



Report to: Place and Economic Development Committee, 14th March 2022

Report of: Corporate Director - Planning and Governance

Subject: UNTIDY LAND AND PROPERTIES

1. Recommendation

1.1 That the Committee notes the report and the actions being taken by the Council to address cases of long-term untidy land and properties.

2. Background

2.1 Members have previously requested an update and overview of the actions taken by the Council to address land and properties in the city which are in a significant condition of untidiness or disrepair. There are a number of mechanisms through which a property in a condition of concern to residents and neighbours, may also be of interest to the Council. These include:

- (a) Planning enforcement powers, notably s215 Tidy Up notices and resulting legal actions;
- (b) Building control powers in the case of dangerous structures;
- (c) Environmental health powers in the case of unsanitary conditions;
- (d) Community safety powers in the case of anti-social behaviour;
- (e) Private sector housing powers in the case of unsafe or unsuitable living conditions;
- (f) Council tax powers in the case of empty homes.

2.2 This report focuses on the Council's use of planning enforcement powers; Members should note that officers work on a multi-disciplinary basis within the Council and with other regulatory organisations, should the issues identified be best addressed through other mechanisms as set out above.

3. Tidy up process

3.1 Under the provisions of section 215 of the Town and Country Planning Act 1990 (as amended), local planning authorities are provided with powers to address properties and land that are adversely affecting the amenity of the area. If the works required by a tidy up notice are not carried out, those served with a notice can be prosecuted or the Council can undertake works in default and then seek to recover the costs of these works from the owner.

3.2 The reasons why properties become untidy are complex and often due to long standing issues. Sometimes it is simply due to the unwillingness of the owner to address the issues identified but equally there can be other, more intractable reasons such as:

- (a) a lack of funds to address upkeep of a property;
- (b) the abandonment of a property;
- (c) disputed ownership issues;
- (d) the inability of the owner to upkeep the property for personal reasons.

- 3.3 Once the Planning Enforcement Team has received a complaint about a property or parcel of land, a site visit is conducted to assess the situation, which includes the collection of evidence (eg photographs) and a review of the planning record if relevant.
- 3.4 On a significant number of occasions, it is deemed that the property or land is not sufficiently untidy to warrant any further action, in that evidential thresholds are not met or enforcement action is not expedient. The management arrangements in the Planning Service now ensure there is a countersigning/ management authorisation process in place for any decision not to take enforcement action.
- 3.5 Also, the service receives complaints about fly tipping, black bags in gardens, or an abandoned mattress, which are best addressed by other departments. The focus of Planning Enforcement therefore tends to be on matters that cannot be addressed by any other regulatory services and involve the cases where the land or property is significantly untidy.
- 3.6 Once a decision has been made to pursue the case, a letter is sent to the landowner requesting that they address the issues that have been identified. On some occasions landowners have taken it upon themselves to tidy up upon request, on receipt of this first letter. However, where it is deemed unlikely that any voluntary action will be taken, a s215 "Tidy Up notice" is served that gives a period of time in which to tidy up. The length of time provided is determined by the amount of work required. All notices are subject to an appeals process in the Magistrates Court.
- 3.7 Since 2015, 18 tidy up notices have been served and 4 more are pending. The table below sets out the number of cases investigated since 2015 and how many cases remain outstanding, which means, the condition of the property remains unsatisfactory.

Years	Cases	Outstanding
2015 - 2018	125	4
2019	40	2
2020	18	6
2021	32	12
Total	215	24

Table 1

4 Further interventions

- 4.1 Where the Council has instigated prosecution proceedings for failure to comply with the requirements of a tidy up notice, this process is straight forward. The prosecution proceedings take place in the Magistrates Court. If the landowner is found guilty, a fine is payable, but it should be noted that the provisions of the legislation do not result in the Court ordering for the land to be tidied up. Once the fine is paid the Court will not pursue the matter further unless the Council instigates further prosecutions. Since 2015 there have been 2 prosecutions which led to the landowner being found guilty and fined accordingly.
- 4.2 An alternative route to prosecution is to consider "works in default". Under section 219 of the Town and Country Planning Act 1990 (as amended), local authorities are also empowered to undertake the specified tidy up works themselves and recover the costs. There are clearly a number of considerations for the Council before deciding to take such action, including the costs of the works to the Council's budget, the prospects of recovery and the likelihood of the owner commencing some works during a reasonable period.
- 4.3 Since June 2021 the Council has taken action four times to carry out works in default on properties that have been empty for many years. Works included the removal of household waste and the clearance of very overgrown gardens. Owners are then invoiced with the cost of these works. In the event that the landowner does not reimburse the Council a charge can be put on the land. Where the costs are substantial, proceedings can be instigated to force the sale of the property to obtain the monies owed. In total since 2015 the Council has instigated tidy up action on 7 occasions. Some recent examples are given below.
- 4.4 A terrace property in Somers Road has been empty for many years. Neighbours were concerned that the condition of the rear garden was affecting their amenity. A notice was served on the property as the whereabouts of the owner could not be determined. As the notice was not complied with within the required time, a private contractor, Enforcement Services Ltd, were commissioned to carry out the requirements of the notice. This was carried out in June 2021 and the photographs of before and during the works are provided in the appendix.
- 4.5 A property in Kilbury Drive has remained empty for over a decade. A notice was served on the property to tidy up the front and rear gardens. Meanwhile, a disused car in the driveway was vandalized. A further notice was served to remove the car. When the car was not removed by the owner the Council commissioned a vehicle recovery company to remove the car. Further default action was then instigated to carry out the requirements of the notice to tidy up the front and rear gardens using Enforcement Services Ltd.
- 4.6 The Council has undertaken works in default itself (using Council personnel) at two properties in the past few months, where the works were considered low risk (not requiring a specialist company) and therefore it was economical not to outsource the work. The Council will seek to recover the cost of these works from the owners of the properties and if necessary, force recovery through the legal charge and enforced sale route.

- 4.7 The Council has also been working with some vulnerable people at some of these properties to look at how the condition of the properties can be improved while the process does not become unduly distressing for the residents. Sometimes an owner will not open official looking documents from a Council and attempts must be made to broker even an initial discussion. Sometimes an owner may be close to moving on to other accommodation or seeking help from family members. Sometimes it is possible to put an owner in touch with another agency which can help meet their needs, which in turn may provide some resolution to the condition of the property. It should be noted that the Council has only had limited success in engaging with voluntary sector organisations to bring about change to the condition of people's properties. While individuals have mental capacity and control of their own properties, they have considerable freedom to choose not to engage with the Council, if they see fit, and they may not have the financial means to make the repairs necessary without threatening their own financial security. This presents a challenge for the Council in balancing competing legal rights and interests.
- 4.8 The most problematic properties are those where an owner cannot be traced or where an owner simply refuses to engage with the Council's efforts, including through legal processes, to achieve lasting improvements to the properties. Then there becomes an asymmetric position where, notwithstanding the problem is a private property matter, the Council must decide how much public resource it will outlay in order to secure a lasting change for the benefit of other residents.
- 4.9 These scenarios are common to all local authorities and the Planning Enforcement team is committed to learning from best practice elsewhere to ensure that all levers are being applied on the most intractable properties.

5. Implications

5.1 Financial and budgetary implications

The service of a 215 notice has the usual financial implication of officer time when dealing with these cases. Given the complex reasons for such cases the work involved in resolving such matters can be protracted and therefore take a significant amount of time to resolve. There is also the cost of taking legal action. In the event that the Council instigates default action it can potentially take a long time before the expenditure is reclaimed and there is always a degree of risk that it cannot be recovered. However, this outcome must be weighed against the cost of not addressing long term issues and the cost to the community or neighbourhood that may be blighted by the condition of an untidy property.

The Council holds a reserve for untidy properties in the region of £25k per annum. The total expenditure on the works in default at the properties on Somers Road and Kilbury Drive, referred to above, was £21,099.00.

5.2 Legal and Governance Implications

The legal and governance processes are described in the main body of this report.

5.3 Risk Implications

Where properties present a risk to health and safety, other powers and remedies are available to the Council as set out at the start of this report.

5.4 Corporate/Policy Implications

The City Plan sets out a number of ambitions for the cleanliness and presentation of the city which are relevant to untidy properties.

The overarching Planning Enforcement policy is currently under review and will be brought to Committee for consideration shortly.

5.5 Equality Implications

There are significant equality diversity and inclusion implications arising out of this work. The owners of untidy properties include a disproportionately high number of people who may be described as frail elderly or people who appear to have mental health needs, or in some cases, physical ill health. The Planning Enforcement team has also managed cases involving different cultural considerations. Each case is risk assessed by officers with advice from Legal Services as appropriate. Where people with health needs or frail elderly people are involved, efforts will be made to engage with wider agencies as appropriate.

5.6 Human Resources Implications

There are no HR implications associated with this report.

5.7 Health and Safety Implications

Works in default must be risk assessed and suitably qualified personnel deployed to undertake them. This is why on occasions the Council will use an expert contractor instead of undertaking works in-house. There are no other significant health & safety implications associated with this report.

5.8 Social, Environmental and Economic Implications

Improving the condition of untidy properties has significant social, environmental and economic benefits for those affected.

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Background Papers: None
Appendix 1 – Examples of default action