

18 February 2010

Enforcement and Private Property

Ward(s) All

Portfolios: Councillor G Perry – Communities and Partnerships

Summary of report:

To explain the regulatory tools available to the Council to use in tackling environmental crime involving private properties.

Background papers:

Environmental Enforcement Plan, approved by Cabinet on 13th January 2010

Recommendations

That:

- 1. the contents of the report be noted;**
 - 2. the Panel support the trial to be commenced in April by Street Pride with limited resource which will focus on the removal of graffiti on private residential properties and, subject to a positive evaluation of the trial upon completion, support the mainstreaming of the service;**
 - 3. the Panel support a proposed pilot to use Section 79 of the Building Act 1984 to tackle a troublesome void property;**
- and;**
- 4. the Panel support the pilot currently being undertaken by a Void Property Group sub-group to employ an Enforced Sales Procedure to enable the Council to force the sale of properties in cases where it has paid for works in default of the owner who is unwilling to act or repay the debt.**

Reason for scrutiny:

Members have expressed an interest in scrutinising which service areas have powers to take action to tackle environmental crimes involving private property and the costs associated with this.

Resource and legal considerations:

Budget

The following budgets are or have been available for the relevant service areas to tackle environmental crimes involving property:

Environmental Health

- £21,325 for all works undertaken in default including works to tackle public health issues e.g. defective drainage and environmental crime involving property.
- £7500 one-off contingency in 2009/10 for void property work.
- In 2008/09 a successful bid for £5000 was made to the Borough Tasking Group for target hardening to reduce likelihood of arson in void properties.
- Some LNPs have provided funding and under the new Neighbourhood Management Model this type of local initiative may continue.

Planning

- There is no dedicated budget for tackling environmental crimes.
- The Council funds a Planning Enforcement service which deals with a very wide range of alleged breaches of planning control such as unauthorised buildings and changes of use.
- Work on environmental crime forms part of this activity (for example, using section 215 amenity notice powers to act against derelict buildings) but has to take its place alongside other work, and an appropriate level of priority has to be given to each.
- Planning does not have a budget for undertaking works in default when section 215 notices are not complied with.

Building Control

- There is no dedicated budget for tackling environmental crimes.
- The Building Control budget includes resources for the inspection and assessment of buildings under dangerous and/or dilapidated building legislation (Building Act 1984 Sections 77, 78 and 79 – see Appendix 1 for more detail) including associated administration and BS9100:2008 certified systems and processes.
- There is no budget for undertaking works in default, where necessary, not even relatively minor works undertaken to secure the health and safety of the public in an emergency situation (e.g. fencing of a building).

Housing Standards

The service resources inspection and assessment of occupied dwellings under the

Housing Health and Safety Rating System and Decent Homes Standard. This is on a reactive basis following complaints by occupants. Inspections are prioritised on a risk basis and the vulnerability of the occupants.

The service also resources inspections and licensing of Houses in Multiple Occupation and works proactively with West Midlands Fire and Rescue Service to prevent fires in these high risk premises. Our work includes developing a joint Fire Protocol and delivery of twice yearly private sector landlord forums to advise on all enforcement aspects impacting on this sector.

The service has a £20,000 Regional Housing Pot allocation for all housing standards related works undertaken in default.

Licensing Enforcement

No designated budget. However, staff allocated to this type of work equates to approximately half a Licensing Enforcement Officer FTE.

Street Pride

Street Pride does not hold any budget for dealing with environmental crime on private land.

Attempts will be made by different service areas to secure funding from external sources and from within the new Neighbourhood Management Model, if appropriate opportunities arise, to support enforcement

The Council's Automated Debt Management Service is used to recover debts arising from works in default. However, the recovery process is difficult and slow.

Staff Allocation

Currently, in the relevant service areas the following enforcement officers have duties relating (in whole or part) to tackling environmental crime involving properties:

Public Safety – Environmental Health Officers, Public Health Officers and Environmental Crime Officers (waste on private property, void properties and graffiti); a Litter Enforcement Officer (waste on private property) and Licensing Enforcement Officers (overhanging trees, deposits on highway originating from private property).

Planning – Planning Enforcement Officers (derelict and badly maintained buildings, and open sites).

Building Control – Building Control Officers (including dangerous and dilapidated buildings activities).

Housing Standards – 3 Housing Standards Officers to work on all aspects of private sector housing. A bid to the health and housing partnership has successfully secured funding for a fixed term part time role to work specifically with landlords and tenants of HMOs to improve their condition and the health and safety of the occupants. This post is due to be advertised in Qtr1 2010/11

Street Pride – Litter Hit Squad (Removal of fly posting on highways and graffiti on public buildings). A trial is to be undertaken using the Litter Hit Squad for a limited time each week to remove graffiti from private residential properties to allow the Council to assess and manage the need.(addressed in more detail elsewhere in this report).

Legislation

Drawing from so many pieces of legislation makes this affair complex. The Appendix sets out the main themes and powers.

Legislation to tackle environmental crime involving private properties can be mandatory (it has to be enforced if a relevant issue is identified) or discretionary. Each separate piece of legislation also provides (usually) different remedies including powers to prosecute and to enable works to be undertaken and associated costs recovered, to require work to be carried out or an activity to cease.

Action can be hindered by unknown or absent owners, the ability of a person to pay for compliance works and the necessity, in some cases, to acquire indemnities from owners when the Council undertakes works on private properties. Sometimes there are provisions for the local authority to carry out the work if a landowner fails to do it but in some cases there is no provision to recover expenditure.

The contents of this report have been written in conjunction with relevant service areas and Legal Services.

Citizen impact:

The Council is committed to achieving its priorities of improving the overall standard of the environment, improving access and encouraging pride in the borough, and regenerating its economy. Action against environmental crimes involving private properties helps to improve the image of the borough, makes people feel safer, builds a sense of civic pride, and can prompt owners to pursue a permanent remedy by selling or redeveloping the property.

Environmental impact:

The scrutiny exercise will potentially have a direct impact upon the environment if they support the report recommendations and the ability to increase enforcement activities.

Performance management:

Support of the Environmental Enforcement Improvement Plan

Equality Implications:

An Equality Impact Assessment has not been carried out in connection with this report.

The delivery of many of the services are based upon a reactive response to the enquires received irrespective of equality themes (ie age, ethnicity etc). For many

services work is prioritised towards tackling issues where vulnerable residents are impacted and on procedures approved by council. Outreach work with particular sections of the community is undertaken including with landlord forums etc.

Consultation:

The relevant service areas and legal have been consulted on the preparation of this report or as part of the scrutiny exercise.

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1. Report

- 1.1 Members have requested clarification about the scope of legislation to combat environmental crime where private properties are involved. The tables in Appendix 1 set out the following:
- Row 1 is the title of the topic and identifies the issues of concern affecting private properties.
 - Row 2 identifies service areas which have lead enforcement roles in respect of particular issues of concern.
 - Row 3 identifies legal tools available to tackle the various issues of concern.
 - Row 4 summarises legal sanctions that can be used against the owners and/or perpetrators of environmental crime involving private properties.
 - Row 5 highlights obstacles to the enforcement of the relevant legislation.
 - Row 6 identifies issues of cost that arise from the implementation of the relevant legislation.
 - Row 7 examines risks encountered by the Council if it does and does not enforce the relevant legislation.
- 1.2 Many of the complaints received about private property relate to void properties which can be dangerous to the public, attract fly tipping, present a risk of arson, attract anti social behaviours such as graffiti and fly posting, reduce the value of neighbouring properties and reduce the level of confidence within a community
- 1.2 There is an array of regulatory tools that could be used to environmental crime at properties including:
- Powers to serve fixed penalty notices and to prosecute in respect of fly posting and graffiti.
 - Powers to require removal of or to remove graffiti and recover costs of removal.
 - Powers to require works of demolition, repair, security and amenity at dangerous, unsightly or insecure buildings.
 - Powers to require the abatement of nuisances and the remedying of unsatisfactory housing condition at private rented residential properties.
 - Powers to require the abatement of nuisance or the removal of waste in buildings or on land and associated powers of cost recovery.
- 1.3 There are a number of barriers to the effective use of the available legislation including the absence of dedicated budgets to support the costs of works in default and insufficient staff resources to enforce the legislation.
- 1.4 There are overlaps between different service areas and external agencies that deal with these problems and in order to facilitate a more integrated approach groups have been established including the Void Property and Graffiti and Fly Posting Groups which have representatives from different service areas within the Council and from the Police and the Fire Service (Void Property Group only).

2 Current Position

2.1 The Environmental Enforcement Plan, approved by Cabinet on 13th January 2010, helps us to focus work across service areas to tackle serious public concerns about vacant buildings, graffiti, fly posting, fly tipping and anti-social behaviour. The document is reviewed by the Joint Enforcement Board at 6 weekly intervals, when updates are also received by the following topic specific task groups to tackle environmental crime issues:

- **Void Property Group** – Integrating responses to void buildings.
- **Fly Posting and Graffiti group** – introducing graffiti enforcement
- **Waste and Fly tipping** - to minimise the impact on fly tipping and increase of filthy and verminous gardens.

2.2 Progress has been made by the Council in enforcing legislation and implementing initiatives to tackle environmental crime involving properties including some direct action (the Council steps in to do works the owner will not):

- Draft graffiti removal agreements have been established with Virgin Media and BT Openreach, which are based on them supplying free paint and making agreed financial contributions and Street Pride's Litter Hit Squad being employed to paint over cabinets defaced by graffiti, are proposed to be implemented in April 2010
- Hi's "n" Lows' drug litter collection service on private land which is currently funded by the Borough Tasking Group. An application has been made for funding through the Safer and Stronger Community Fund to enable this service to be continued in 2010/11. Target Action is in the planning process and is to be considered by the Safer Walsall Board in March.
- Partnership working between officers from Public Safety, the tPCT and Hi's "n" Lows through The Hidden Hazards Initiative is raising awareness of health risks from drug debris and advising business operators how to safely remove debris from land for which they are responsible
- Close working between the Joint Enforcement Board and Borough Tasking Group has led to pilot work being carried out through the Void Property Group to target problematic void properties and to test and extend enforcement powers. Appendix 2 outlines works undertaken by the Void Property Group and identifies priority properties.
- In December 2008 a successful bid was made for £5000 from the Borough Tasking Group which was used to tackle priority void properties by undertaking works in default. An additional sum of approximately £2000 was also received from the Safer Walsall Borough Partnership in March 2009 for the same purpose.
- In cases where the Council has taken direct action, and paid for works in lieu of the owner who is unwilling to act or repay the debt, a Void Property Group sub-group is currently piloting the implementation of an Enforced

Sales Procedure which could, if successful, enable the Council to force the sale of such properties. This would allow the Council to both recover debts and resolve troublesome void property issues. The Void Property Group is also proposing to instigate a pilot to use Section 79 of the Building Act 1984 to tackle a void property to which this legislation can be applied.

- A high profile campaign – **Cracking Environmental Crime** – has raised the public's awareness of environmental crime and has provided an opportunity to highlight key successes. The campaign also aims to build support within local communities to help tackle this blight on the borough and has led to an increase in reporting.
- A six month trial with a limited resource focussing on the removal of graffiti on private residential properties, subject to the owners signing indemnities (more detail on this appears later in the report) is due to commence in April.

3.0 Comments

- 3.1 With reference to Appendix 1 attached there are numerous legal powers which affect void properties and properties in poor repair.
- 3.2 Many of the most serious environmental problems occur on void properties. These can manifest several problems in combination, such as a derelict and dilapidated state, unsecured and unsafe buildings with de-graded and unsightly joinery and walls, overgrown and fly tipped grounds and graffiti. Most of the powers listed in Appendix 1 tackle the problems associated with voidness. Only one (the power to make an Empty Dwelling Management Order under the Housing Act by enforcing the occupation of houses) tackles the voidness itself though this may not yet be causing environmental crime.
- 3.3 Properties which are occupied but in poor repair usually have a narrower range of environmental problems and the show these less severely. However, property with degraded joinery and walls and overgrown grounds, is relatively common. There are also significant problems of grounds containing various types of discarded items and waste.
- 3.4 A common form of action is securing void buildings under section 29 Local Government (Miscellaneous Provisions) Act (LGMPA) using perforated metal sheets or plywood boards to remove the danger caused by unauthorised entry. However, the boarding up may also create poor visual amenity.
- 3.5 Section 215 Town and Country Planning Act (TCPA). amenity notices have also been used to tackle the unsightliness of void property and that in poor repair. These notices can tackle a number of environmental problems in the same notice provided that they are substantially unsightly and harmful to the amenity. However, this power involves legal timescales which make it relatively slow acting, and the procedures for issuing are also relatively long, these things making such notices unsuitable for problems which can very quickly recur. Examples of these would be fly tipping and graffiti on sites where these are stand alone problems and are not part of a wider dereliction problem.

- 3.6 When securing buildings in the interests of public health Section 29 LGMPA only requires the use of utilitarian materials for boarding up such as metal sheets or unpainted plywood. It does not support the use of higher cost and more aesthetically pleasing materials such as painted boards which satisfy the amenity objectives under Section 215 TCPA. These powers can therefore conflict. The choice of which power to use on a particular site is one which officers can steer by sharing information and this is a key role for the void property group. It can be that the public health issues from a particular building can justify the urgent boarding up under Section 29 LGMPA, even if this is harmful to amenity. The owners can however be warned at outset that this is not a permanent solution for the Council as a whole, and further action under other legislation may follow.
- 3.7 The use of legislation to tackle derelict or dilapidated buildings, other than dangerous buildings, has been restricted because the Council is not statutorily obliged to enforce it, budgets do not make adequate provision for underwriting works undertaken in default, and the recovery of costs incurred can be a difficult and protracted process. This is also compounded by conflicting priorities for the relevant service areas, and insufficient staff capacity to undertake the resource hungry administrative duties associated with formally instigating remedial works at private properties.
- 3.8 However, significant enforcement work is undertaken and this would be better supported if a budget was established for funding works in default. With effective debt recovery processes (including enforced sale), the expenditure would become increasingly balanced by receipts, after the initial start up period.
- 3.9 Formal enforcement action is not normally taken for fly posting on structures in the highway. Instead, powers under Section 132 Highways Act 1980 (HA) are used to simply remove illegal fly posting (by Street Pride's Litter Hit Squad or contractors for traffic signal maintenance). Cabinet established the current arrangements in approving the cabinet report "delivering A Clean And Green Borough – Tackling Fly Posting and Fly Tipping" (20th October 2004) and since that time a "no tolerance" policy has been applied
- 3.10 Section 215 of the TCPA is the only general power that can be used to require the removal of graffiti from private properties. However, it is seldom used because it can only be used to tackle graffiti as a separate amenity issue if the graffiti causes serious injury to the amenity of an area. In view of this it is proposed in April, subject to budget approval, to commence a six month trial that will focus on the free removal of graffiti on private residential properties by Street Pride, subject to the owners signing indemnities. However, the trial will be limited to one day per week to the need for such as service to be assessed and managed.
- 3.11 Section 215 of the TCPA is the only general power that can be used to require the removal of graffiti from private properties. However, it is seldom used because it can only be used to tackle graffiti as a separate amenity issue if the graffiti causes serious injury to the amenity of an area. In view of this a different approach is proposed. In April, subject to budget approval, it is intended to commence a six month trial that will focus on the free removal of graffiti on private residential properties by Street Pride, subject to the owners signing indemnities. However, the trial will be limited to one day per week to enable the need for such as service to be assessed and managed

- 3.12 Enforcement Officers in Public Safety routinely enforce legislation to secure the removal of rubbish from private properties and in 2008/09 ninety six notices were served requiring the removal of rubbish.
- 3.13 An obstacle to all housing enforcement options, particularly in the case of long term empty properties is to determine ownership of the property. The purpose of housing enforcement tools are to address structural issues which may affect occupiers and to bring back into use long term empty properties to provide living accommodation. They are not intended to address neighbourhood problems such as anti social behaviour, rubbish etc. However, the housing enforcement options available will complement and contribute to the overall aims of sustainable communities.

4.0 Next Steps

The Panel is requested to:

- 4.1 Note the contents of the report.
- 4.2 Support the trial to be commenced in April by Street Pride with limited resource which will focus on the removal of graffiti on private residential properties and, subject to a positive evaluation of the trial upon completion, support the mainstreaming of the service
- 4.3 Support a proposed pilot to use Section 79 of the Building Act 1984 to tackle a troublesome void property.
- 4.4 Support the pilot currently being undertaken by a Void Property Group sub-group to employ an Enforced Sales Procedure to enable the Council to force the sale of properties in cases where it has paid for works in default of the owner who is unwilling to act or repay the debt.

APPENDIX 1

ENFORCEMENT AND PRIVATE PROPERTY

WHO DOES WHAT?

Fly Posting and Graffiti

FLY POSTING: DISPLAYING POSTER ADVERTISEMENTS WITHOUT CONSENT OF OWNER OR CONTROLLER OF LAND		
1	Lead Enforcement Role	Planning
2	Legal Tool	Section 224 TCPA 1990
3	Enforcement Action	Maximum fine of £2,500 per poster. Legal Services are looking into what powers exist to issue Fixed Penalty Notices, as an alternative to prosecution, but such powers may be difficult to operate
4	Clearance Actions	Two days notice to the advertiser before removal. If name/address of advertiser not obvious 'reasonable enquiries' must be made prior to removal.
5	Obstacles	Complaints received by Planning are rare, unless part of a wider problem where a site is derelict and neglected,, when section 215 powers are available (please see below).
6	Costs	Cost of removal is not known as no experience of this power has been accumulated. Costs can be recovered from those displaying the poster or advertised in it.
7	Risks	Prior investigation is required to ensure the poster does not have landowners consent, which would make it lawful under the 'deemed consent' provisions of Advert Regulations

FLY POSTING/GRAFFITI: DEFACEMENT OF STRUCTURES IN OR ON A STREET AND THE BUILDINGS OF EDUCATIONAL INSTITUTIONS AND STATUTORY UNDERTAKERS WITH GRAFFITI AND/OR FLY-POSTING.		
1	Lead Enforcement Role	Environmental Health
2	Legal Tool	Sections 48-52 of Anti-social Behavior Act 2003
3	Enforcement Action	Defacement Removal Notice to require removal. If not removed Local Authority can remove and recover expenditure.
4	Clearance Actions	Council could arrange for Street Pride or a contractor to remove defacement after 28 days if notice not complied with.
5	Obstacles	Application of DRN restricted to buildings owned by a statutory undertaker and educational institutions and to objects in or the street e.g cable boxes, telephone kiosks and bus shelters (these do not include buildings facing onto a street) . DEFRA guidance directs that DRN should be a last resort and that local authorities should secure removal agreements .
6	Costs	Only costs incurred by Council in removing the "defacement" can be recovered.
7	Risks	It may not be cost effective to pursue cost recovery for low level graffiti/fly posting. Adverse impact on the amenity of an area if graffiti not removed.

GRAFFITI: BUILDINGS DEFACED BY GRAFFITI WHICH ADVERSELY AFFECT THE AMENITY OF AN AREA		
1	Lead Enforcement Role	Planning
2	Legal Tool	Section 215 Town and Country Planning Act 1990
3	Enforcement Action	Enforcement Notice requiring removal of graffiti/fly posting. If not removed local authority can take direct action to remove and recover or prosecute (maximum fine £2500).
4	Clearance Actions	Council could arrange for Street Pride or a contractor to remove defacement after 28 days if notice not complied with
5	Obstacles	This power is not appropriate for use for small matters such as just graffiti in isolation. Section 215 Notices need to be served in conjunction with other issues which are detrimental to the amenity of an area.
6	Costs	Level of officer delegation, capacity, delays in taking reports through D&C Committee before instituting proceedings No costings available. No budget exists to pay for removal, though legal powers exist to recover costs.
7	Risks	This is the only broad power available to require the removal of graffiti from private properties Enforcement could impact badly on the Council if the owner of the property has no means of paying for the removal and is a victim of crime. Adverse impact on the amenity of an area if graffiti not removed.

Void, Derelict and Dilapidated Buildings

All void buildings		
1	Lead Enforcement Role	Council Tax and Business Rates
2	Legal Tool	Allowances for void property reduced in April 2009 – now charged at 100% after a period of grace.
3	Enforcement Action	Various Council Tax or Rates debt recovery processes.
4	Clearance Actions	Not applicable.
5	Obstacles	Not an enforcement tool in the normal sense, but a financial regime which is intended in part to discourage voidness. Debt recovery can be labour intensive.
6	Costs	Costs in recovering debts can be considerable and expediency in each case must be considered.
7	Risks	National legislation – no special risks.

Unsecured buildings which are likely to become a danger to public health.		
1	Lead Enforcement Role	Environmental Health
2	Legal Tool	Local Government (Miscellaneous Provisions) Act 1982, Section 29
3	Enforcement Action	Notice served informing the owner what works are required of them and that if they are not carried out in a specified time period the LA will do the works in default
4	Clearance Actions	Works to secure building undertaken in default..
5	Obstacles	<p>Budget required to underwrite works in default.</p> <p>The recovery of expenses incurred by the LA can be made via the civil debt procedure</p> <p>No powers to prosecute</p> <p>The use of this legislation is discretionary.</p> <p>The legislation does enable a Land Charge to be placed on a property for un-recovered costs incurred in executing works,</p>
6	Costs	The cost of securing properties can range from £1000 for domestic properties to in excess of £10,000 for larger commercial and industrial properties.
7	Risks	<p>Cost recovery protracted and difficult.</p> <p>Use of this legislation does not provide a long-term remedy for troublesome void properties, and its utilitarian results can conflict with 'amenity' objectives of planning legislation.</p> <p>Risk of injury to persons gaining unauthorised access to insecure buildings</p> <p>Adverse impact on amenity of area if not enforced.</p>

Buildings which are adversely affecting the amenity of an area as a result of their condition.		
1	Lead Enforcement Role	Planning
2	Legal Tool	Town & Country Planning Act 1990, Section 215
3	Enforcement Action	Service of a Notice to require an owner to take steps to remedy a building Local authorities can deal with Section 215 Notices non-compliance cases by works in default (direct action) or by prosecution. Maximum fine of only £1000 on first conviction, but on second prosecution a daily fine can be imposed. When used on derelict buildings can require physical improvements to external fabric of building and also encompass related problems such as graffiti and fly posting
4	Clearance Actions	Works undertaken in default.
5	Obstacles	The use of this legislation is discretionary. Budget required to underwrite works in default Staff resources Prosecution fines modest unless a second prosecution and daily fine obtained.. Normally, a minimum 2 month time scale built into Notices by law, together with rights of appeal and therefore a relatively slow acting power. Relates to visual amenity, and so cannot affect interior condition.
6	Costs	No budget exists to pay for removal, though legal powers exist to recover costs (the legislation confers the power to place a Land Charge on a property for un-recovered costs incurred in executing required works).
7	Risks	May help promote re-use or development as a long-term solution and assisting regeneration of area. However, may only give temporary respite from environmental problems until deterioration sets in again. Adverse impact on amenity of an area if not enforced

Building or structure, or part of a building or structure, is in such a condition, or is used to carry such loads as to be dangerous		
1	Lead Enforcement Role	Building Control
2	Legal Tool	Building Act 1984, Section 77
3	Enforcement Action	<p>The Council can make an application to the magistrates court for an order requiring the owner to execute such works necessary to remove the danger or if he so elects demolish the building or structure or any dangerous part of it and remove any rubbish from the demolition.</p> <p>The Council may execute the order as it sees fit if the order is not complied with.</p> <p>Recovering all expenses reasonably incurred in doing so from the owner in default</p> <p>The owner is also liable on summary conviction to a fine not exceeding level 1</p>
4	Clearance Actions	<p>Works to remove the danger or undertake demolition work.</p> <p>Work undertaken in default</p>
5	Obstacles	<p>No budget exists to pay for removal .Budget required to underwrite works in default.</p> <p>The recovery of expenses incurred by the Council can be made via the civil debt procedure</p> <p>The use of this legislation is discretionary. However there is an expectation on the part of the courts that the Council will act in default</p> <p>The legislation allows a Land Charge to be placed on a property for un-recovered costs incurred in executing works,</p>
6	Costs	The cost of removing the danger or demolition can range from £300 for a small domestic task (e.g. loose chimney pot) through to many thousands of pounds to demolish a large commercial/industrial building
7	Risks	<p>Cost recovery protracted and difficult.</p> <p>Legislation is widely used nationally to maintain public safety</p>

Building or structure, or part of a building or structure, is in such a condition, or is used to carry such loads as to be dangerous and immediate action should be taken to remove the danger		
1	Lead Enforcement Role	Building Control
2	Legal Tool	Building Act 1984, Section 78
3	Enforcement Action	Before exercising these powers a local authority shall if reasonably practicable to do so give notice of intentions to the owner and occupier of the building, or of the premises on which the structure is situated. Recovering all expenses reasonably incurred in doing so from the owner in default
4	Clearance Actions	Expenses incurred by the Council under this section consist of expenses of fencing off the building or structure or arranging for it to be watched.
5	Obstacles	No budget exists to pay for removal. Budget required to underwrite the works The recovery of expenses incurred by the Council can be made via the civil debt procedure
6	Costs	The legislation enables a Land Charge to be placed on a property for un-recovered costs incurred in executing works Expenses incurred by the Council can vary from a small number of highway barriers overnight (£300 approx) to a large scale temporary fence around a building/structure until applied to magistrates court under section 77
7	Risks	Cost recovery protracted and difficult. Legislation is widely used nationally to maintain public safety Risk of serious injury if legislation were not to be enforced.

Ruinous or dilapidated buildings which are seriously detrimental to the amenities of the neighbourhood.		
1	Lead Enforcement Role	Building Control
2	Legal Tool	Building Act 1984, Section 79
3	Enforcement Action	<p>Notice requires an owner to deal their dilapidated building by external renovations or demolition If an owner fails to comply with a Notice it allows the Council to do both the works required by it in default and also to prosecute.</p> <p>Maximum fine on prosecution of £2500, much higher than the maximum £1000 with the other amenity power under Planning legislation..</p>
4	Clearance Actions	Works of renovation or demolition undertaken in default.
5	Obstacles	<p>The use of this legislation is discretionary.</p> <p>No budget exists to pay for removal. Budget required to underwrite works in default.</p> <p>Need for significant officer capacity.</p> <p>Allows owners the choice of demolition or repair, but is inappropriate for listed buildings and buildings within Conservation Areas (which require even more elaborate approaches).</p>
6	Costs	<p>Cost of works of renovation.</p> <p>The legislation confers the power to place a land Charge on a property for un-recovered costs incurred in executing required works.</p>
7	Risks	<p>There has not been widespread use of this legislation.</p> <p>Risk of injury to persons gaining unauthorised access to ruinous or dilapidated buildings</p> <p>Adverse impact on amenity of an area if not enforced</p>

Listed Buildings

Listed Buildings in need of urgent protection (relates to minority of buildings which are 'Listed' for Conservation by the Secretary of State.		
1	Lead Enforcement Role	Conservation Officers - Regeneration
2	Legal Tool	Section 54, Planning (Listed Buildings and Conservation Areas) Act
3	Enforcement Action	Urgent Works Notices give notice of Council's intention of carrying out urgent economical works to prevent further damage and deterioration. May prompt pre-emptive action by owners.
4	Clearance Actions	Works undertaken by Council.
5	Obstacles	Officer capacity. Need for access to interior can cause difficulties, even requiring a warrant.
6	Costs	No budget exists to pay for removal .Costs recovered under section 55 if necessary attaching a Charge to a property via Land Registry, English Heritage can provide a 80%grant to unrecovered costs
7	Risks	Failure to act can cause irreparable harm to heritage of Borough. An economical but temporary solution only. Costs can be challenged by arguing that works carried out were unreasonable. English Heritage has adjudication role.

Listed Buildings in need of repair (relates to minority of buildings which are 'Listed' for Conservation value by the Secretary of State.		
1	Lead Enforcement Role	Conservation Officers - Regeneration
2	Legal Tool	Section 48, Planning (Listed Buildings and Conservation Areas) Act
3	Enforcement Action	Repairs Notice can require full external and internal repair to bring building up to a reasonable serviceable standard.
4	Clearance Actions	No direct action can be taken by the Council. Enforcement is by a Compulsory Purchase Order, when/if owner .does not comply
5	Obstacles	Need for significant officer capacity. Works need to be to Conservation standards. Compulsory Purchase procedure can be lengthy and includes a right of appeal.
6	Costs	CPO procedures can be lengthy and demanding on officer resources. However, financial costs can be minimal if Council can attract a development partner and arrange for immediate re-sale to them. Some acquisition and repair costs may attract grant aid from English Heritage
7	Risks	Failure to act can cause irreparable harm to heritage of Borough.

Sites which require development or improvement (including ruinous or badly maintained sites)		
1	Lead Enforcement Role	Regeneration
2	Legal Tool	Section 226 TCPA 1990 – Compulsory Purchase Order
3	Enforcement Action	Compulsory Purchase Order to bring into Council ownership.
4	Clearance Actions	None.
5	Obstacles	Likely to be challenged by appeal to Secretary of State and will need to show a clear strategy to achieve economic, social and environmental benefit.
6	Costs	CPO procedures can be lengthy and demanding on officer resources. However, financial costs can be minimal if Council can attract a development partner and arrange for immediate re-sale to them.
7	Risks	Regarded as a 'Draconian' power and may need to show that other options have been tried first but have failed.

Housing

Void dwelling causing a statutory nuisance		
1	Lead Enforcement Role	Housing Standards and Improvement
2	Legal Tool	Environmental Protection Act 1990
3	Enforcement Action	Abatement notice served on owner to carry out works to remove the nuisance and/or prevent its recurrence
4	Clearance Actions	Council carry out work specified in notice and/or prosecute for non-compliance
5	Obstacles	Statutory nuisance must be caused by a structural matter. Limited staff resources result in empty dwellings being low priority.
6	Costs	Unknown, wide range. Default budget required
7	Risks	Cost recovery protracted but can be registered as a charge against the property

Void dwelling causing a statutory nuisance where there would be unreasonable delay in using Environmental Protection Act 1990		
1	Lead Enforcement Role	Housing Standards and Improvement
2	Legal Tool	Building Act 1984 Section 76
3	Enforcement Action	Notice served on owner that Council intend to carry out works in 9 days unless owner serves a counter notice
4	Clearance Actions	Council carry out work specified in notice
5	Obstacles	Statutory nuisance must be caused by a structural matter. Occupied dwellings are higher priority.
6	Costs	Unknown, wide range. Default budget required
7	Risks	Cost recovery protracted but can be registered as a charge against the property

Void dwelling where Category 1 and/ or 2 hazard/s exist		
1	Lead Enforcement Role	Housing Standards and Improvement
2	Legal Tool	Housing Act 2004 Part 1
3	Enforcement Action	Hazard Awareness Notice
4	Clearance Actions	Serve HAN advising owner of existence of hazard and works needed to remove/reduce it.
5	Obstacles	Equivalent to informal action no enforcement possible.
6	Costs	Officer time and administration
7	Risks	Owner may not carry out work

Void dwelling where Category 1 hazard/s exist		
1	Lead Enforcement Role	Housing Standards and Improvement
2	Legal Tool	Housing Act 2004 Part 1
3	Enforcement Action	Improvement Notice
4	Clearance Actions	Serve Improvement notice on owner advising of hazard/s works needed and time for compliance. Carry out works in default and/or prosecute for non-compliance.
5	Obstacles	External visible condition of property may not constitute any hazard which can be actioned. Occupied dwellings of higher priority
6	Costs	Unknown, wide range, charge can be made for service of notice
7	Risks	Cost recovery protracted but can be registered as a charge on the property

Void dwelling where Category 1 hazard/s exist and it poses a serious risk to the health and safety of the potential occupiers and or visitors to the property		
1	Lead Enforcement Role	Housing Standards and Improvement
2	Legal Tool	Housing Act 2004 Part 1
3	Enforcement Action	Emergency Remedial action
4	Clearance Actions	Notice served advising owner that emergency works will be or have been carried out
5	Obstacles	Occupied dwellings are a higher priority it is unlikely that this action could be justified. Availability of approved contractors to carry out emergency work.
6	Costs	Unknown
7	Risks	Although costs can be recovered and charge placed on property there is a risk that challenge to notice and works could result in local authority being unable to recoup its costs.

Void dwelling where Category 1 hazard/s exist which cannot be removed by remedial works		
1	Lead Enforcement Role	Housing Standards and Improvement
2	Legal Tool	Housing Act 2004 Part 1
3	Enforcement Action	Prohibition Order
4	Clearance Actions	Order served on owner prohibiting use of property for living accommodation
5	Obstacles	Occupied properties are higher priority
6	Costs	Officer time and administration. Local authority may be liable to pay compensation to owner
7	Risks	Dwelling remains empty and deteriorates further. No requirement for owner to secure property or carry out work.

Void dwelling where Category 1 hazards are so severe that the most appropriate action is to demolish the property		
1	Lead Enforcement Role	Housing Standards and Improvement
2	Legal Tool	Housing Act 1985 as amended by Housing Act 2004
3	Enforcement Action	Demolition Order
4	Clearance Actions	Serve demolition order on owner to demolish or local authority demolish in default
5	Obstacles	Staff resources determine that occupied properties are higher priority for action
6	Costs	Officer time and administration. Default costs. Local authority may be liable to pay compensation to owner
7	Risks	Site ownership remains with owner

Long term empty property where action is required to bring it back into use for occupation		
1	Lead Enforcement Role	Housing Standards and Improvement
2	Legal Tool	Housing Act 2004 Part 4
3	Enforcement Action	Empty Dwelling Management Orders
4	Clearance Actions	Apply to the Residential Property Tribunal to serve an Interim Empty Dwelling Management Order and if necessary a Final EDMO. Local authority take over management of property up to 7 years and carry out repairs needed to get property re occupied
5	Obstacles	Staff resources required to commit to this level of work. Property remains in original ownership. RSL required to manage the property and tenancy, no RSL in Walsall has expressed an interest.
6	Costs	Unknown, cost of work to bring up to a habitable standard. Officer time and administration.
7	Risks	Procedure is protracted and suitable for properties which require minimal remedial work.

Void dwelling where all other courses of action are inappropriate		
1	Lead Enforcement Role	Housing Standards and Improvement
2	Legal Tool	Housing Act 1985 Section 17
3	Enforcement Action	Compulsory Purchase Order
4	Clearance Actions	Apply to Secretary of State to compulsorily purchase the property for housing purposes
5	Obstacles	The procedure is long and costly and subject to Public Inquiry. Local authority must dispose of property as no internal facility to manage it and bring it back into use.
6	Costs	Purchased by the council at market value of property which could be several thousand pounds.
7	Risks	Order may not be confirmed making work abortive. Property still remains long term empty.

Waste on Land

Waste: Accumulation of waste on land where damage by pests is likely to occur.		
1	Lead Enforcement Role	Environmental Health
2	Legal Tool	Prevention of Damage by Pests Act 1949, Section 4
3	Enforcement Action	Council can serve notice on owner or occupier requiring the removal of accumulated waste. Power to prosecute.
4	Clearance Actions	Works undertaken in default.
5	Obstacles	This legislation is routinely used.
6	Costs	The legislation confers the power to place a land Charge on a property for un-recovered costs incurred in executing required works. Council can recover its costs incurred in removing rubbish.
7	Risks	Legislation used as required. Failure to use could lead to an increase of vermin within the borough.

Waste: Land that is in such a state as to adversely affect the amenity of the neighbourhood		
1	Lead Enforcement Role	Planning
2	Legal Tool	Town & Country Planning Act 1990, Section 215
3	Enforcement Action	Service of a Notice to require an owner to take steps to remedy the condition of the land Local authorities can deal with Section 215 Notices non-compliance cases by works in default (direct action) or by prosecution. Maximum fine of only £1000 on first conviction, but on second prosecution a daily fine can be imposed. May also tackle waste where this is on land around a building, and possibly tackle other problems at same time such as derelict unsightly condition. .
4	Clearance Actions	Works in default.
5	Obstacles	The use of this legislation is discretionary. Budget required to underwrite works in default Staff resources Prosecution fines modest unless a second prosecution and daily fine obtained.. Normally, a minimum 2 month time scale built into Notices by law, together with rights of appeal and therefore a relatively slow acting power. Therefore, not suitable for problems which can quickly recur such as fly tipping (as a stand alone problem). More suitable for longer term waste such as large scale demolition rubble.
6	Costs	The legislation confers the power to place a Land Charge on a property for un-recovered costs incurred in executing required works.
7	Risks	May help promote re-use or development as a long-term solution and assisting regeneration of area. However, may only give temporary respite from environmental problems until deterioration sets in again. Adverse impact on amenity of an area if not enforced

Waste: Rubbish on open land that is seriously detrimental to the amenity of the neighbourhood.		
1	Lead Enforcement Role	Environmental Health
2	Legal Tool	Public Health Act 1961, Section 34
3	Enforcement Action	Council removes rubbish at own cost
4	Clearance Actions	No power for council to recover the costs of removing rubbish No power to prosecute.
5	Obstacles	Legislation is not an enforcement power. The legislation does not make any provision for cost recovery. TCPA, Section 215 provides enforcement and cost recovery powers to tidy sites that adversely affect amenity.
6	Costs	All cost of removal of rubbish are borne by the Council
7	Risks	Council liable for costs. Adverse impact on amenity of an area if rubbish not removed

Filthy and Verminous Premises: In such a filthy or unwholesome condition as to be prejudicial to health or are verminous.		
1	Lead Enforcement Role	Environmental Health
2	Legal Tool	Public Health Act 1936, Section 83
3	Enforcement Action	Serve a Notice on the owner or occupier of the premises requiring it to be cleansed and disinfected and for vermin to be destroyed or removed.
4	Clearance Actions	Council can execute the works required in default and can prosecute. Maximum fine of £???. Daily fine penalty also available.
5	Obstacles	Legislation enforced as required.
6	Costs	Cost of clearing filthy and verminous premises is normally in range of £3k-£8k. On average 3 properties per annum are cleared.
7	Risks	Risks to health if not enforced. Cost of recovery may be difficult due personal circumstances of persons occupying filthy and verminous premises.

Drug Paraphernalia on land and/or in buildings		
1	Lead Enforcement Role	Environmental Health
2	Legal Tool	No clearly defined legislation to tackle drug paraphernalia on land. Dudley MBC is progressing a prosecution concerning drug debris at a void property under the provisions drugs legislation enforced by its drugs advisory service. A report of the prosecution case has been requested to determine the suitability of this legislation.
3	Enforcement Action	Currently no enforcement action.
4	Clearance Actions	Clear private land subject to drug litter by agreement.
5	Obstacles	Difficult to identify that could be directly applied to drug debris.
6	Costs	Funding required to support the Hi's "n" Lows service.
7	Risks	Risk to health from drug debris on land.

Overhanging trees		
1	Lead Enforcement Role	Licensing Enforcement team
2	Legal Tool	Highways Act 1980
3	Enforcement Action	Serve notice requiring removal
4	Clearance Actions	Highway authority can carry out works and recover costs.
5	Obstacles	No offence designated so it is not possible to prosecute.
6	Costs	No provision to recover costs
7	Risks	In some circumstances the proprietor may claim damages (compensation) for the Council. Public annoyance at being required to cut a tree.

APPENDIX 2

THE WORK OF THE VOID PROPERTY GROUP

PURPOSE OF REPORT

The purpose of the Report is to inform members about the work of the Void Property Group and to update them about action that has been taken in respect of void properties following successful bids in December 2009 for funding for funding of £5000 from the Borough Tasking Group (BTG) and £2000 from the Safer Walsall Partnership (SWP) to support the cost of remedial works to targeted properties.

BACKGROUND

The Void Property Group consists of representatives of Environmental Health, Planning, Building Control, Legal, Council Tax, Anti Social Behaviour Unit, Police Arson Task Force and Fire Service and aims to develop processes and service standards to manage the identification, assessment and prioritisation of void properties for enforcement action. The group is now chaired by the Environmental Health Manager and reports to the Joint Enforcement Board

Void properties generate complaints because they reduce the value of neighbouring properties, attract anti-social behaviour, can be dangerous to the public, attract fly tipping and present a risk of arson

This is reflected by statistics that show in 2006/07, 2007/08 and 2008/09 Environmental Health received 107, 148 and 135 complaints respectively about void properties. In the current financial year 111 complaints have so far been received.

Complaints about void properties are likely to increase because of the adverse effect of the credit crunch on the housing market and on the closure of businesses.

The table below summarises the powers that can be used by the Council to tackle void properties.

Legislation	Criteria	Action	Responsible Service Area
Local Government (Miscellaneous Provisions) Act 1982, Section 29	Not effectively secured against unauthorised entry and/or is likely to become a danger to public health	Requires the owner to take steps to secure the property.. Allows the Local Authority to board property up in an emergency.	Environmental Health
Town & Country Planning Act	Amenity of an area is adversely	Requires the owner to	Planning

1990, Section 215	affected by the condition of land. (Land includes buildings)	address unsightly land and the external appearance of a property.	
Building Act 1984, Section 79	"Ruinous or dilapidated" and is "seriously detrimental to the amenities of the neighbourhood"	Requires the owner to address dilapidated buildings detrimental to the amenity of an area. Allows Local Authority to demolish property in default.	Building Control

The above legislation enables the Council to undertake works in default and recover the costs incurred from the owner of a property if he/she fails to comply with a Notice served under the legislation.

There has been reluctance to utilise this legislation because budgets are unable to support the cost of instigating works in default and taking Court action to recover costs incurred.

The cost of securing properties can range from £1000 for domestic properties to in excess of £10,000 for larger commercial and industrial properties.

Bids for funding were made to the BTG (£5000) and the SWBP (£2000) to enable the Council to make more effective use of the legislation to tackle void properties by instigating enforcement action on a priority and targeted basis and by taking robust action to recover the costs incurred so that the recovered costs could be used to tackle further void properties.

In December 2008 the Void Property Group successfully bid for £5000 from the BTG to tackle troublesome void properties for the purpose of supporting works in default to targeted properties and to pursue debt recovery of the costs incurred. An additional sum of approximately £2000 was also received from the SWBP in March 2009 for the same purpose.

Actions

Works to targeted priority properties were undertaken at the following properties in March 2009 to secure them against unauthorised entry following the service of Notices using Section 29 of the Local Government (Miscellaneous Provisions) Act 1982.

- 1 The Bell Inn, The Bell Inn, 3 Market Place, Willenhall, Walsall, West Midlands (Cost = £400)
- 2 38 Wilkinson Road, Moxley, Walsall, West Midlands (Cost = £690)

- 3 122-130 Newhall Street, Willenhall, Walsall, West Midlands (Cost = £3300). In addition to building works were also undertaken in default at this site to clear it of rubbish under the Section 4 of the Prevention of Damage by Pests Act 1949.

Works were also undertaken to address the external appearance at 43 Wenlock Gardens, Walsall, West Midlands (Cost £3680) using Section 215 of the Town and Country Planning Act 1990 (TCPA)

The total cost of all these works was £7870.

Before and after works photographs are attached as Appendix 1.

The owners of these properties were subsequently invoiced for these works and have yet to pay. Consequently, the Council has invoked debt recovery action. Additionally, the Void Property Group has established a Working Group, with members from Environmental Health, Planning, Finance, Legal and Council, which aims to implement the use of an Enforced Sales Procedure (ESP) to recover the cost of works and to expedite the resolution of long-standing void property complaints. In particular 43 Wenlock Gardens is now being used as a property to pilot ESP, as the owner still continues to refuse to pay for works undertaken in default.

FUTURE ACTIONS

The Working Group's work to implement ESP is progressing.

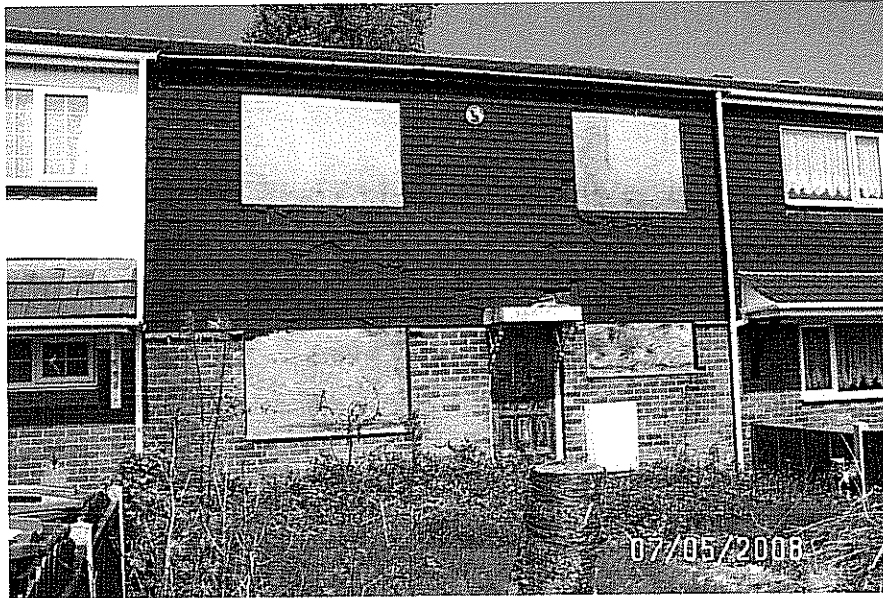
A successful contingency bid for £7500 for void property enforcement was made in May 2009 which will enable further remedial works to tackle priority properties to be undertaken. Current priority properties include:

- 1 20-22, Brownhills Road. Walsall Wood.
- 2 100-101, Union Street, Willenhall.
- 3 104, Lowe Avenue, Darlaston.
- 4 Intown Row, walsall
- 5 182, Wolverhampton Road, Walsall
- 6 1 Hope Street, Caldmere, Walsall.

The Void Property Group's Enforcement sub-group is also aiming to pilot the use of Section 79 of the Building Act to require the owner of a dilapidated building which is detrimental to the amenity of an area to remedy it. Additionally, this power allows a Local Authority to demolish property in default if a Section 79 Notice is not complied with.

APPENDIX 1

43 WENLOCK GARDENS BEFORE WORKS.



43 WENLOCK GARDENS AFTER WORKS



38 WILKINSON ROAD, MOXLEY



THE BELL INN, MARKET PLACE, WILLENHALL BEFORE WORKS



THE BELL INN, MARKET PLACE, WILLENHALL AFTER WORKS

