

Neath Port Talbot County Borough Council
Cyngor Bwrdeistref Sirol Castell-nedd

Democratic Services
Gwasanaethau Democrataidd

Decision Notice

PLANNING COMMITTEE - URGENCY ACTION , TUESDAY, 2ND MARCH, 2021

Please see below approval of decision as follows:

1. **Section 16 Notice - JWR 005 - Urgency Action (Pages 3 - 10)**

Section 77 Building Act 1984
Section 16 (Local Government) Miscellaneous Provisions Act
1976

To serve a section 16 notice on all relevant parties to enable the Council to establish ownership of a dangerous wall.

That approval is given for Building Control to issue a Section 16 Notice, as detailed in the attached report.

For Immediate Implementation

Yours sincerely

Tammie Davies

p.p Chief Executive

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NEATH PORT TALBOT COUNCIL

Planning Committee

Report of the Head of Planning & Public Protection Mr Ceri Morris

Matter for Decision

Wards Affected: Neath East

Section 77 Building Act 1984

Section 16 (Local Government) Miscellaneous Provisions Act 1976

Purpose of Report

- 1 The report seeks authorisation to enable the Building Control section to serve a Section 16 Notice on all relevant parties to enable the Council to establish ownership of a dangerous wall.

Executive Summary

- 2 The Council's Building Control section is dealing with a wall that has been reported as dangerous using powers available under sections 77 and 78 of The Building Act 1984. A total of four properties share benefit from the boundary wall and it has been suggested that Redrow Homes (as the site developer) retains responsibility for the wall. Enquiries thus far have been unable to establish ownership and responsibility for the wall, thus hindering the Council's efforts to discharge its responsibilities.

Background

- 3 Building Control has received a report of a wall leaning dangerously. The wall is a shared boundary between 33 Edith Mills Close, 35 Edith Mills Close, 50 Westbourne Road and 51 Westbourne Road.
- 4 The wall is not owned by the Council, nor does the wall affront any publically owned land. However, the gardens of numbers 33 and

35 Edith Mills Close are not adequately fenced off from the public highway and access to space adjacent to the wall, authorised or unauthorised, is possible by the general public.

- 5 The wall has been assessed as being in a dangerous condition, but is not thought to be in danger of imminent collapse. Building Control continue to monitor its condition.
- 6 It has been suggested that the developer of the former Neath Hospital site, Redrow Homes, had retained ownership of the stone wall that surrounds the estate.
- 7 The Council has written to all five parties under Section 77 of The Building Act asking that repairs be carried out to the wall so as to remove the danger. This has been unsuccessful thus far, with all parties denying responsibility for the wall.
- 8 Without being able to establish ownership the Council is unable to proceed in making an application to the courts for an order to be made under section 77 of the Building Act.
- 9 It is proposed to serve notice on all parties concerned under Section 16 (Local Government) Miscellaneous Provisions Act 1976 requiring that they provide information specifying the nature of his interest in the wall.

Financial Impact

- 10 If it is not possible to establish ownership of the wall, the Council will be unable to recover costs incurred in dealing with the dangerous structure.

Integrated Impact Assessment

- 11 An integrated impact assessment is not required for this decision.

Workforce Impact

- 12 None.

Legal Impact

- 13 Serving the notice will enable the Council to discharge legal responsibilities.

Crime and Disorder Impact

- 14 Section 17 of the Crime and Disorder Act 1998 places a duty on the Council in the exercise of its functions to have “due regard to the likely effect of the exercise of those functions on and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment). This report and policy is consistent with these obligations as it sets out to protect the public.

Risk Management

- 15 None applicable to the context of this report.

Consultation

- 16 There is no requirement under the Constitution for external consultation on this item.

Recommendation

- 17 It is recommended that approval is given for Building Control to issue a Section 16 Notice.

Reason for Proposed Decision(s)

- 18 To ensure that the authority is in a place to discharge responsibilities under Sections 77 and 78 of The Building Act 1984.

Implementation of Decision

- 19 The decision is proposed for implementation immediately.

Appendices

- 20 Appendix 1 – Section 16 (Local Government) Miscellaneous Provisions Act 1976
21 Appendix 2 – Sections 77 & 78 Building Act 1984

List of Background Papers

22 None.

Officer Contact

23 Paul Davis – Building Control and Business Support Manager
Tel: 01639 686952 or email: p.davis1@npt.gov.uk

Appendix 1

16 Power of local authorities to obtain particulars of persons interested in land.

(1) Where, with a view to performing a function conferred on a local authority by any enactment, the authority considers that it ought to have information connected with any land, the authority may serve on one or more of the following persons, namely—

(a) the occupier of the land; and

(b) any person who has an interest in the land either as freeholder, mortgagee or lessee or who directly or indirectly receives rent for the land; and

(c) any person who, in pursuance of an agreement between himself and a person interested in the land, is authorised to manage the land or to arrange for the letting of it,

a notice specifying the land and the function and the enactment which confers the function and requiring the recipient of the notice to furnish to the authority, within a period specified in the notice (which shall not be less than fourteen days beginning with the day on which the notice is served), the nature of his interest in the land and the name and address of each person whom the recipient of the notice believes is the occupier of the land and of each person whom he believes is, as respects the land, such a person as is mentioned in the provisions of paragraphs (b) and (c) of this subsection.

(2) A person who—

(a) fails to comply with the requirements of a notice served on him in pursuance of the preceding subsection; or

(b) in furnishing any information in compliance with such a notice makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding **[F1]** level 5 on the standard scale].

Appendix 2

77 Dangerous building.

(1) If it appears to a local authority that a 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, the authority may apply to a magistrates' court, and the court may—

(a) where danger arises from the condition of the building or structure, make an order requiring the owner thereof—

(i) to execute such work as may be necessary to obviate the danger or,

(ii) if he so elects, to demolish the building or structure, or any dangerous part of it, and remove any rubbish resulting from the demolition, or

(b) where danger arises from overloading of the building or structure, make an order restricting its use until a magistrates' court, being satisfied that any necessary works have been executed, withdraws or modifies the restriction.

(2) If the person on whom an order is made under subsection (1)(a) above fails to comply with the order within the time specified, the local authority may—

(a) execute the order in such manner as they think fit, and

(b) recover the expenses reasonably incurred by them in doing so from the person in default,

and, without prejudice to the right of the authority to exercise those powers, the person is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

[F1(3)This section has effect subject to the provisions **[F2**the Planning (Listed Buildings and Conservation Areas) Act 1990**]** relating to listed buildings, buildings subject to building preservation **[F2**notices**]** and buildings in conservation areas.**]**

78 Dangerous building—emergency measures.

(1) If it appears to a local authority that—

(a) a building or structure, or part of a building or structure, is in such a state, or is used to carry such loads, as to be dangerous, and

(b) immediate action should be taken to remove the danger,

they may take such steps as may be necessary for that purpose.

(2) Before exercising their powers under this section, the local authority shall, if it is reasonably practicable to do so, give notice of their intention to the owner and occupier of the building, or of the premises on which the structure is situated.

(3) Subject to this section, the local authority may recover from the owner the expenses reasonably incurred by them under this section.

(4) So far as expenses incurred by the local authority under this section consist of expenses of fencing off the building or structure, or arranging for it to be watched, the expenses shall not be recoverable in respect of any period—

(a) after the danger has been removed by other steps under this section, or

(b) after an order made under section 77(1) above for the purpose of its removal has been complied with or has been executed as mentioned in subsection (2) of that section.

(5) In proceedings to recover expenses under this section, the court shall inquire whether the local authority might reasonably have proceeded instead under section 77(1) above, and, if the court determines that the local authority might reasonably have proceeded instead under that subsection, the local authority shall not recover the expenses or any part of them.

(6) Subject to subsection (5) above, in proceedings to recover expenses under this section, the court may—

(a) inquire whether the expenses ought to be borne wholly or in part by some person other than the defendant in the proceedings, and

(b) make such order concerning the expenses or their apportionment as appears to the court to be just,

but the court shall not order the expenses or any part of them to be borne by any person other than the defendant in the proceedings unless it is

satisfied that that other person has had due notice of the proceedings and an opportunity of being heard.

(7) Where in consequence of the exercise of the powers conferred by this section the owner or occupier of any premises sustains damage, but section 106(1) below does not apply because the owner or occupier has been in default—

(a) the owner or occupier may apply to a magistrates' court to determine whether the local authority were justified in exercising their powers under this section so as to occasion the damage sustained, and

(b) if the court determines that the local authority were not so justified, the owner or occupier is entitled to compensation, and section 106(2) and (3) below applies in relation to any dispute as regards compensation arising under this subsection.

(8) The proper officer of a local authority may, as an officer of the local authority, exercise the powers conferred on the local authority by subsection (1) above.

(9) This section does not apply to premises forming part of a mine or quarry within the meaning of the [M1](#) Mines and Quarries Act 1954.