managed through basic officer communication.

In terms of abandoned vehicles, the Committee would like further clarification on what definition the Authority intends to use; a clear definition at this stage could prevent future ambiguity impacting the effectiveness of the proposed legislation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lindsay De Sausmarez', with a stylized initial 'L'.

Deputy Lindsay De Sausmarez
President
Committee *for the* Environment & Infrastructure

APPENDIX D

**Copy of Office of the Deputy Prime Minister publication – Town & Country Planning
Act 1990 Section 215 – Best Practice Guidance**



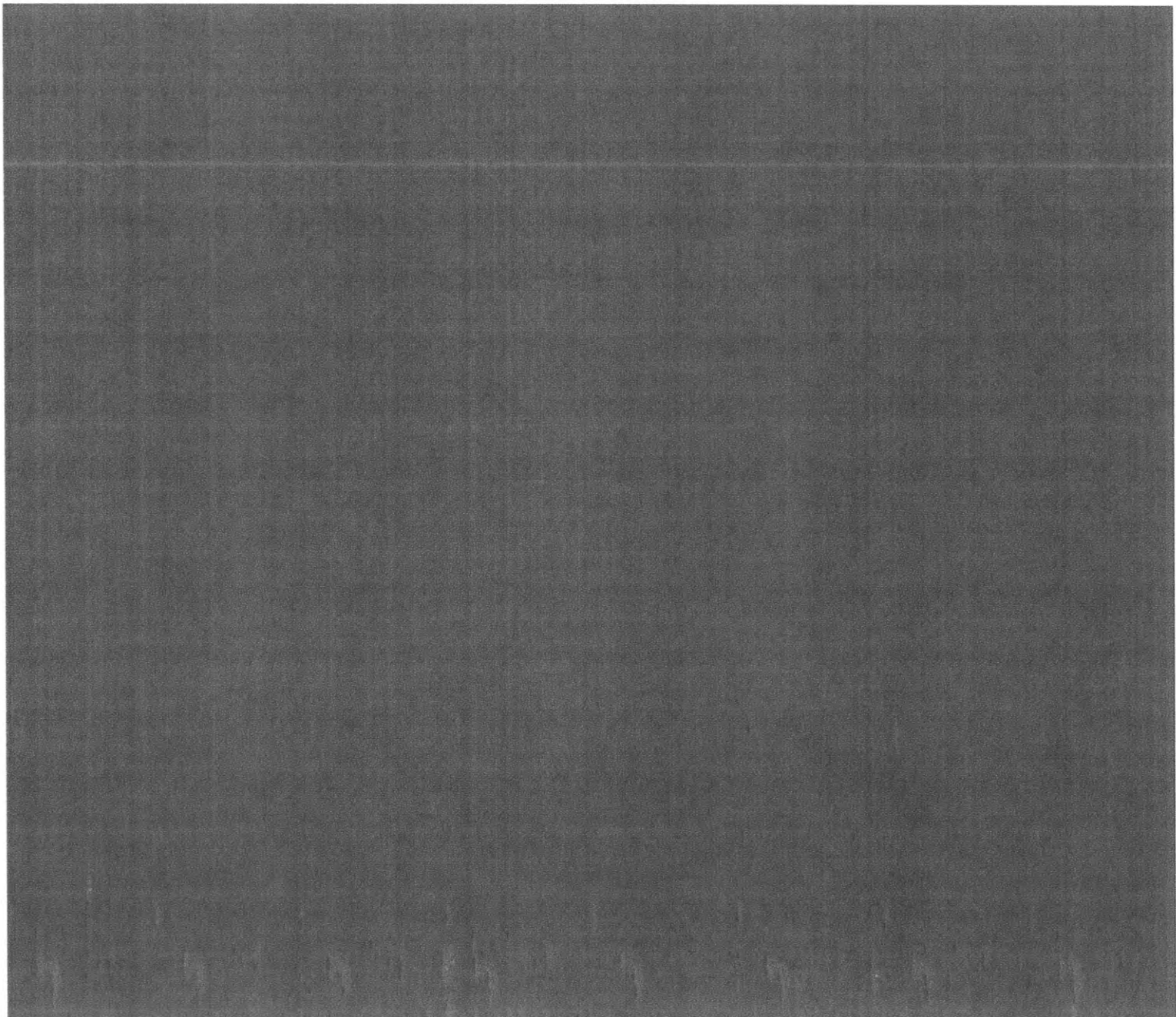
Office of the
Deputy Prime Minister

Creating sustainable communities

Town and Country Planning Act 1990

Section 215

Best Practice Guidance





Office of the
Deputy Prime Minister

Creating sustainable communities

Town and Country Planning Act 1990 Section 215 Best Practice Guidance

January 2005

Office of the Deputy Prime Minister: London

Following the reorganisation of the government in May 2002, the responsibilities of the former Department of the Environment, Transport and the Regions (DETR) and latterly Department for Transport, Local Government and the Regions (DTLR) in this area were transferred to the Office of the Deputy Prime Minister.

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Introduction

Section 215 (s215) of the Town & Country Planning Act 1990 (the Act) provides a local planning authority (LPA) with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a 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. LPAs also have powers under s219 to undertake the clean up works themselves and to recover the costs from the landowner.

The use of s215 by LPAs is discretionary and it is therefore up to the LPA to decide whether a notice under these provisions would be appropriate in a particular case, taking into account all the local circumstances. LPAs will need to consider, for example, the condition of the site, the impact on the surrounding area and the scope of their powers. In some circumstances s215 notices may be used in conjunction with other powers, for example, repair notices in respect of listed buildings or dangerous structure notices.

The most important message that LPAs should be aware of is that s215 action can be taken against land *and* buildings – in s336 of the Act the definition of ‘land’ includes a building.

The planning research report *Derelict Land and Section 215 Powers*, commissioned by the Department of the Environment, Transport and the Regions (DETR), published in September 2000, concluded that there are no fundamental problems with existing legislation. Section 215 and associated powers provide an effective mechanism for tackling unsightly land, both as a ‘threat’ and through the formal serving of a notice and through work in default. However the report concluded that practical examples in the imaginative and effective use of s215 needed to be disseminated to LPAs to encourage greater use of the power. Difficulties in the use of the power seem to arise from infrequent use and lack of experience rather than complexity or lack of scope of the legislation.

Successful s215 action has been both complaint-driven and proactive. It is one of a number of provisions available to LPAs for maintaining and improving the quality of the environment, assisting in tackling dereliction and retaining land in productive use. As such, it can be carried out as a stand-alone process or in partnership with other agencies. Wherever possible, however, action using s215 needs to be combined with proactive measures such as empty homes strategies, development briefs and public/private funding programmes, as well as other reactive enforcement and development control tools (including conditions and legal agreements on planning permission). Through the planning application process and the use of conditions, local authorities can encourage ‘the creation and maintenance of attractive, successful places in which people are happy to live, work and take their leisure.’¹

¹ DETR, *Places, Streets and Movement: A companion guide to Design Bulletin 32 Residential Roads and Footpaths* (1998)

Section 215 is a relatively straightforward power that can deliver important, tangible and lasting improvements to amenity. For example, in one LPA 157 former eyesores were improved as a result of the direct use or threat of s215 action between April 2000 and April 2004. Section 215 has the potential to contribute to wider regeneration and urban quality objectives and is an important part of the Government's sustainable development strategy. The Urban Task Force (1999) found that 'there is little incentive for private property owners to invest in the quality of their property if they are situated within an urban environment which is of such low quality that it simply sucks value out of their property'.

ODPM recognises that there are many LPAs who are successfully using s215 as a regenerative tool (Doncaster Metropolitan Borough Council and Hastings Borough Council are leading examples) and believe that problems in the use of s215, particularly definitions, would be best addressed through the 'informal' dissemination of information. By issuing Best Practice Guidance, ODPM hopes to encourage closer working and the sharing of experience between LPAs.

RESEARCH FINDINGS

The research commissioned by DETR in 1999 into the use of s215 drew a number of key conclusions and observations:

- Section 215 powers are effective as a threat or informal mechanism for cleaning up sites, around 20% of notices approved in 1998/99 were not served, implying that action was taken by the landowners in the face of the 'threat' of a s215 notice being served.
- Section 215 notices are effective in terms of securing compliance, for example 80% of notices served in 1998/99 resulted in compliance and only 6% were appealed. Only 6-8% of notices resulted in works in default by the authority.
- Experience has shown that authorities that interpret the scope of s215 widely also tend to be more proactive and successful at using the powers to achieve wider regeneration objectives.
- Successful use of s215 for regeneration purposes also coincides with close working arrangements with partner organisations, for example New Deal and urban regeneration bodies, and regular monitoring of the quality of the environment.

REGENERATION

Section 215 powers have a role to play in LPAs' response to the Government's sustainable regeneration agenda. Indeed, several LPAs have successfully demonstrated how s215 action can be used as an integral part of regeneration and built environment improvement programmes. LPAs should not sit back and wait for complaints however. Rather they should be proactive in identifying and taking action against buildings and land, the condition of which are regarded as unsatisfactory. It is also important that LPAs share information and work in co-operation with regeneration, economic development, housing departments and other regeneration agencies as part of a wider strategy of local environment improvement and regeneration.

Section 215 powers are just one of the tools available to LPAs within a package of other measures to be used in conjunction with regeneration initiatives.

SCOPE OF POWER

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 the more typical rundown residential properties and overgrown gardens. In certain circumstances, early consideration of the use of s215 could prevent a need for use of s54 of the Planning (Listed Buildings & Conservation Areas) Act 1990 (Urgent Works Notice). LPAs should use s215 powers proactively; they should not just be complaint-led.

LPAs should certainly not be afraid of using s215 powers. LPAs have reported that it is a relatively straightforward power to use and that it can deliver extremely good results. For example in one LPA, of 130 s215 notices served between April 2000 and April 2004 the vast majority resulted in a very high standard of remedial works with prosecution and/or direct action for non-compliance only being required in less than 10% of cases.

Subdivision of fields and woods into small plots for sale, usually over the internet, can lead to unsightly consequences. The buyers may be misled into confidence that, one day, they will be able to carry out works on their 'investment' plots, or change the land-use. Neglect or unlawful works may occur. If this is damaging the landscape or other countryside amenity, action under s215 could be considered.

Another context in which s215 notices may be used successfully is in relation to listed buildings and their setting, and in the enhancement of conservation areas. In one LPA, for instance, s215 action has resulted in improvements being carried out to 41 listed buildings and 104 premises in conservation areas.

The scope of works that can be required in s215 notices is wide and includes planting, clearance, tidying, enclosure, demolition, re-building, external repairs and repainting. 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.

Potential sites can sometimes go beyond the remit of a s215 notice so there may be other more appropriate powers that an LPA can rely upon in order to effect a remedy, for example:

- ss76-79 of the Building Act for defective premises, dangerous buildings, ruinous and dilapidated buildings and neglected sites;
- s29 of the Local Government (Miscellaneous Provisions) Act 1982 for works on unoccupied buildings;
- ss79-82 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.

There are many issues associated with buildings and land in disrepair. LPAs are encouraged to work with parties across their council, for example empty homes, environmental health and grant providers, such as town centre management or New Deal bodies.

DEFINITION OF 'AMENITY'

'Amenity' is a broad concept and not formally defined in the legislation or procedural guidance, ie it is a matter of fact and degree and, certainly common sense. Each case will be different and what would not be considered amenity in one part of an LPA's area might well be considered so in another. LPAs will therefore need to consider the condition of the site, the impact on the surrounding area and the scope of their powers in tackling the problem before they decide to issue a notice. LPAs should not be excessively concerned with producing an overly technical definition of 'amenity' though. Experience has shown that where a notice is appealed or a prosecution is pursued, a clear and well-presented case will usually be sufficient to ensure that the appeal is refused.

PRE-NOTICE DISCUSSION AND ENSUING TIMESCALES

Pre-notice discussion can be an invaluable tool in terms of yielding positive results and is to be encouraged. That said any discussions should not be allowed to result in undue delay in terms of yielding results. The timescale between complaint and compliance can appear protracted (see flowchart at Annex A) but generally most time is taken up in pre-notice discussion with landowners. The mutual benefit of communication between LPA and landowner cannot be overstated. In many instances, issue of a s215 notice has been avoided, and an eyesore remedied, due merely to talking with a landowner. Experience has shown that landowners are usually quick to take action once the warning of a s215 notice has been sent, and more so once a s215 notice has been issued. Example 'first warning' letters upon which LPAs may wish to base their own letters are shown at Annex B. **However it must be stressed that LPAs should take their own legal advice as to the exact wording of each letter they use, as each case will be unique.**

A s330 notice requires the recipient to provide information about the ownership of the property and of any other person who may have an interest in it. Experience has shown that the inclusion of a s330 notice with the first warning letter encourages co-operation (an example s330 notice and accompanying guidance is attached at Annex C). Failure to respond to one of these notices is a criminal offence punishable in the Magistrates' Court with a fine of up to £1,000. A false statement given in response to the notice is punishable, upon conviction in the Magistrates' Court, with a fine of up to £5,000 or in the Crown Court, with a fine, imprisonment, or both.

LPAs may also wish to consider the matter of lawful use and whether or not a Planning Contravention Notice should be served in order to obtain information relating to the lawful use of the land being investigated.

There are several other options to help in tracing the owner or occupier of a potential s215 site, for example by:

- Land Registry search;
- Companies House search;
- internet search;
- private investigators; and
- information gathering notices.

All have been widely and successfully used by LPAs.

Whilst negotiation is undeniably a valuable tool, it must be stressed that in order to produce prompt, tangible and good quality results, a hardline approach intolerant of delay should be adopted. Furthermore, the best results depend on utilising the powers available to the maximum potential and courting publicity wherever possible.

PUBLICITY AND THE 'RIPPLE' EFFECT

One benefit of the successful use of s215 notices is the 'ripple' effect it generates, especially in residential areas. LPAs have reported that often once a notice has been issued and work begun, work on neighbouring properties has also commenced, resulting in improved standards and conditions over a wide area. LPA experience has shown that often the mere 'threat' of a s215 notice elicits a similar response. Publicity, whether via local media or merely word of mouth, of an LPA's willingness to use initiatives such as s215 notices and actively pursue landowners in an effort to improve and regenerate their areas is also an incredibly strong tool.

Public perception of this kind of enforcement action has proven extremely popular. The issue of eyesores is clearly one that is close to people's hearts and confronting the problem head on using s215 powers could potentially show the LPA in a positive light. Run-down and derelict buildings convey all sorts of negative impressions. If an LPA combats them with comprehensive remedial action, people will feel better about the area, whether they are residents, businesses or tourists. There is an important economic issue in favour of comprehensive s215 action: if a town is presentable, people will want to visit or live there, and businesses will want to locate there.

ISSUING A S215 NOTICE

LPAs would be well advised to ensure that the notices they issue are clear, precise and unambiguous. The letters should aim to achieve a good quality, lasting solution. Where necessary, specialist input should be sought at an early stage, for example

from the LPA's Conservation or Building Control Officers, or independent engineers with expertise. It would be prudent for all letters to be subject to scrutiny by the LPA's legal advisers.

Provided the notice is skillfully composed, the requirements are absolutely clear, and the LPA has a precise timescale then, if anything goes awry, the LPA has certain formal remedies provided within law to which it can resort.

Section 215 action should not be taken against land the poor condition of which is attributable in some way to the carrying out of operations or a use of land in accordance with Part III of the Town & Country Planning Act 1990.

APPEALS

Unlike s172 enforcement notices, appeal against the s215 notice is to the Magistrates Court. The grounds of appeal against the s215 notice are set out in ss217-218 of the Act (see Annex D). In reality, they are relatively limited and a carefully thought out, reasonable and skillfully composed notice should tend to reduce the chances of an appeal being successful.

Very few s215 notices are actually appealed and of those that are only a small proportion are upheld. A clear and well-presented case that stresses the adverse impact of the site on the local streetscene has proven more effective than an overly technical presentation regarding the definition of 'loss of amenity'. The use of site visits and photographic evidence can carry a lot of weight in presenting the LPA's case to magistrates.

Where LPAs have made a well-presented case, appeals have rarely been successful. LPAs would be well-advised to operate with a prosecution in mind and train officers to carry out investigations to the standards contained within the Police and Criminal Evidence Act 1994, preparing prosecution/appeal files according to the Criminal Procedure and Investigation Act 1996.

Section 215 allows an LPA to take positive action and unlike, for example, stop notices or Article 4 directions, would not place any prohibition or restriction upon the land. Loss or injury attributable to the imposition of the notice would be at best minimal and it would be unlikely therefore that an LPA would be liable for compensation should the s215 notice not be upheld.

An example of a letter, including information on making an appeal, which could be issued to the recipient of a s215 notice is at Annex D.

HUMAN RIGHTS ACT

Article 8 and Article 1 of the first protocol to the Convention on Human Rights state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property. However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In this case, the wider impact of the appearance of the land overrules the owner's right to the peaceful enjoyment of his property.

PROSECUTION VERSUS DIRECT ACTION WORKS IN DEFAULT

Some LPAs prefer to deal with the majority of their s215 non-compliance cases by direct action, ie by carrying out the works themselves, whilst some prefer to prosecute for non-compliance, for example where they do not have a direct labour organisation. Experience has shown that each route is equally as successful as the other in terms of outcome. It is for the LPA to decide which is the most appropriate action to take, taking into consideration the details of each individual case. Indeed, in some cases LPAs may take the view that both courses should be pursued together. The majority of s215 cases are resolved before these stages need to be considered. That said, cases should always be conducted from the outset with these eventualities in mind.

Whilst the level of fine for a successful conviction is relatively limited to one not exceeding level three (at the time of publication up to £1,000) this should not dissuade LPAs from considering prosecution. The prospect of conviction and having a criminal record has a salutary effect and can produce the desired outcome. Many apparently intractable cases have been solved at the last minute under threat of prosecution.

Where direct action is to be taken, prior warning should be given by letter that the Council and its appointed contractors intend to carry out the steps required by the notice. It is recommended that this be backed up by the display of a suitable notice of intent on the site carrying the same information. Prior warning of intended prosecution should also be given by letter. Examples of both letters are at Annex E.

When taking the direct action approach it may be advisable to exercise some caution. Understandably, some owners or occupiers do not welcome Council employees or contractors with open arms! It is good practice to notify the Police of any direct action taking place, as it has been known for owners or occupiers to react in such a way that their actions result in them being arrested for a breach of the peace.

COST RECOVERY

An LPA budget is not normally needed for direct action works to be carried out in default, as costs are normally met from revenue, not capital. Authorities that have undertaken works themselves have not experienced great difficulties in recovering costs. Where costs cannot be immediately recovered LPAs have the option of registering a charge on the property with the Land Registry, thus assuring full cost recovery plus base-rate interest. There is also provision within the Land Charges Act for the interim procedure of placing an estimate of the charge that will become due on the property. This effectively ensures the land or property cannot be sold without a charge being shown on the land.

County or High Court bailiffs have also been successfully used to recover monies owed.

FURTHER INFORMATION

Copies of the research report *Derelict Land and Section 215 Powers* can be obtained by calling ODPM's Publication Sales Centre on 0870 1226 236 or from the internet at: www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplate/odpm_index.hcst?n=2497&l=3

Additional guidance/information can also be found in the following documents:

Town and Country Planning Act 1990 (Section 215) (1990)

Derelict Land Prevention and the Planning System (1995)

DETR Circular 2/98 Prevention of Dereliction through the Planning System (1998)

Urban White Paper (2000)

Listed Buildings, Conservation Areas & Monuments (Third Edition) – Charles Mynors (Section 6.13.1-8, pages 138-143)

ACKNOWLEDGEMENTS

ODPM wishes to acknowledge the help given by the officers at Oadby & Wigston Borough Council, Doncaster Metropolitan Borough Council, Hastings Borough Council, Walsall Borough Council and King's Lynn & West Norfolk Borough Council who have shared their positive and practical experiences of the use of s215, and for the use of images supplied by them.

Case Studies



CASE STUDY

Residential

Date of complaint: August 2003

Date of 1st warning: 5 September 2003 (with s330 notice)

Date of 2nd warning: 18 November 2003

Date of notice: 18 November 2003

Date of appeal: None

Date of compliance: 18 December 2003

Outcome: Site cleared by direct action 11 February 2004

Recovery of costs by way of registering a Land Charge



CASE STUDY

Derelict Hotel

Date of complaint: Series of complaints from approx 1990 to Building Control and Environmental Health

Date of 1st warning: March 1999

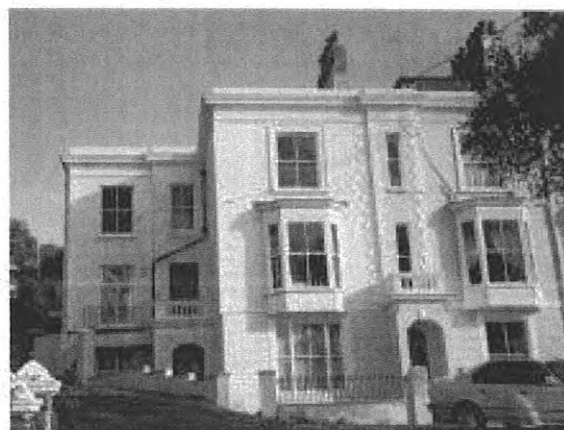
Date of 2nd warning: none

Date of notice: none served

Date of appeal: none

Date of compliance/outcome: With co-operation of Local Planning Authority property sold to developer.

Converted to 20 luxury apartments 2000



CASE STUDY

Residential flat in conservation area

Date of complaint: end of 1999

Date of 1st warning: 26 January 2000 (with s330 notice)

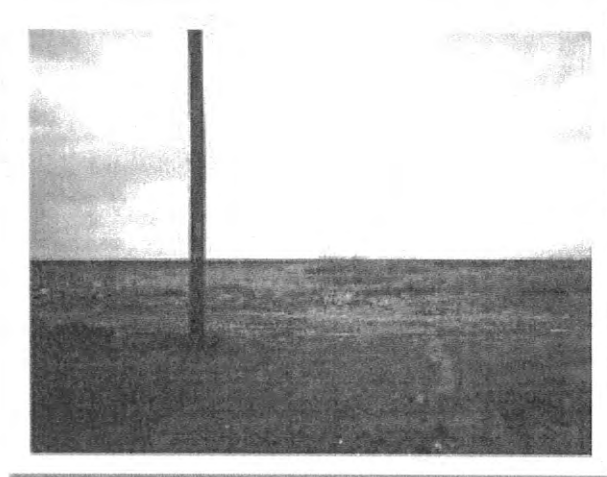
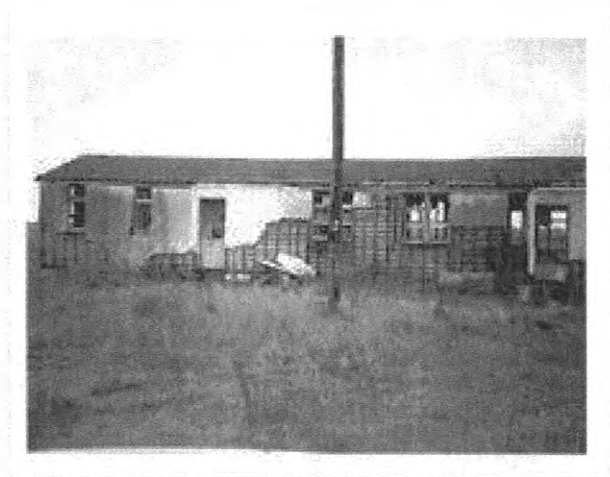
Date of 2nd warning: 17 February 2002

Date of notice: 11 December 2000

Date of appeal: None

Date of compliance: 18 August 2001

Outcome: full compliance with s215 notice



CASE STUDY

Derelict residential

Date of complaint: series of complaints from around 1990

Date of 1st warning: October 1997

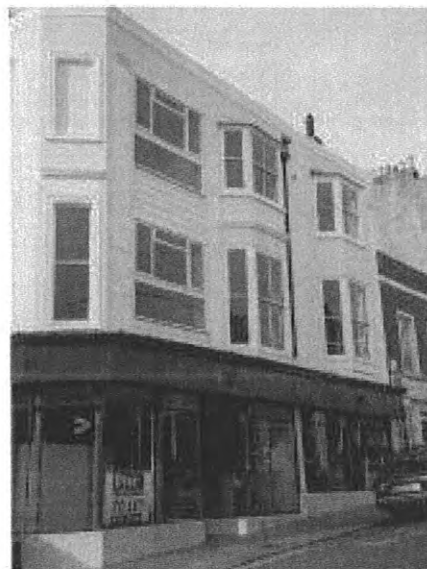
Date of 2nd warning: none

Date of notice: January 1998

Date of appeal: none

Date of compliance: February 1998

Outcome: site cleared by owners



CASE STUDY

Property in A1 use, town centre location on corner of main road

Date of complaint: pro-actively targeted by lpa officers

Date of 1st warning: 9 August 2001 (with s330 notice)

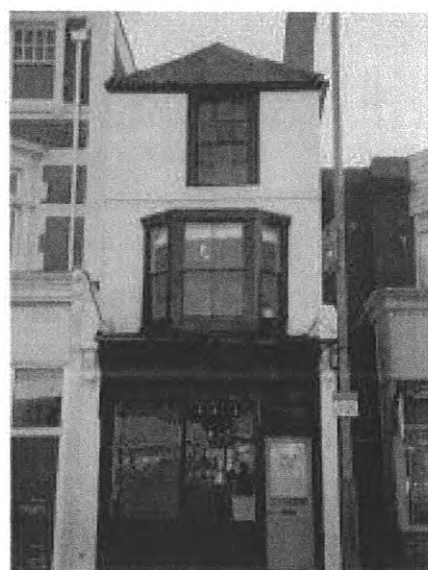
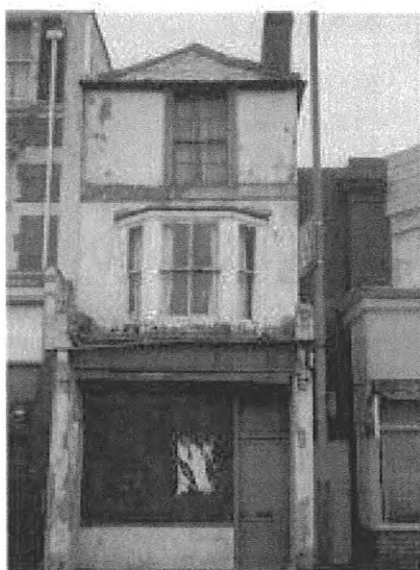
Date of 2nd warning: 20 September 2001

Date of notice: 1 October 2001

Date of appeal: none

Date of compliance: August 2002

Outcome: Summons issued by work commenced and completed to very high standard so prosecution dropped



CASE STUDY

**Former shop with residential over, just
outside town centre on key arterial route**

Date of complaint: pro-actively targeted by lpa officers

Date of 1st warning: 27 February 2002

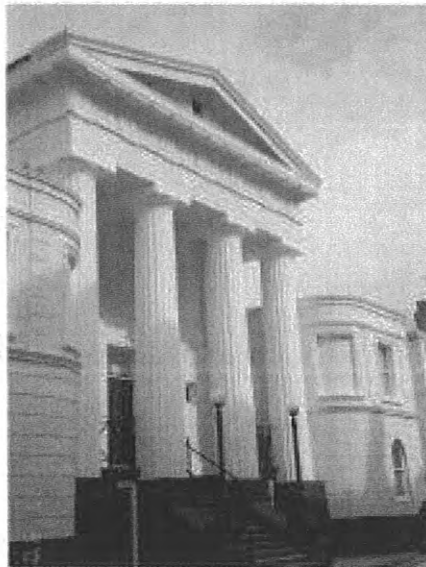
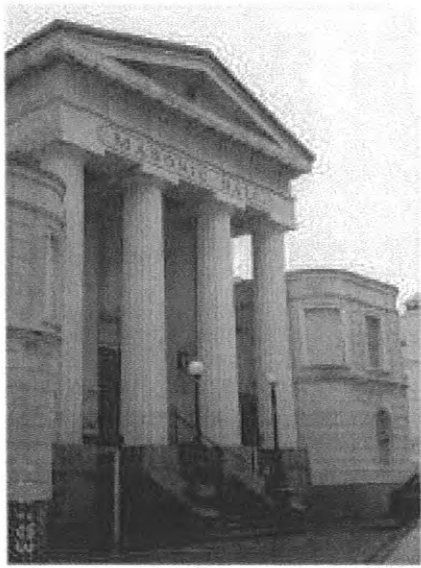
Date of 2nd warning: 6 March 2002

Date of notice: 2 May 2002

Date of appeal: none

Date of compliance: works completed early 2003

Outcome: full compliance with s215 notice



CASE STUDY

**Grade II listed building, predominantly
residential conservation area**

Date of complaint: pro-actively targeted by lpa officers

Date of 1st warning: 25 February 2003

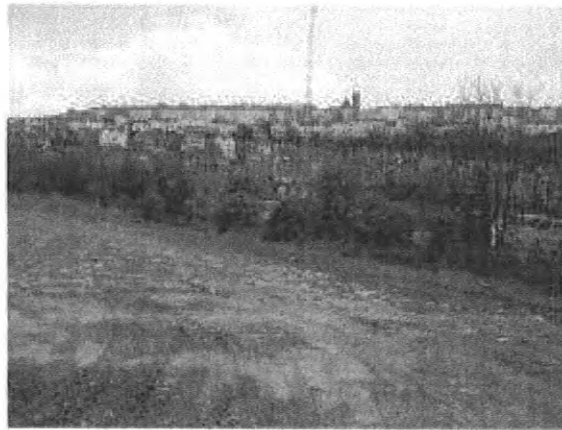
Date of 2nd warning: none

Date of notice: 25 November 2003

Date of appeal: none

Date of compliance: August 2004

Outcome: full compliance with s215 notice



CASE STUDY

Old garage site with demolition material left in situ

Date of complaint: early 2003

Date of 1st warning: difficulty encountered in tracing owners whose agent was convicted of failing to comply with s330 notice and fined £2500 plus costs.

Date of 2nd warning: none

Date of notice: 4 December 2003

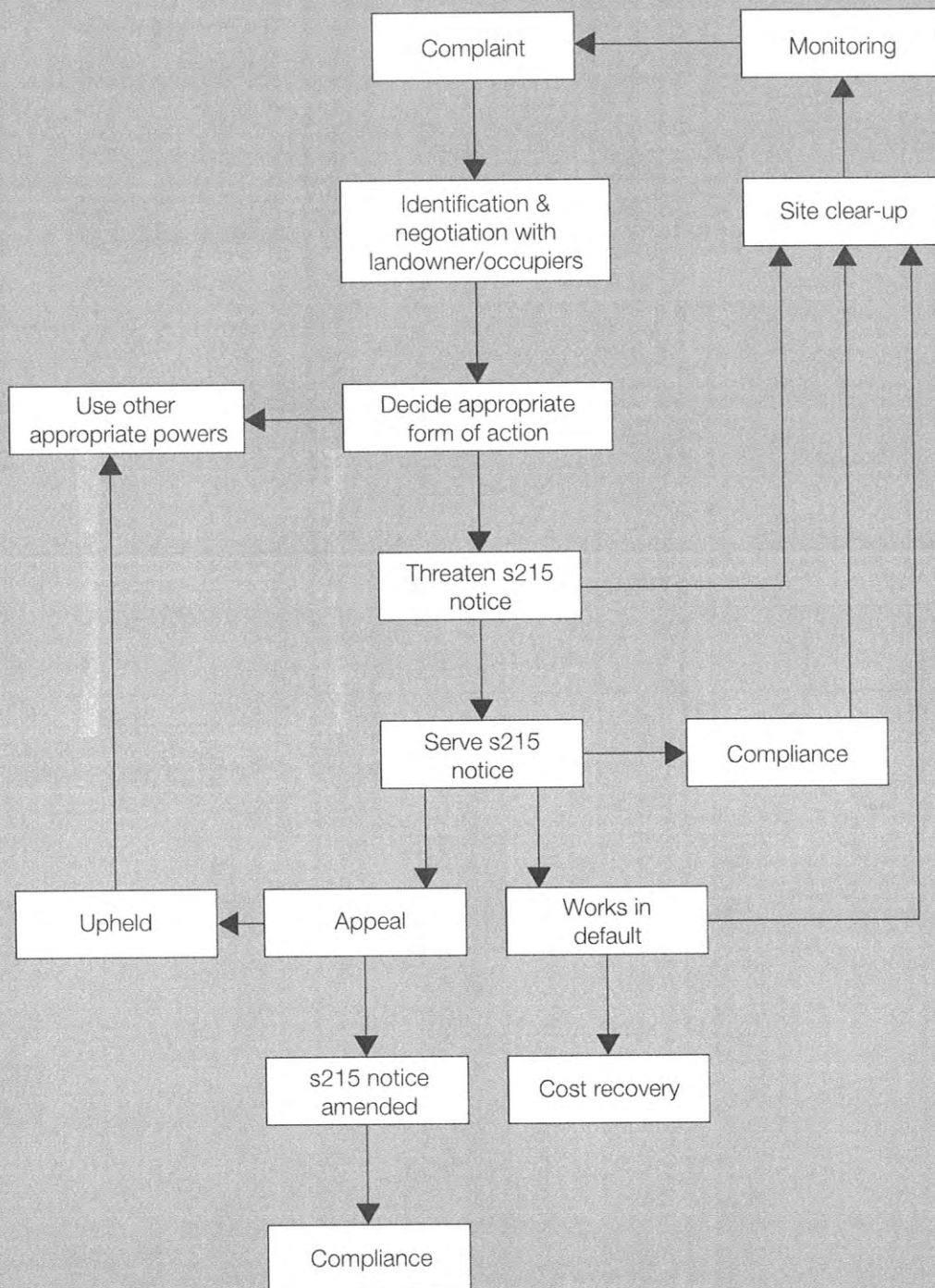
Date of appeal: none

Date of compliance: mid-March 2004

Outcome: full compliance achieved with the removal of several thousand tonnes of material and the securing of the site to deter unauthorised access

Annex A

SECTION 215 PROCEDURE



Annex B

EXAMPLE: FIRST WARNING LETTER – BUILDING IN DISREPAIR

Dear Sir/Madam

PROPERTY ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD [AREA/AREA]

As you may know, [Council name] is committed to ensuring that improvements are carried out to buildings in [eg general/specific area] whose external condition has deteriorated. Improving such buildings has been identified by local people as a key priority for the Council and as a result of this a number of buildings across the [Council area] have been brought to a satisfactory condition.

The external appearance of the above mentioned premises is a source of concern primarily because of [the condition of render, external metalwork, paintwork, windows, grilles, doors]. The Council is writing to you today as the proprietor of the above mentioned premises as identified by the Land Registry. Its purpose is to respectfully request that works be carried out to remedy the poor external condition of the building in the near future, and to ascertain whether you have any plans in this regard. I would emphasise that your property is not being treated in isolation. The owners of other premises in the vicinity are being similarly contacted.

I advise that if prompt progress is not made in terms of remedying the poor external condition of the premises and a guarantee given to the Council by you that such works will be undertaken, the Council has the option to take enforcement action under Section 215 of the Town and Country Planning Act 1990. This is a course that the Council would wish to avoid if at all possible. It is hoped, therefore, that your co-operation can be relied upon in terms of improving the building in the near future and giving a guarantee to that effect.

EXAMPLE: FIRST WARNING LETTER – BUILDING & LAND IN DISREPAIR

Dear Sir/Madam

PROPERTY ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD [AREA/AREA]

I have received a complaint in respect of the condition of your property at the above address. A recent visit by a Council officer has confirmed that its condition is unsatisfactory and is causing concern.

In these circumstances I must ask you to undertake the following works within 21 days from the date of this letter, to abate the nuisance and bring the property back to an acceptable standard:

[1. ...]

I advise that failure to comply with this request will leave the Council with no option but to consider action pursuant to Sections 215-219 of the Town & Country Planning Act 1990 (as amended). This could include formal action by way of service of a Notice, which will legally require you to undertake the work set out above. This is a course of action the Council would rather avoid and I seek your co-operation by carrying out these works. Such works will contribute towards achieving an [urban renaissance in [area]].

I enclose with this letter a Notice pursuant to Section 330 of the Town and Country Planning Act 1990 (as amended), which requires you to provide information about the ownership of the property and of any other person who may have an interest in it.

WARNING – Failure to respond to the enclosed Notice is a criminal offence punishable in the Magistrates Court with a fine of up to £1,000. It is also a criminal offence to make a false statement in response to this Notice. On conviction in the Magistrates Court this offence is punishable with a fine of up to £5,000 or in the Crown Court with a fine, imprisonment, or both. The Local Authority may prosecute this matter in the Courts should there be a breach of this or any subsequent Notice.

Please complete in full the Notice reply form and return to me [using the enclosed stamped addressed envelope] **within 21 days of the date of this letter.**

Should you wish to discuss any of the above in detail, you can contact the officer named above on the number given, who will be pleased to assist you. It is my hope that this matter can be resolved in a spirit of mutual co-operation.

EXAMPLE: SECOND WARNING LETTER – BUILDING IN DISREPAIR

Dear Sir/Madam

**PROPERTY ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD
[AREA/AREA]**

The Council last wrote to you about this matter on ... A copy of that letter is attached for your information. The Council has not received a response from you.

I advise you that, unless the Council hears from you within five working days of the date of this letter, outlining the steps you are going to undertake to remedy the external condition of the premises, then it will take enforcement action under Section 215 of the Town and Country Planning Act 1990. This enforcement action will require the improvements to be carried out. As you can appreciate this is a course that the Council would wish to avoid. The matter however now rests with you.

Annex C

EXAMPLE: S330 NOTICE

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

[lpa name]
TOWN AND COUNTRY PLANNING ACT 1990
NOTICE UNDER SECTION 330(1)

To:

[name & address]

TAKE NOTICE that the [lpa name] in exercise of its powers under Section 330(1) of the Town and Country Planning Act 1990 does hereby require you to provide to it in writing, the following particulars affecting land situated and known as [address] in the [lpa area] as shown edged red on the attached plan (hereinafter referred to as “the Premises”) within **twenty-one days** after the date on which the Notice is served:

A. As to interest in the premises:

- i. The nature of your own interest in the premises.
- ii. The name and address of any other persons known to you as having an interest in the premises whether as freeholder, mortgagee, lessee or otherwise.

B. As to the use of the premises:

- i. The purpose for which the premises are used.
- ii. The time when that use began.
- iii. The name and address of any person known to you as having carried on that use.
- iv. The time when any activities being carried out on the premises began.

Section 330(4) of the Town and Country Planning Act 1990, states that any person who without reasonable excuse fails to comply with a Notice served on him under Section 330(1) shall be guilty of an offence and liable to summary conviction to a fine not exceeding £1,000.

Section 330(5) of the Town and Country Planning Act 1990, states that any person who having been required by a Notice served on him under Section 330(1) to give any information knowingly makes any mis-statement in respect thereof shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or both.

EXAMPLE: GUIDANCE ON COMPLETING SECTION 330 FORM

This form is supplied to assist you in providing the information required by my Notice dated the xxth day of xxxx, 200x served under the provisions of Section 330(1) of the Town and Country Planning Act 1990.

Please answer the following questions and complete the declaration at the end of the questions. If a question is not applicable, please state that this is the case.

A. As to interests in the premises:

i. What is the nature of your interest in the premises?

.....
.....

ii. What is the FULL NAME AND ADDRESS of:-

a. The occupier of the premises?

.....
.....

b. The freeholder of the premises?

.....
.....

c. The lessee of the premises?

.....
.....

d. The mortgagee of the premises?

.....
.....

e. Any other person with an interest in the premises?

.....
.....

Nature of interest?

.....
.....

B. As to the use of the premises:-

i. For what purposes are the premises being used?

.....

ii. When did that use begin?

.....

iii. What are the full names and addresses of persons known to you as having used the premises for that purpose?

.....

iv. When did any activities being carried out on the premises begin?

.....

I [name] hereby declare that the answers to the above questions comprise a true and correct statement of all the information required by the said Notice, so far as the same is within my knowledge.

Date:

Signed:

Address:

.....

.....

.....

Annex D

EXAMPLE: LETTER TO ACCOMPANY S215 NOTICE AND GUIDANCE TO MAKING AN APPEAL AGAINST S215 NOTICE

Dear Sir/Madam

PROPERTY ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD [AREA/AREA]

I wrote to you on [date] concerning the above and seeking your co-operation in improving the condition of your property. You were invited to discuss this matter with my Officer if you wished.

A further inspection has been conducted and revealed that there has been no significant improvement in the condition of the property since I last wrote to you. [I note that you have failed to return the Section 330 Notice as required within the period stated. I remind you that failure to complete the Notice is a criminal offence and can give rise to prosecution.]

Consequently, you will now find enclosed with this letter a formal Notice pursuant to Section 215 of the Town and Country Planning Act 1990 (as amended), together with information concerning your right of appeal to the Magistrates Court. The Notice details the list of requirements that I consider are the minimum works required to bring the property back to a reasonable standard and which will rectify the adverse effects your property is having on the amenity of the neighbourhood.

I would still urge you, even at this late stage, to take the required action to resolve this matter as detailed in the Notice, within the next **28 days** from the date of this letter.

Your failure to comply with this Notice will leave me with several courses of action. Either or all of these actions may be pursued as follows:

1. A prosecution in the Magistrates Court for non-compliance with the s215 Notice – which could result in a substantial fine if found guilty of an offence.
2. The Council carrying out the works required by the Notice followed by action in the County Court to recover, from you, all expenses and costs reasonably incurred by such action.
3. Registration with HM Land Registry of a charge on your property, recoverable should your property be sold.

You may consider that these actions are radical steps that should be avoided. But I must make clear that, unless the requirements of the Notice are complied with in full, and within the specified period, I will proceed with a course of action described above.

**RIGHT OF APPEAL AGAINST SECTION 215 NOTICE
SECTIONS 217-218 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

217—(1) A person on whom a notice under Section 215 is served, or any other person having an interest in the land to which the notice relates, may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal against the notice on any of the following grounds:

- (a) that the condition of the land to which the notice relates does not adversely affect the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;
 - (b) that the condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from the carrying on of operations or a use of land which is not in contravention of Part III;
 - (c) that the requirements of the notice exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of any part of the area of the local planning authority, who served the notice, or of any adjoining area;
 - (d) that the period specified in the notice as the period in which any steps required by the notice are to be taken falls short of what should reasonably be allowed.
- (2) Any appeal under this section shall be made to the Magistrates Court acting for the petty sessions in which the land in question is situated.
- (3) Where such an appeal is brought, the notice to which it relates shall be of no effect pending the final determination or withdrawal of the appeal.
- (4) On such an appeal the Magistrates Court may correct any informality, defect or error in the notice if satisfied that the informality, defect or error is not material.
- (5) On the determination of such an appeal the Magistrates Court shall give directions for giving effect to their determination, including, where appropriate, directions for quashing the notice or for varying the terms of the notice in favour of the appellant.
- (6) Where any person has appealed to a Magistrates Court under this section against a notice, neither that person nor any other shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

218 —Where an appeal has been brought under section 217, an appeal against the decision of the Magistrates Court on that appeal may be brought to the Crown Court by the appellant or by the local planning authority who served the notice in question under section 215.

Annex E

EXAMPLE: WARNING OF DIRECT ACTION BY LPA AFTER S215 NOTICE HAS BEEN ISSUED

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Sir

**RE: TOWN AND COUNTRY PLANNING ACT 1990: SECTION 215:
ENFORCEMENT NOTICE SERVED REGARDING THE POOR CONDITION OF
LAND AT ...**

You are advised to read this letter very carefully and contact the Council ***immediately*** at the address or phone numbers given above if you have any queries.

On [specify date] you were served with a formal notice under Section 215 of the Town and Country Planning Act 1990 requiring you to take steps to remedy the condition of land at the above mentioned site. That Notice should have been complied with by [specify date]. It has not been.

The purpose of this letter is to inform you that ***the Council now intends to carry out the steps required*** in accordance with Section 219 of the Town and Country Planning Act 1990. ***Contractors appointed by the Council will start those works on [specify date]***. Upon completion of those works, the Council will actively recoup its costs from you by placing a charge on your property.

Failure to comply with a Section 215 Notice is an offence under Section 216 of the Town and Country Planning Act 1990. Accordingly, I must advise you that the Council now intends to pursue a prosecution with immediate effect. Because an offence has been committed I must advise you that you should contact the Council about this matter and you are hereby cautioned that anything you do say can be given in evidence. It may also harm your defence if you do not mention something which you later rely on in court.

EXAMPLE: WARNING OF PROSECUTION BY LPA AFTER S215 NOTICE HAS BEEN ISSUED

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Sir

RE: TOWN AND COUNTRY PLANNING ACT 1990: SECTION 216: OFFENCE OF FAILURE TO COMPLY WITH NOTICE SERVED UNDER SECTION 215: EXTERNAL CONDITION OF ...

The Council has received no correspondence or undertakings from you in respect of the above mentioned premises despite its letter and the enforcement notices served upon you dated [specify dates] under Section 215 of the Town and Country Planning Act 1990 (copies attached for information). The time period for compliance with the notices expired on [specify date]. Failure to comply with it is an offence. In the absence of the required works having been carried out, I have to advise you that the Council is left with no alternative but to commence legal proceedings with immediate effect. Clearly, the Council would wish to avoid such a course and if the required works now start and are brought to a swift and satisfactory conclusion then the situation will be reviewed. In the meantime, because an offence has been committed I must advise you that you should contact the Council about this matter and you are hereby cautioned that anything you do say can be given in evidence. It may also harm your defence if you do not mention something which you later rely on in court.

Annex F

EXAMPLE: SECTION 215 NOTICE

(served in respect of a former shop with residential above)

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990

(as amended by the Planning and Compensation Act 1991)

SECTION 215 NOTICE

SERVED BY: [council name]

To:

1. THE NOTICE

This Notice is served by the Council under Section 215 of the above Act because it appears to them that the amenity of a part of their area is adversely affected by the condition of the land described below.

2. THE LAND TO WHICH THE NOTICE RELATES

The land known as ... shown edged red on the attached plan.

3. WHAT YOU ARE REQUIRED TO DO

The Council requires the following steps to be taken for remedying the condition of the land:

- (i) Hack off any perished, unkeyed and cracked render/stucco. Replace render/stucco so removed using suitable materials to match the existing render/stucco mix and finish.
- (ii) Prior to repainting, clean and prepare all render/stucco, removing in the process any flaking paint, so as to ensure all external render/stucco is in an appropriate condition for repainting.
- (iii) Prior to repainting, clean and prepare all external timbers, removing in the process any flaking paint and replacing any rotten or perished timbers with replacement woodwork which is an accurate replica of the original design in terms of pattern, detail and profile, so as to ensure that all external timbers are in an appropriate condition for repainting.
- (iv) On completion of steps (i) and (ii) above, repaint in cream or white all render/stucco with a minimum of two coats of exterior paint.
- (v) On completion of step (iii) above, repaint all external timbers in cream or white with primer, undercoat and gloss.
- (vi) Permanently remove all boarding from the shopfront, replacing any broken glazing with new glass to the appropriate specifications.

4. TIME FOR COMPLIANCE

Steps (i) to (iv) above to be complied with in full within three months of the date on which this Notice takes effect.

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on [specify date]

Dated:

Signed:

EXAMPLE: SECTION 215 NOTICE
(served in respect of a Doric style Grade II Listed Building)

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)

SECTION 215 NOTICE

SERVED BY: [council name]

To:

1. THE NOTICE

This Notice is served by the Council under Section 215 of the above Act because it appears to them that the amenity of a part of their area is adversely affected by the condition of the land described below.

2. THE LAND TO WHICH THE NOTICE RELATES

The land known as ... shown edged red on the attached plan.

3. WHAT YOU ARE REQUIRED TO DO

The Council requires the following steps to be taken for remedying the condition of the land:

- (i) Hack off any perished, unkeyed and cracked render/stucco. Replace render/stucco so removed using suitable materials to match the existing.
- (ii) Prior to repainting, clean and prepare all render/stucco, removing in the process any flaking paint, so as to ensure all external render/stucco is in an appropriate condition for repainting.
- (iii) Prior to repainting, clean and prepare all external joinery, removing in the process any flaking paint, replacing any rotten or perished timbers with replacement woodwork to match the existing and renewing putty/joinery surrounds so as to ensure all external joinery is in an appropriate condition for repainting.
- (iv) Prior to repainting, clean and prepare all external metalwork, removing in the process any rust and flaking paint, so as to ensure all external metalwork is in an appropriate condition for repainting.
- (v) On completion of steps (i) to (ii) above, repaint all external render/stucco with a minimum of two coats of exterior masonry paint, the finished colour to be cream.
- (vi) On completion of step (iii) above, repaint all external joinery with exterior wood primer, exterior undercoat and exterior wood gloss, the finished colour to be white or cream.
- (vii) On completion of step (iv) above, repaint all exterior metalwork with exterior metal primer, exterior undercoat and exterior metal gloss, the finished colour to be white, cream or black.

4. TIME FOR COMPLIANCE

Steps (i) to (vii) above to be complied with in full within four months of the date on which this Notice takes effect.

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on [specify date]

Dated:

Signed:

EXAMPLE: SECTION 215 NOTICE

(served to clear demolition material from a large former garage site)

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990

(as amended by the Planning and Compensation Act 1991)

SECTION 215 NOTICE

SERVED BY: [council name]

To:

1. THE NOTICE

This Notice is served by the Council under Section 215 of the above Act because it appears to them that the amenity of a part of their area is adversely affected by the condition of the land described below.

2. THE LAND TO WHICH THE NOTICE RELATES

Land at ... shown edged red on the attached plan.

3. WHAT YOU ARE REQUIRED TO DO

The Council requires the following steps to be taken for remedying the condition of the land:

- (i) Remove from the site, to an authorised place of disposal, all hardcore, waste and demolition materials. Materials to be removed will include bricks, concrete, reinforced concrete, metal, timber, plastic, tyres and fabrics.

Informative

Upon completion of step (i) above, the owner and any occupier of the site are strongly advised to secure the site perimeter by means of an earth bound or site fencing the height of which should not exceed one metre unless specific planning permission has been granted beforehand for a higher bund or fence.

4. TIME FOR COMPLIANCE

Step (i) above to be complied with in full within one month of the date on which this Notice takes effect.

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on [specify date]

Dated:

Signed: