

Council – 27 September 2012

Derelict Buildings

Service: Regeneration

Wards: All

1. Summary

The report considers the issues related to derelict properties and how the Council deals with these problems setting out recent changes and successes in addressing this issue. Whilst working across the Council and with partners it is clear that the threat of taking direct action by the Council has proven to be the most effective remedy. This is particularly so in cases where serious impacts arise in terms of securing action on the ground by the owner or enabling the Council to do so and recover costs..

The report also considers a recent motion from Council regarding the possibility of imposing planning conditions on new developments to require that redundant sites are maintained and not left to become derelict & unsightly. There is no legal definition of dereliction, but the report highlights that a pro-active approach is required to identify the circumstances leading to the risk of dereliction. This is particularly so at vacant public houses and managed through the Councils current Void Property Group, the establishment of a shared data base and by engagement with land owners at an early stage to offer business support or identify suitable alternative uses.

2. Recommendations

That Council :

- 2.1 Note the range of powers and tools available to the Council to address derelict properties in the Borough.
- 2.2 Note the pro-active steps that are now being taken through positive action to reduce the number of derelict properties in the Borough and that increased emphasis be put on undertaking further positive action, co-ordinated through the Borough's void property group.
- 2.3 Note that current Government guidance advises that attaching planning conditions to new planning permissions to deal with the consequences of future poor maintenance of properties is not the most effective approach and that other legislation is more effective and appropriate in dealing with this issue.
- 2.4 Agrees that representation is made in conjunction with the Local Government Association to the Department for Communities and Local Government to review the effectiveness of existing powers with respect to dealing with derelict buildings and to consider any other ways to assist and financially support Local Authorities to positively address the blight of privately owned derelict buildings.

3. Report detail

- 3.1 At its meeting on 23rd February 2012 Council passed the following notice of motion:

This Council instructs appropriate officers to prepare a report detailing options to enable a more effective and pro-active approach to combat the blight caused in all areas of the Borough by derelict buildings, and in particular vacant public houses (pubs).

Furthermore, to investigate when planning permission is granted at these sites, as to whether conditions could be added to ensure that the area must be cleared, maintained and not left to become unsightly.

- 3.2 The report considers each matter in turn and has been developed following discussions involving Councillor Andrew as the lead portfolio holder and also Councillor Shires and Westley.

When does land and property become derelict ?

- 3.3 There is no legal definition of ‘dereliction’ in relation to land and properties. The dictionary definition refers to land and buildings “in a very poor condition as a result of disuse and neglect”. Dereliction will normally occur over a period of time where an owner fails to maintain a building. It can be a lengthy process, initially occurring unnoticed, but can be accelerated when an empty property becomes a target for anti-social behaviour including fly-tipping and arson. Derelict buildings are typically characterised as those which are unoccupied and have broken windows, weathered paint work, loose or missing roof tiles, broken water pipes and gutters, overgrown vegetation etc. Arguably the most noticeable empty properties that have become derelict in recent times are public houses. A list of derelict properties that the Council is aware of is enclosed in appendix A. Appendix B is a list of closed and derelict public houses, which also highlights where planning applications have been received for redevelopment.

What options are available to the Council to tackle derelict properties?

- 3.4 Table 1 below summarises the legislative powers available to the Council to tackle derelict properties. It must be recognised that there are other powers that deal with the side effects of derelict properties, e.g. deposited waste attracting vermin. For the purpose of this report those powers are not considered here. Also the remit of the report is not to consider the issue of empty properties, which in themselves are governed by further legislative controls. In regard to empty properties a separate review is being undertaken as a Working Smarter theme.

Table 1 – Powers available

Legislation	Criteria	Action	Penalty for non-compliance	Responsible Service Area
Local Government (Miscellaneous Provisions) Act 1982, Section 29	Unoccupied building not effectively secured against unauthorised entry and/or is likely to become a danger to public health	Requires the owner to take the steps to secure the property. Allows the local authority to board up property in an emergency	Where the local authority undertake any works they may recover the expenses reasonably incurred in so doing	Environmental Health

Town & Country Planning Act 1990, Section 215	Amenity of an area is adversely affected by the condition of land. (Land includes buildings)	Requires the owner to address unsightly land and the external appearance of a property	Prosecution: Maximum of £1000 fine upon first conviction at court. A maximum of £100 daily fine following first conviction for each further day the notice is not complied with. Or: The Council undertakes the works itself and recovers the cost from the owner or puts a charge on the land.	Planning
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 or if so elects to demolish the building.	The Council undertakes the works itself and recovers the cost from the owner or puts a charge on the land. Or: Prosecution: Maximum of £2500 fine upon first conviction at court. Maximum of £2 daily fine for each day of non-compliance after first conviction.	Building control
Building Act 1984 Section 77& 78	Where it appears that a building or structure or part of a building or structure is in such a condition to be considered as dangerous	In Securing the health safety, welfare and convenience of persons in or about buildings. Owner to make safe the building or part of, allows local authority to make safe the building or part of or demolish in the case of a building in default	The Council undertakes the works itself and recovers the cost from the owner or puts a charge on the land. Or Prosecution: Maximum of £200 fine upon conviction at court.	Building Control
Compulsory Purchase Order Town and Country Planning Act 1990, Section 226	Acquisition of land to improve social, environmental and economic well-being	Make a CPO and submit to Secretary of State	N/A	Planning
Compulsory	Acquisition of land for	Make a CPO and	N/A	Housing

Purchase Order Housing Act 1985, Section 17	housing purposes	submit to Secretary of State		Standards
Law and Property Act 1925 (Power of Sale)	Debt to the Council, created as a result of the Council undertaking works in default	Where the Owner fails to pay the debt, the Council can enforce the sale of the property, just like a mortgagor in possession.	N/A	Legal Services in collaboration with relevant service area who registered the dept

3.5 The ultimate responsibility for the maintenance of a property lies with the landowner. The current legislative powers permit the Council to take action when, due to neglect, properties adversely affect the wider amenity of the area. Table 2 is a list of high profile cases where intervention by the Council has brought about significant improvements to properties in the borough in the last few years. Appendix C shows before and after photographs showing these cases.

Table 2 Actions taken at key properties

Address	Type of action	Outcome	Comments
Curl and Dye, 182 Wolverhampton Street.	S215 Notice (2005) requiring improvements to the appearance of former hairdressers. Second S215 (December 2011) Notice requiring removal of demolition material.	Building demolished. Demolition material disposed of	Long history, includes problems in contacting owner and funding direct action. Prosecution commenced but owner chose to demolish.
43 Wenlock Gardens, Blakenall	S215 Notice (March 2006) requiring works undertaken to improve the appearance of derelict house.	Weathered boarding replaced with painted boarding and overgrown vegetation removed.	A small budget was made available to take direct action in 2009 as officers were unable to locate the owner to prosecute. Direct action included boarding the windows and doors and cutting back overgrown vegetation. A charge for the works was put on the land. The Council was progressing with an enforced sale of the property until the owner paid the dept on the eve of the property auction.
177 Weston Street, Palfrey	S215 Notice (May 2007 and December 2011) requiring works to be undertaken to improve the appearance of derelict house.	Large parts of works have been undertaken. Officers pursuing compliance on others.	First notice not complied with and first prosecution took place in 2008. Limited further works undertaken, so second prosecution undertaken in 2011.

			Second notice issued to deal with evolving situation, large parts of works now undertaken and remainder being pursued.
Former Manor House PH, Mill Street	S215 Notice (May 2007) requiring long list of actions to improve the visual appearance of this derelict public house.	Building demolished rather than undertaking long schedule of works. Planning permission secured to redevelop the site for nine houses (March 2009) which have since been built.	S215 action opened up negotiations for redevelopment of the site.
Free Trade PH, Wood Lane, Pelsall	No formal action required to be taken against derelict public house. Officers advised owner of problem (May 2010) and invited to discuss redevelopment opportunities.	Owner boarded up broken windows with painted boards and secured planning permission (January 2011) to redevelop into two houses.	Improvements achieved through negotiation.
66 Mill Lane, Walsall	S215 Notice (July 2010) requiring improvement to the appearance of a neglected house.	Improvements to property were undertaken by boarding up broken windows, removing rubbish in the front garden and cutting back vegetation.	Owner was prosecuted for not complying with the notice following which compliance was achieved.
104-106 Lowe Avenue, Darlaston	S215 Notice(s) (August 2010) requiring improvements to the appearance of three derelict houses.	Improvement to these properties were undertaken by boarding up broken windows and repainting the buildings.	Part compliance achieved within compliance period. Remaining works achieved after following threat of prosecution.
284 Lichfield Road, Willenhall	S215 Notice (March 2011) and S79 against derelict severely fire damaged house.	House in process of being renovated to be brought back into use.	Council was on the verge of taking direct action to demolish property when ownership changed and renovation works commenced.
Mellish Road Church, Lichfield Street, Walsall	S215 Notice (April 2011) requiring demolition of derelict church.	Church demolished.	Listed Building Consent for demolition had been obtained but no action was being taken. The S215 Notice was the catalyst for demolition commencing.
Pear Tree Cottage, Pear Tree Lane, Brownhills	S215 Notice (December 2011) requiring improvements to the appearance of derelict public house.	Building demolished	Prosecution proceedings commenced for non-compliance with S215 notice. Owner obtained appropriate consents to demolish (July 2012). Discussions on going in regard to redevelopment of site for local shop.
20-22 Brownhills Road,	No formal action	Planning permission	Improvements achieved

Walsall Wood	required to be taken against derelict pair of houses. Officers advised owner of problem (December 2010) and long list of works required to improve condition of properties. Pressure brought about submission of planning application.	secured to redevelop the site for 10 houses (December 2011). Derelict properties demolished to enable re-development to commence	through negotiation bringing additional housing to the area.
Four Crosses PH, Green Lane, Leamore	No formal action, but Planning Services raised issues with the appearance of the derelict public house (October 2011).	Building demolished and site currently being developed for a drive thru fast food restaurant and veterinary clinic.	Pressure from Planning Services to improve the appearance of the public house encouraged the submission of a planning application (February 2012) and early demolition of the building (August 2012).
12-14 Lower Lichfield Street, Willenhall	S215 Notice (June 2012) requiring works to be undertaken to improve the appearance of these derelict shops	Compliance due 2 nd October 2012.	
Dainty's, 74 and 75 Stafford Street, Willenhall	S215 Notice (July 2012) requiring works to be undertaken to improve the appearance of this derelict former shop.	Three stage compliance period, first compliance due early 7 th September Report to Planning Committee on 20 September to consider next steps due to failure to comply to first stage	

3.6 The process is initially reactive involving various service areas and partners and is usually initiated by complaints received from ward Councillors and members of the public about the condition of a property. A complaint could be lodged with Planning Services, Building Control, Area Partnership, Environmental Health, Housing or an officer from other service areas who visit the site to make an assessment of its condition. Depending on its condition, the matter may be referred to any one of the above service areas to more effectively deal with the matter under the terms of the legislation administered by that service.

3.6 As part of the Working Smarter review it is proposed that a shared data base is set up to enable each service area which receives complainants to review the status of any actions by others and enable pooling of resources at an early stage with a clear identified lead role.

Void Property Group

3.8 The Void Property Group provides for a collaborative approach, void properties are defined in this context as those that are empty or derelict. The group brings together agencies such as the Police, Fire Services, Planning, Building Control, Housing Standards, Environmental Health, Legal Services and Council Tax. The

group meets once a month to discuss key derelict sites (and also empty properties) to agree actions for a joined up approach to bring a resolution.

- 3.9 Planning Services also aim is to identify investment opportunities which protect the building. In the case of vacant public houses advice is offered on development rights which allow a change of use without needing planning permission. For example in most cases planning permission is not required to convert a public house into a shop, a financial or professional service (e.g. bank or estate agents), or a restaurant or cafe.
- 3.10 The owner is also advised of the legal powers the Council holds and what action could be taken against the owner and/or occupier and the penalties for non-compliance. In the first instance the Council will always look to the owner to bring improvements without formal action and rely on the spirit of mutual co-operation. While officers will always encourage bringing a property back into use, there are no legal powers to require this. Where, after a reasonable period of time no, or unsatisfactory action is taken and the property remains in a derelict state, the Council is left with no option but to issue a formal notice. In the case of derelict properties, these are usually under Section 215 of the Town and Country Planning Act and these notices usually require boarding of windows and doors (or re-instatement of glazing depending of the circumstances), replacement of missing roof tiles, removal of vegetation and any rubble/litter and sometimes the re-painting of the exterior of the building. Where the condition of the property is severe for example a fire damaged building, the Council has powers to require demolition under section 77 – 79 of The Building Act.

Direct Action

- 3.13 Direct action is where the Council undertakes the work specified in the notice and remedies the harm on the ground itself. The costs can then be recovered from the owner. If cost recovery is not possible (for example if the owner cannot be traced or is bankrupt), then a charge can be registered against the land with the Land Registry assuring full cost recovery plus base-rate interest at the time the property is sold in the future. Up until recently the ability to take direct action has been limited due to the cost which initially falls on the Council. Historically there has never been a sufficient budget to take direct action as a matter of normal procedure.
- 3.14 While the Void Property Group (principally through the Area Partnership) has funding on a year-by-year basis to tackle problems of this nature, the funding has been limited and does not get carried over at the end of the financial year. As a consequence in cases where direct action has been the only solution to solving the problem on the ground, one property could require the whole budget and where cost recovery is not possible, the money cannot then be used on the next derelict property. As a result officers have liaised with the Chief Finance Officer in order to seek a budgetary solution that would underwrite a more proactive response which is set out in section 6 below.

Pro-active measures undertaken where there is a risk of dereliction

- 3.15 Owners of vacant buildings that have the potential to become derelict are contacted by the Area Partnership and service areas and brought to the attention of the Void Property Group. Planning and Building Control, officers advise owners of vacant buildings of the risk of further decline and make recommendations to measures required to avoid neglect. Planning officers from development Management have now commenced making monthly visits to monitor their condition and liaise with landowners and ward members as necessary, including discussions in regard to redevelopment. Appendix B identifies the number of vacant pubs that through negotiations with Planning Services have secured planning permission for their re-use or redevelopment.
- 3.16 Compulsory Purchase of a site can provide for a comprehensive approach to dealing with dereliction. The Council has the powers to apply to the Secretary of State to obtain land or properties without the consent of the owner where it is considered in the public interest to do so. Compulsory Purchase Orders are mostly used to enable the wider redevelopment of an area. It is possible to undertake a 'back-to-back' CPO where the Council acquires the land and then sells it to a suitable purchaser simultaneously to enable wider public benefits. Compensation would be available to the owner which usually includes the value of the property, costs of acquiring and moving to a new property, and sometimes additional payments.

4. Council priorities

Dealing effectively with derelict buildings is directly related to the council's priorities to:

Ensure a clean and green borough

In order to ensure that local people will take pride in their environment, to help prevent vandalism and graffiti – and that environmental enforcement problems are dealt with speedily and effectively.

Ensure all people are safe and secure

In order that areas remain safe for the community by working closely with our local partners including the police and a range of key local organisations, so that, year by year, the borough of Walsall becomes a much safer community. In particular it is important that derelict buildings are made safe and secure in order to avoid encouraging anti-social behavior and the potential for arson and accidental fires.

Encourage everyone to feel proud of Walsall

To help people, deep down, have a pride and loyalty to their community, their town and their borough and to improve Walsall's poor image, and at negative perceptions of the Black Country and the West Midlands by promoting a strong, positive image by dealing with derelict properties quickly and effectively.

5. Risk management

Failure to address the derelict nature of property and in particular public houses can result in significant harm being caused to the visual amenities of the area and problems to neighbouring properties and businesses. It is therefore very important for the Council to act quickly and proactively. This needs to be balanced against following due process and building the case in terms of working with owners in order to give opportunity for them to rectify the problems and bring their properties into use. Failure to do so could see prosecution cases fail in the courts for not using the court as a last resort.

6. Financial implications

To ensure a more effective way of dealing with derelict properties the Council has established in the current financial year an ear marked reserve of £100,000 which is under the budget management of the Head of Planning and Building Control. This money will ensure that direct action will now be a more viable option for dealing with derelict properties where notices have been issued but have not been complied with. It is noted that most derelict properties have been improved through owners complying with notices, and remedial action by the owner will continue to be the priority in resolving the issue. The benefit of Direct Action can be twofold. Firstly that the harm caused by derelict properties where engaging the owner has been impossible is address directly by the Council. Alternatively, the work may be done by the owner rather than face a charge on the land which may amount to a larger sum than what may be incurred if the work is done under the owner's control, avoiding the Councils costs and legal fees.

7. Legal implications

The Use of Planning Conditions

- 7.1 Planning Conditions must meet strict tests before they can be imposed on planning permissions granted for public houses and other properties to ensure the buildings are maintained and not left to become unsightly. The conditions must meet tests to be valid. as set out in Government Circular 11/95 and paragraph 206 of the National Planning framework. The tests are whether the conditions are necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.
- The availability of wide ranging legislation, can specifically address problems of amenity, public health and danger arising from the condition of a property meaning, the imposition of planning conditions duplicates these controls, **failing the 'necessary' test.**
 - Planning permission for redevelopment could be subject to conditions directly related that redevelopment, e.g. housing. A condition to maintain the existing building prior to redevelopment **would not be 'relevant to the development permitted'**.
 - Conditions attached to new planning permissions, requiring 'clearance' of the area in terms of demolishing a public house building if it becomes empty, pre-judges whether the buildings could be used for another purpose and may not be considered to be sustainable. Planning regulations allow pubs to change

their use to shops, professional or financial offices (e.g. estate agents, building society's), or restaurants, without the need for a new planning application. Officers consider that such **conditions would fail the test of being 'reasonable in all other respects'**.

- In not meeting the tests a planning condition can be considered unsound and unenforceable. If challenged at appeal the Council could be at risk of costs awards against it.

For these reasons it is considered that recourse to other legislative controls available to the Council should ensure continued effective action to remedy problems that arise at vacant sites.

8. Property implications

It should be recognised that some Council owned properties have been subject to complaints about their condition. Any such complaints are referred to Asset Management to ensure that their condition is brought up to an acceptable standard.

9. Staffing implications

None arising from this report

10. Equality implications

None arising from this report

11. Consultation

Walsall Partnership, Environmental Health and Housing Services have been consulted in compiling the list of properties appended to this report.

Background papers

None.

Author

David Elsworthy
Head of Planning and Building Control
☎ 654722
✉ elsworthyd@walsall.gov.uk



Tim Johnson
Executive Director

14 September 2012



Councillor Andrew
Portfolio holder for Regeneration

14 September 2012