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18/00890/HHCOMP

WARD: Knaphill

Subject: Proposed direct action under s77 of the Anti-Social Behaviour Act 2003 to secure compliance with a Remedial Notice in respect of high hedges at St Annes, Littlewick Road, Woking, Surrey, GU21 4XR

Case Officer: JV

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1. REASON FOR REPORT

The purpose of the report is to obtain authority to take direct action against the owner of the land due to the continued failure to comply with a Remedial Notice issued under s69 of the Anti-Social Behaviour Act 2003.

2. RECOMMENDATION

- (i) Authority be granted to proceed with direct action under s77 of the Anti-Social Behaviour Act 2003 in order to undertake the outstanding steps required by the notice, as set out in paragraph 4(d) below.
- (ii) Recover from the owner of the land any expenses reasonably incurred by the Council for carrying out the works required by the Notice, including registering a charge against the land if necessary.

3. Site Description:

The property is a detached house located on the North side of Littlewick Road, Horsell. The property is set back from the highway.

There are evergreens (Cypress trees) which form tall hedges along the front and rear boundary of the property. The hedge at the front boundary is currently 9.5m in height and the hedge at the rear is 13m in height.

4. REPORT

- (a) Following a complaint from a local resident the Council issued a Remedial Notice on 3 December 2018 requiring works to be undertaken to hedges at the front and rear of the property. The notice was issued because the hedges were considered to affect the reasonable enjoyment of the occupiers of the neighbouring property at Manijeh. Given the size of the hedges the neighbour experiences shading and reduced light levels. The hedges are untidy and out of keeping with the well managed hedges and trees found in the nearby area.
- (b) The notice requires the following to be undertaken:-
 - (i) reduce the height of the front height to no less than 9m, and
 - (ii) reduce the height of the rear hedge to no less than 10.5m in height

A period of 9 months was given to comply with the requirements of the Notice.

- (c) An appeal was lodged against the notice by the neighbouring property Manijeh in March 2019. The neighbour appealed the notice on the basis they wanted the hedges to be cut lower than the height specified in the Notice.
- (d) On 2 March 2020 the appeal was allowed and the Remedial Notice varied. The Notice was varied as follows:-
 - (i) reduce the height of the front height to no less than 6m, and
 - (ii) reduce the height of the rear hedge to no less than 9m in height

A period of 9 months was given to comply with the requirements of the Notice by 2 December 2020.

- (e) The Council's tree officer has visited the property on several occasions in an attempt to speak with the owner and to try and encourage them to comply with the notice. The owner is elderly and appears to be in poor health. The owner had told the Tree Officer that she does not have the financial means to comply with the requirements of the notice.
- (f) A formal warning letter was sent to the owner on 4 December 2020 making her aware of the consequences of her continued failure to act and that she may be liable to prosecution and/or direct action.
- (g) Despite best efforts by the Tree Officer to communicate with the owner and numerous requests to comply with the notice, no attempts have been made by the owner to comply with the requirements of the Notice.
- (h) As a result of the owner's failure to comply with the Notice, the Council has been left with no option but to consider enforcement action to ensure full compliance with the Notice.

6. EXPEDIENCY OF TAKING ACTION

- (a) Failure to comply with a Remedial Notice is an offence punishable on conviction in the Magistrates Court to a fine not exceeding £1000.
- (b) Whilst the Council may prosecute the owner for failing to comply with the Notice it is the view of Legal colleagues that it would not be in the public interest to prosecute the owner given her age and the possibility of raising mitigation and a lack of financial resources to carry out the works. A prosecution would also not achieve compliance with the notice and simply delay the matter further.
- (c) The Council also has the power to take direct action which is considered a more appropriate method of securing compliance with the notice. The Council may enter the land and undertake the works required in the notice. This power can be exercised after the time for compliance has expired.
- (d) The Council may exercise this power after giving 7 days written notice to the owner of its intention to go in and do the works. The warning notice of direct action will give the owner a final opportunity to comply with the notice.
- (e) If the owner still fails to comply after the 7 day written notice of intention to take direct action, the Council is required to give 24 hours' notice of intended entry.

- (f) This notice would be served at least 24 hours before the date of the planned entry to carry out the works.
- (g) Direct action is considered the most appropriate method of enforcement in this case. It will reduce the height of the hedges, immediately securing compliance with the notice which has been subject to appeal. This will save considerable officer time sending further correspondence and carrying out further site visits, all of which have previously been unsuccessful.
- (h) A disadvantage of taking direct action is the expense to the Council of having the works carried out. However, the cost of this work can be recovered from the owner. This also includes the costs of removing the waste from the property. Given the level of works to be undertaken, the extent of waste that is likely to derive from it and the age/ill health of the owner, the Council would be seeking to remove the resulting waste from the property rather than leaving it at the property which may present a hazard to the owner. Any unpaid expenses would be secured and registered as a local land charge. This means the Council would get their money back when the property is sold.
- (i) For the above reasons the Council considers it expedient to take direct action to secure compliance with the Remedial Notice.

7. FINANCIAL CONSIDERATIONS

- (a) Tree Officers have obtained quotations from 3 local tree contractors with a view to undertaking the necessary works and removing the deriving waste. The quotations range from £ 4500 + VAT to £5960 + VAT. A mid-range figure of £5535 + VAT. The quotation is an estimate of costs and may be subject to change if there are problems gaining access to the site and the work takes longer than planned.
- (b) If the Committee decide to authorise direct action the Council would bear the initial expense of having the works carried out but the reimbursement of the costs of the work would be secured by way of a Legal Charge on the land in the event of non-payment by the owner. Following a recent Land Registry search the land is mortgage free so the Council is confident funds should be recovered when the property is sold, if not before.
- (c) There is no standing budget for direct action, however, a separate planning budget has been set up in the past to fund such matters.

8. RECOMMENDATION

- (i) Authority be granted to proceed with direct action under s77 of the Anti-Social Behaviour Act 2003 in order to undertake the outstanding steps required by the notice, as set out in paragraph 4(d) below.
- (ii) Recover from the owner of the land any expenses reasonably incurred by the Council for carrying out the works required by the Notice, including registering a charge against the land if necessary.
- (iii) That the Council accepts the quotation from Tree Clinic Surrey at a cost of £4500 + VAT

