

Arun District Council

REPORT TO:	Planning Committee - 8 March 2023
SUBJECT:	Land at Sandfield Nursery - Possible service of a section 215 Notice (impact upon local amenity)
LEAD OFFICER:	Karl Roberts, Director of Growth
LEAD MEMBER:	Councillor Terence Chapman
WARDS:	Courtwick with Toddington
CORPORATE PRIORITY / POLICY CONTEXT / CORPORATE VISION: This report relates to the Council Vision of 'Supporting our environment to support us' and the objective of 'Protecting and enhancing our natural environment.'	
DIRECTORATE POLICY CONTEXT: This report is to gain Committee approval for action to assist in maintaining the environment of the District.	
FINANCIAL SUMMARY: Unknown currently. Potentially the costs of resolution could be significant (five figures).	

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to determine whether the Council wishes to serve a section 215 notice of the Town & Country Planning Act 1990 (as amended) in respect of the condition of land at the former Sandfield Nursery, Littlehampton, and, if so, consider any consequential actions.

2. RECOMMENDATIONS

- 2.1 The Committee is asked to authorise the Director of Growth to arrange the service of a section 215 notice of the Town & Country Planning Act 1990 in respect of land at Sandfield Nursery, Littlehampton and to take any consequential actions under sections 216 to 219 of the same Act and other legislation as appropriate to secure compliance and the recovery of any funds so used in securing compliance.

3. EXECUTIVE SUMMARY

- 3.1 This report invites the Committee to determine whether the Council should serve a section 215 notice in respect of land at Sandfield Nursery and if so, considers any consequential actions.

4. DETAIL

- 4.1 The Plan appended at appendix A shows the location and physical extent of the former nursery, whilst appendix B is a series of photographs showing the site. Works have been undertaken to clear the site of buildings and import material to

modify the level of the site. The result of undertaking the former action is that a very large pile of inert (assumed) rubble has been created at the eastern end of the site near to two residential properties. The exact content of the rubble is unknown.

- 4.2 This report is only concerned with the impact of the rubble upon the amenity of the area. The term amenity isn't defined in the planning acts but the courts have held as follows.

“Amenity' is a broad concept and not formally defined in the legislation or procedural guidance, i.e. 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...”

All the other matters have been investigated separately in consultation with other partners including the Environment Agency.

- 4.3 The Council in certain circumstances, can 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.
- 4.4 The use of s215 by LPAs is discretionary and it is, therefore, up to the Council as the Local Planning Authority (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.
- 4.5 Whilst, the pile of rubble is of a significant size the LPA should not seek to serve a notice if no harm is identified. The Council has been in contact with the nearest neighbours to understand any potential impact upon their residential amenity. The view has been clearly expressed by the residents that they would like to see the pile of rubble removed but neither have been able to indicate any specific current harm when asked. Largely because of the screening on the boundary and the dust and noise issues that did arise have now ceased. It is also worth noting that the adjoining site to the north is the Trinidad Allotment Gardens and there would be some views of the pile of rubble at various points for users of this site.
- 4.6 From a wider perspective the pile of rubble is visible from only a few public vantage points. Firstly, from the access to the site via the A284. The view is largely a brief and narrow one from the road and given the location of the access on a sharp bend is largely only visible briefly when travelling towards Littlehampton, rather than in the other direction. If the level crossing barriers are down then a queue of traffic can build up and longer periods of visibility are possible. However, it is visible and has resulted in the Council receiving at least one complaint recently from a member of the public.

- 4.7 The other location from where the site is visible is from the railway line. Officers have taken short video's (which will be shown at committee) during both summer and winter months that show that when the boundary trees are not in leaf the pile of rubble is clearly visible and given its scale is considered to be harmful to the visual amenity of the locality.
- 4.8 Overall, based on more substantive harm when viewed from the railway and the less substantive harm when viewed from the junction of the access with the public highway it is considered that there are reasonable grounds to serve a section 215 notice.
- 4.9 However, the purpose of bringing this report to the Committee is to seek the Committee's view on whether the Committee concurs that there is a sufficient level of harm that requires rectification, and if so, the Committee's agreement as to the next courses of action.
- 4.10 The next stage would be to write to the owners of the land and to seek their voluntary agreement to remove the pile of rubble (giving a 3-month period for compliance- a longer period may have to be allowed if it can be shown the pile contains material which needs to be disposed of in a different way). The original owner of the land who allowed the original works to be undertaken has subsequently died and the land has now been transferred to their beneficiaries. They are now responsible for the condition of the land.
- 4.11 If a voluntary resolution of the issue is not forthcoming, then the notice would be served requiring within a three-month period the removal of the pile of rubble to a licensed disposal site and make good that part of the site.
- 4.12 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 s217 - 218 of the Act.
- 4.13 If after the compliance period, the work has still not been done then the Council can seek to prosecute for non-compliance under section 216 of the Act or undertake the works in default by virtue of section 219 of the Act, or both.
- 4.14 Clearly the Council undertaking the works by default has initial cost implications for the Council and resources needed should not be underestimated and appropriate provision should be made. At the time of writing this report an estimate is not available but would likely to be a five-figure sum (allowances will need to be made for the unknown nature at this time of the material in the rubble pile). The works would need to be project managed and contractors secured to remove the material safely to a licensed disposal site.
- 4.15 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.

4.16 In conclusion it is recommended that the Committee authorise the service of a section 215 notice and authority to take action under sections 216 to 219 if necessary.

5. CONSULTATION

5.1 None directly in respect of this report but ward members have been informed of the Council's consideration of this issue.

6. OPTIONS / ALTERNATIVES CONSIDERED

6.1 The only alternative of note is to not take any action.

7. COMMENTS BY THE INTERIM GROUP HEAD OF FINANCE/SECTION 151 OFFICER

7.1 Comments to follow.

8. RISK ASSESSMENT CONSIDERATIONS

8.1 If the Committee agrees to serve the notice, then there is a reasonable prospect given the scale of the material that has to be removed that the Council will have to undertake the works in default and, thus, the risk exists that the Council may not quickly secure the recovery of any costs incurred. A detailed risk assessment will need to be prepared for undertaking any actions in default.

9. COMMENTS OF THE GROUP HEAD OF LAW AND GOVERNANCE & MONITORING OFFICER

9.1 Paragraph 4 of the committee report sets out the legal framework. There are no additional legal implications at this stage of the process.

10. HUMAN RESOURCES IMPACT

10.1 Any actions needed to secure compliance in default can be resource intensive and, therefore, the Council may need to outsource this activity.

11. HEALTH & SAFETY IMPACT

11.1 Any actions needed to secure compliance in default will have H&S implications which will need to be addressed as part of the project planning.

12. PROPERTY & ESTATES IMPACT

12.1 No direct implications arising from the recommendations in this report.

13. EQUALITIES IMPACT ASSESSMENT (EIA) / SOCIAL VALUE

13.1 No direct implications arising from the recommendations in this report.

14. CLIMATE CHANGE & ENVIRONMENTAL IMPACT/SOCIAL VALUE

14.1 No direct implications arising from the recommendations in this report.

15. CRIME AND DISORDER REDUCTION IMPACT

15.1 No direct implications arising from the recommendations in this report.

16. HUMAN RIGHTS IMPACT

16.1 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.

17. FREEDOM OF INFORMATION / DATA PROTECTION CONSIDERATIONS

17.1 No direct implications arising from the recommendations in this report.

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BACKGROUND DOCUMENTS:

Appendix A – Location and physical extent of the former nursery
Appendix B – Site Photographs