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## No Use Empty Initiative "When Negotiation Fails"

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Section 215 Town & Country Planning Act 1990




- Local Planning Authority (LPA) (Authorisation)
- Adverse affect on the amenity of the area
- Serve notice (discretionary)
- Owner and occupier of the land
- Requiring such steps to remedy condition (Building & Land)
- Can be used in conjunction with other powers, HA 2004 & Listed Building Notices etc
- A straight forward piece of legislation

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Adverse Affect On Amenity



Amenity (Broad Concept)

- Not formally defined in legislation or guide
- It is a matter of fact and degree and common sense

Factors to Consider


- Visible from a public domain
- Condition of the site
- Impact on the surrounding
- Cannot include material that would normally be associated with that area.

Overgrown garden (per se)  
Building materials on building site

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Issuing Section 215 Notice



- Must be served on the owner and occupier
- Notices should be clear, precise and unambiguous
- Specialist advise should be sought prior to action i.e. listed buildings, conservation works , structural engineers etc
- Should not be used against land, which is attributable in some way to operations or a use of the land under Part III T&CP Act 1990
- Must include a plan of the property, identifying land that it applies to
- Notice takes effect from (must be minimum of 28 days), do not specify to long , as it extends the appeal period.

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## Prosecution vs Direct Action (Works in Default)



- Can prosecute or do WID or both
  - Prosecution – max £1,000 fine (level 3)
  - Second or subsequent prosecution 1/10<sup>th</sup> of fine, for each day following first conviction
  - (Original fine £200, non compliance 12 months prosecute again **(£7,300)**)
  - However, relatively low fine given
- Recovery of Costs -WID
- Local Land Charge – notice and expenditure (recorded)
  - Enforced Sales Procedure (Court)
  - Court Bailiffs etc.

## Power of Entry



### Town & Country Planning Act 1990 - Power of Entry

- Section 324 & 325 Officer authorised may enter at any reasonable time (24 hrs Notice, if residential), no need for warrant.
- Section 196A-C, JP can grant warrant to enter (by force if necessary), only where breach of Planning Control

## Section 215: Town & Country Planning Act 1990



## Section 215: Town & Country Planning Act 1990



## Section 215: Town & Country Planning Act 1990



## Section 79 Building Act 1984



- Building or structure is by reason of its ruinous or dilapidated condition, seriously detrimental to the amenities of neighbourhood
- Require the owner to execute such works or repair or restoration or, if he elects
- Demolition of the building or structure and removal of rubbish/waste material (Relates to building only, not land)
- Has effect, subject to the Town & Country Planning (listed building & building preservation orders)

## Prosecution vs Direct Action (Works in Default)



- Can prosecute or do WID or both
- Prosecution – max £2,500 fine (level 4)
- Second or subsequent prosecution £2, for each day following first conviction
- However, relatively low fine given

### Recovery of Costs

- Local Land Charge – notice and expenditure
- Enforced Sales Procedure

## Power of Entry



### Building Act 1984 - Power of Entry

- Officer authorised by LA may enter after 24 hours notice to the occupier (residential premises) (if any), good practice to notify owner (if known)
- Must give to the occupier, notice of intention to apply for warrant
- JP can grant warrant to enter (by force if necessary) provided JP satisfied:
  - Admission has been sought and refused, or
  - Premises vacant or occupier temporarily absent & might defeat object of entry to await return, or
  - Application for admission would defeat the purpose of entry
- Can take with him and such persons, as may be necessary

### Recovery of Expenses – Section 107 (Good Guidance)

## Section 79 – Building Act 1984



## Building Act 1984 - Powers



- **Section 77 - Dangerous or dilapidated buildings**
  - building or structure is in such a condition, or is used to carry such loads, as to be dangerous, the authority may apply to a magistrates' court to require the owner to undertake remedial work
  - Council undertake WID if not complied with
- **Section 78 - Dangerous building – Emergency Works**
  - Dangerous and immediate action is necessary
  - Give notice to owner & occupier, if reasonably practicable

## Section 78 – Building Act 1984



## Housing Act 2004 - Options for Action



- **Improvement Notice (s11)\***
  - **Prohibition Order (s20)\***
  - **Hazard Awareness Notice (s28)**
  - **Emergency Remedial Action (s40) (Cat 1 imminent risk)**
  - **Emergency Prohibition Order (s43)**
  - **Demolition Order (s265 1985 Act as amended) (Cat 1)**
  - **Clearance Area (s289 1985 Act as amended) (Cat 1)**
- \* Both INs and POs can be suspended

## Improvement Notice



- Must provide a section 8 Statement of Reason (Empty Property – no occupiers)
- Nature of hazard and the premises on which it exists
- Deficiency(ies) giving rise to the hazard
- Nature of remedial action and premises on which remedial action should be taken
- Date when remedial action to be started (< 28 days) & when to be completed (times for each part can differ)
- Can specify different times for different deficiencies
- Effective after 21 days

## Emergency Remedial Action / Demolition Order



- **Emergency Remedial Action**
  - there is a **Category 1 hazard**
  - an **imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises. (limited use)**
- **Demolition Order (most satisfactory course of action)**
  - **economic (NPV), social and environmental assessment**
  - **Clearance areas – Market Pathfinder areas**

## Powers of Entry



- Officer authorised by LHA may enter after 24 hours notice to proprietor (if known) and occupier (if any) where: JP can grant warrant to enter (by force if necessary).

### Provided JP satisfied:

- Admission has been sought and refused, or
- Premises vacant or occupier temporarily absent & might defeat object of entry to await return

Remember Camden case et al  
Power of Entry / Works in default

## Power to Charge



- S49 gives power to recover expenses reasonably incurred in serving Improvement Notice/Hazard Awareness Notice/Prohibition Order etc.
- Can include inspection and consideration of most appropriate course of action & service
- No maximum currently specified but charge must be reasonable and LHA must be able to substantiate
- LHAs should consider cost of accounting & time recording

Turner Street, Margate: Housing Act 2004



Turner Street, Margate: Housing Act 2004



Environmental Protection Act 1990  
Prevention of Damage by Pest Act 1949



**Section 79-81 Environmental Protection Act 1990**

- Premises prejudicial to health or a nuisance
- Execute repair works or prosecution
- Power of entry & warrant provisions

**Section 76 – Premises prejudicial to health or a nuisance**

- 9 day notice, can undertake works in default thereafter

**Section 4 Prevention of Damage by Pest Act 1949**

- Steps needed to destruct rats or mice or to keep land free of rats or mice
- Power of entry & no warrant provisions

Local Government (MP) Act 1982 – Section 29



- Building in area unoccupied or occupier temporarily absent and not secured against unauthorised entry or likely to become a danger to public health
- Generally, require work to be done within 48 hours
- Works in default only option – charge owner
- Other legislation
- Planning (Listed Building and Conservation Areas) Act 1990
- Public Health Act 1936 & 1961

## Enforced Sales Procedure (ESP)



- Enforced Sales, not a procedure to deal with problem properties *per se*
- Procedure to deal with recovery of outstanding debt following actions that have created a land charge against a property
- Can be used in relation to registered & unregistered land (£100K)
- Generally, takes priority over other mortgages and private debts
- Can be used for recovering debts, where the LA has completed works in default (caveats) & Council Tax debt

## Status of the Range of Legislation



Principal Statutory powers confer charge on all estates and confer L&PA 1925 Housing Act 1985 & 2004	Does not bind all estates and interests - Section 7 Local Land Charges Act 1975 applies Section 215 Town & Country Planning Act 1990
Building Act 1984	
Prevention of Damage by Pests Act 1949	Section 29 Local Government (MP) Act 1982 - not suitable
Environmental Protection Act 1990 More complex - issue over service	

## Council Tax / Section 215 T&CP Act 1990 Enforced Sales Procedure



- This method can be used for Council Tax debts & other debts to the Council
- Council Tax debt obtain liability order
- Obtain Interim Charging Order from County Court
- Obtain Final Charging Order from County Court
- Advertise intentions in local and national press
- Instigate Order of Sale and sell in accordance with standard procedure
- Recover debt - rest of money paid into Court

## 77 Eastern Esplanade, Margate – Case Study



## 77 Eastern Esplanade, Margate – Case Study



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## Public Request to Order Disposal (PROD)



- Under 1980 Housing and Planning Act all members of the public have the power to make a public request ordering disposal (PROD)?
- A method of putting pressure on public authorities to maximise use of their empty property.
- It gives members of the public power to request disposal and challenge the relevant public authority to say what they are going to do with their property and if they can't come up with a good reason to then dispose of it and make sure that it is put back into use
- Schedule 16 excludes NHS & MOD properties but includes Government Bodies, Local & Regional Authorities

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Questions?