

Agenda Item No:

Report to: Overview and Scrutiny (Services)

Date of Meeting: 2nd June 2011

Report Title: Scrutiny Review of Management and Security of Derelict Buildings

Report By: Mike Hepworth
Head of Environmental Health and Parking

Purpose of Report

To summarise the work carried out for this review, the conclusions reached, and to set out the recommendations of the Review Team

Recommendation(s)

- 1. All concerned in the review, including Hastings Borough Council Officers and Councillors, colleagues from the Police and Fire and Rescue Services, and Officers from other local authorities who responded to requests for information, should be thanked for their contribution and provided with a copy of the report.**
- 2. The Borough Planning Officer and the Council's Senior Enforcement and Litigation Lawyer should carry out further research into the potential use of the power to force the sale of a property in relation to recovering debts incurred by the Council through works in default carried out to specific derelict buildings (Section 103 of the Law of Property Act 1925).**
- 3. The information outlined in Appendix Two, summarising the legal powers available to the Council and the specific Council services responsible for enforcing them, should be brought to the attention of all Ward Councillors to help them determine the most appropriate Council service to contact if they have concerns about a derelict building.**
- 4. The information outlined in Appendix Two, summarising the legal powers available to the Council and the specific Council services responsible for enforcing them, should also be brought to the attention of all of the Council Officers working within the different enforcement services, to help them to understand the powers available to colleagues in other parts of the Council, and to promote a joined up and more effective approach to tackling the issues arising from derelict buildings.**
- 5. A section on derelict buildings should be added to the Council's website, covering who to contact to complain about issues arising from such**

premises, and also who the owners or potential developers should contact for advice on how to redevelop such sites.

6. The Borough Planning Officer should introduce a system whereby a 'Council Aware' style Notice is erected at vacant derelict buildings notifying the general public of the most appropriate Council contact details for concerns associated with specific vacant derelict buildings.

Reasons for Recommendations

To promote a clearer understanding amongst Councillors and Officers of how the Council can deal with issues arising from derelict buildings to help minimise the impact upon local residents.

To ensure that the general public are aware of how to contact the Council if they have concerns about specific vacant derelict buildings in the borough.

Introduction

1. This review was chaired by Councillor Matthew J Lock, and the senior Officer leading the review was Mike Hepworth, Head of Environmental Health and Parking. This year the senior Officer appointed to lead each review was appointed on the basis that they were largely independent of the main Council department responsible for the area of service being reviewed. However, in this case it should be noted that from time to time the enviro-crime enforcement services managed by the Head of Environmental Health and Parking do have a role to play in tackling some of the issues associated with derelict buildings.
2. Having said this, the principal Council services involved with problems arising from derelict buildings are Planning and Building Control, and in some cases Housing Renewal. On this basis the other Senior Officer involved in this review was Tim Cookson, Borough Planning Officer.
3. The review arose from the understandable frustration of some Ward Councillors, at what they saw as the Council's inadequate response to residents concerns about the impact of several large derelict buildings. The property which probably attracted the most resident concern and resulted in the original proposal for this scrutiny review, was the former Nicola Rodmell Dance School in London Road St Leonards.
4. Planning consent was given for 24 flats on the site in 2008, but because of the lack of progress in bringing forward the proposed development due to poor economic conditions, it then deteriorated and was the subject of arson and antisocial behaviour. Action was taken by the Council to ensure the property was properly secured and this needed to be done on a number of occasions. In addition because of its deteriorating condition and it being the focus for antisocial behaviour, planning enforcement action was taken using Section 215 powers in order to require demolition of the building and tidy up the site. The property owner tried to sell the property and would not undertake the demolition. Dialogue was on going between the owner and the Council to encourage the demolition, which was a costly and time consuming project for the Council to consider carrying out in default. Prosecution was threatened and ultimately the property was demolished and the site cleared. A new development is awaited when economic circumstances improve.
5. The long running problems associated with this premises meant that valuable Council, Police, and Fire and Rescue Service resources had to be deployed to deal with it. This was particularly the case in relation to the arson attempts, as the Fire and Rescue and Police services had to attend on at least one weekend to fight the fire, and to patrol the site boundary to stop people accessing it.
6. This single incident required lengthy input from several fire crews, the fire investigation unit, the Police including their scenes of crime unit, local Police Community Support Officers to patrol the site, the Council's out of hours emergency service including the duty Silver Commander, as well as Planning Enforcement and Building Control to secure the proper fencing of the site in the days following the fire.

7. In the years preceding the fire, frequent Illegal use of the site by vagrants and young people and the anti-social behaviour associated with this activity, caused a lot of concern to local residents, and the fire itself also caused a lot of disruption in the area surrounding the premises, as the roads had to be closed whilst the Fire and Rescue Service tackled the blaze and then kept the site damped down over the following few days. Sites like this can also be a serious concern for the Fire and Rescue Service as they can be subject to arson attempts, and they cannot be sure whether or not people are squatting in the premises. They therefore have to put their staff at greater risk searching the building and adapting their fire fighting tactics accordingly. This also has consequences for the Council and Police, as there is a need to monitor these sites even when they have been boarded up to ensure that people are not breaking in and putting themselves at risk, as well as causing a nuisance to local residents. Prior to the fire at the former Nicola Rodmell Dance School, the Police had been visiting the site on at least a weekly basis to remove young people participating in anti-social behaviour from it.
8. From the local residents perspective this premises was a blot on the landscape and a magnet for anti-social behaviour, and they also had serious concerns over the blighting affect it could have on other property in the immediate vicinity.
9. Local residents and Councillors simply couldn't understand why 'the authorities' didn't appear to be doing anything to force the redevelopment of the site, either by the owners or directly by the Council.
10. There are a number of other derelict buildings across the borough that can attract similar anti-social behaviour and are also a concern to the people living nearby, and with this in mind Members agreed to carry out a review of the management and security of such buildings.
11. After much debate the Review Team agreed that for the purposes of this review a derelict building is a building that is vacant and in very poor condition. As a consequence of their very poor condition, they have the potential to blight the immediate vicinity. Typically this may be due to overgrown grounds/gardens, flytipped rubbish, serious deterioration of the structure of the building, partial collapse, illegal access resulting in anti-social behaviour, pest infestations.
12. This is in contrast to 'empty homes', which the Housing Renewal Team are doing much good work on. Although they are obviously empty, they are generally not in such poor condition or likely to have a serious impact on the amenity of the neighbourhood.

Methodology of the Review

13. The Review Team initially decided to look at about 4 derelict buildings as case studies to help to identify the typical issues associated with them, the measures that the authorities had taken to try and manage them, and the enforcement powers available.
14. The premises considered by the Team were:-
 - The Former Observer Building in Cambridge Road;
 - The Former Nicola Rodmell Dance School in London Road;

- A group of properties compulsorily purchased by East Sussex County Council in relation to highways projects in the vicinity of the Green, Gillsman's Hill and Seddlescombe Road North; and
 - A large semi-developed then abandoned block of flats in Tilekiln Lane, Ore.
15. The Borough Planning Officer researched the background to all of these premises and the action taken by the Council in relation to them, as this action was principally taken by the Planning Enforcement and Building Control Teams for which he is responsible.
 16. The Borough Planning Officer also carried out extensive research to find out how other local authorities tried to tackle the issues associated with this sort of premises, with a view to identifying best practice. This involved contact with a large number of other local authorities across the South East and further afield, using a well established planning authority networking system. The results of this research are summarised in appendix one.
 17. The Head of Environmental Health and Parking also discussed this Council's approach to dealing with this sort of premises with specialist enforcement officers from several services, including planning, building control, housing renewal, and environmental protection, as well as the Council's Senior Enforcement and Litigation Lawyer.
 18. In February it became apparent that based upon our research carried out with a lot of other local authorities, Hastings Borough Council was actually already more proactive than many others, and that there wasn't a hitherto unknown 'silver bullet' that we could use to deal with these premises. In fact Hastings had been in the vanguard of using Section 215 powers to try and deal with premises that had fallen into a poor state and become 'detrimental to the amenities of the neighbourhood'. Indeed several of the respondents to our survey made this point, saying that Hastings had helped them to develop better ways of tackling such premises.

The Use of Enforcement Powers

19. Appendix two summarises the various legal powers available to the Council to try and tackle problems arising from derelict buildings. It also notes which Council Officers/Departments can provide advice on these powers.
20. The Planning Enforcement Team have clearly lead the way nationally in using the Section 215 powers to try and get property owners to significantly improve the appearance of buildings that are considered to be detrimental to the amenities of the neighbourhood.
21. Environmental Health has also used similar powers under the Environmental Protection Act to try and force property owners to remove accumulations of rubbish from the exterior of premises. They have also used the Prevention of Damage by Pests Act to have harbourage for rats and mice removed, which in some cases could include undergrowth and putrescible waste.
22. So long as the owner of the property can be identified, this sort of enforcement action is relatively straight forward. However, if the Notices are ignored, the Council has to consider the options for securing compliance, and that is when

cases have the potential to become far more problematic. Depending upon the Notice served, this can include prosecuting the owner for non-compliance in the Magistrates or Crown Court, &/or carrying out the works in default and seeking to recover the costs from the owner.

23. Clearly there is a cost involved in carrying out the works in default as this will involve the Council in engaging a private contractor, and this can be relatively low, for example when using a contractor to remove rubbish or harbourage (typically under £1000), or high if the Notice requires extensive structural works to remedy the defective façade of a 3 storey building (probably starting at £20,000 and rapidly increasing depending upon the extent of the works).
24. For this reason prosecution is likely to be the preferred option. However, prosecuting property developers is unlikely to be straight forward. They can be extremely well versed in making it hard for anyone to take action against them. They may hide behind a complex raft of managing agents, legal entities, or as with the pier, off shore companies. All of this can lead to mounting legal costs, which can only be recovered if the Council is ultimately successful in Court, and even then the Court may not award them all of the costs incurred, and even if they do, despite Court Orders they may not be able to recover their costs. The Council's Senior Enforcement and Litigation Lawyer quoted a case she was involved with a few years ago where the defendant in a property case opted to have the case heard in the Crown Court. This meant both parties had to engage barristers, and expert witnesses such as surveyors and although the Council was ultimately successful, our legal costs were very high and yet the fine only amounted to £500. With the benefit of hindsight she has serious doubts as to whether this course of action was appropriate, and as a result the Council is now rightly cautious about taking Court action in such cases.
25. If the Council does carry out works in default, and recovering the costs from the owner proves to be problematic, a charge can be placed upon the property. In theory this means that the Council can recover the cost of the works when the premises changes hands. However, with long term derelict buildings there are likely to already be other creditors with charges on the property, so again it can be difficult to recover the costs, and even if successful, it may take many years.
26. The other factor to bear in mind is that generally speaking local authorities do not budget for the costs associated with enforcement actions such as those described. This is because it would be difficult to quantify the budget from year to year, and pressure on budgets means that large service specific contingency funds are a luxury that most local authorities cannot afford. In the last few years this has become increasingly relevant, as the Council has needed to significantly reduce budgets.
27. It can therefore be seen that even using these relatively straight forward and common enforcement powers involves the Council in financial risk, and the scope for introducing a contingency fund to enable the Council to be more proactive appears to be extremely limited.
28. Of course as mentioned in the appendices, there is also the option of compulsory purchase. However, our research has confirmed that this should only be considered as an absolute last resort. Again the current economic climate means

that this option has probably become even more problematic, as the sort of premises we are looking at are likely to have poor redevelopment potential, and therefore low site values, and given that funding for capital projects has now almost disappeared, and potential development partners are few and far between, the Council needs to be extremely cautious to ensure that it doesn't take on potentially huge financial liabilities associated with some of these premises.

29. Again the pier is a good example of this, and despite the very high public profile of the pier in Hastings, the Council is still only able to consider compulsory purchasing it if we can ensure that there is a financially viable partner to transfer it to. But this also shows that if a derelict building does deteriorate to the extent that it has a very serious affect on the area, and if there is no other viable alternative, the Council can consider compulsory purchase as a last resort.
30. The other consideration when looking at increasing the use of compulsory purchase powers to try and tackle large long term derelict buildings is the Council's capacity from a specialist Officer perspective. The Council's Legal Service is already engaged in a wide range of enforcement and litigation work, and the amount of time that is needed to deal with just one compulsory purchase case should not be underestimated. Similarly, there would also need to be a lot of input from the service leading on the case, which would generally be Planning Enforcement and/or Building Control. Unless we were to increase specialist Officer resources in these teams, it is most unlikely that we could become more proactive in pursuing compulsory purchase enforcement action in relation to some of these derelict buildings, even if we thought it was appropriate.
31. The only 'new' enforcement power that was highlighted by the Borough Planning Officer's research was the power to force the sale of a property that the Council is seeking to recover a debt relating to works carried out in default (Section 103 of the Law of Property Act 1925). The Senior Enforcement and Litigation Lawyer is planning to visit another local authority who have used this power to discuss their experience. Her initial thoughts are that this is definitely worth looking at in relation to property that has been subject to housing renewal enforcement action (such as the work going on with empty homes), but that because it can result in the Council becoming liable for the property, it may not be appropriate in relation to the sort of derelict buildings this review has considered. However, this needs further research.

Conclusions

32. For the reasons summarised above, rather than using compulsory purchase powers, Hastings like the majority of other local authorities seeks to minimise the problems associated with large long term derelict buildings by taking relatively piecemeal enforcement action, where this is unlikely to result in significant financial liabilities for the Council. Typically this involves issuing basic Planning Enforcement and/or Building Control enforcement Notices, and also in some cases Environmental Health/Waste enforcement Notices.
33. This sort of enforcement action can need repeating from time to time, but our enforcement services generally have the capacity to do this. This can become annoying for local residents who want a long term solution (ideally the redevelopment of the site), but as described above with sites like these achieving a

long term solution through enforcement could be a very high risk strategy for the Council.

34. The Senior Enforcement and Litigation lawyer also advised that this fairly routine type of enforcement action can sometimes have a very positive effect, far beyond the scope of the Enforcement Notice served. She cited several examples of cases where Court action to enforce an enforcement Notice had resulted in a previously uncooperative property owner deciding to not only comply with the Notice, but also to redevelop the property as a whole, or to sell it to someone with the means to do so.
35. Of course initially our various enforcement services generally try to resolve issues associated with derelict buildings informally, before resorting to the use of Enforcement Notices. However, where swifter action is required, perhaps because of rat and mouse infestations caused by rubbish on the site, fairly rapid action can be taken using a 7 or 28 day Notice procedure.
36. The Planning Service also puts a lot of time and effort into these cases behind the scenes. Seeking to assist the owners of derelict buildings through planning advice and support, whilst at the same time bringing pressure to bear by way of threats of enforcement action where the owners continue to be reluctant to either sell the site to a developer who does have the funding to redevelop it, or they simply won't co-operate.
37. Given the difficult economic environment the Council operates in, and the potentially high risks associated with pursuing compulsory purchase enforcement in relation to large derelict buildings, the review team believes that the approach described above is most appropriate at this time.

Wards Affected

Ashdown, Baird, Braybrooke, Castle, Central St. Leonards, Conquest, Gensing, Hollington, Maze Hill, Old Hastings, Ore, Silverhill, St. Helens, Tressell, West St. Leonards, Wishing Tree

Area(s) Affected

Central Hastings, East Hastings, North St. Leonards, South St. Leonards

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	No
Crime and Fear of Crime (Section 17)	Yes
Risk Management	Yes
Environmental Issues	No
Economic/Financial Implications	Yes
Human Rights Act	No

Background Information

Appendix One - Summary of responses from other local authority planning services, illustrating common approaches to issues arising from derelict buildings, and examples of good practice.

Appendix Two - Summary of enforcement powers available to the Council and contact details for Officers responsible for those powers.

Officer to Contact

Mike Hepworth
mhepworth@hastings.gov.uk
01424 783332
