

# Report to the Cabinet

**Report reference: C/142/2005-06.**

**Date of meeting: 10 April 2006.**



**Epping Forest  
District Council**

**Portfolio: Planning and Economic Development.**

**Subject: Planning Enforcement – Birchfield, Epping Lane, Stapleford Tawney.**

**Officer contact for further information: Colin Crudginton (01992 – 56 4055).**

**Democratic Services Officer: Gary Woodhall (01992 – 56 4470).**

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## Recommendations:

**That in accordance with the requirements of the planning enforcement notice:**

**(a) that the Head of Environmental Services be authorised to enter into a contract for the clearance of rubbish, caravans and mobile homes from the site; and**

**(b) that a supplementary DDF estimate in the sum of £50,000 be recommended to the Council for approval.**

## Report

1. At the meeting of the Cabinet held on 6 March 2006, works to achieve the clearance of rubbish from the site were recommended for approval and accordingly competitive quotations were invited by the Head of Environmental Services from four specialist companies listed on Construction Line.
2. Quotations for the works are due to be returned to the Head of Environmental Services on 3 April 2006, consequently as at the date of drafting this report (27 March 2006) it was not possible to report the quoted cost of the works. However, an unsolicited offer has been received by the Council for the clearance of the site by a specialist contractor in the sum of £50,000 and for reasons of expediency it is this figure that has been employed for the recommended supplementary DDF estimate.
3. The Portfolio Holder will report on the quotations received and the anticipated programme of works with the value detailed in recommendation 2 being amended accordingly.
4. At the 6<sup>th</sup> of March Cabinet the Head of Environmental services was requested to report back on the non planning based powers which were available for dealing with issues of this nature, and the table which follows outlines those powers:

<b>Legislation</b>	<b>Power to act etc.</b>
Section 79 Public Health Act 1936	The removal of 'noxious' matter from land within 24 hours. There is no appeal and authority can act in default and recover costs. 'Noxious' is not defined but in the concise oxford dictionary includes 'harmful' and 'unwholesome'
Section 34 Public Health Act 1961	Powers to deal with material in the open air

Legislation	Power to act etc.
	which is seriously detrimental to the amenities of the neighbourhood. Authority can serve a statutory notice requiring removal within 28 days. The recipient of a notice can appeal to the Magistrates' Court or serve a counter notice stating their intention to remove the accumulation. Authority can take action in default.
Section 79 / 80 Environmental Protection Act 1990	Power to deal with any accumulation which is either a nuisance or prejudicial to health. Notices can be served which can be appealed. Following court action works in default can be undertaken and costs recovered.

5. In all of the above notices can be served on the owner and/or occupier of the land in question. In all cases it is up to the courts to decide, on appeal, whether a council has used its powers appropriately, and it is important to note that the mere presence of an accumulation on land does not of itself automatically mean that the use of these powers can be justified. Appropriate use depends upon matters such as:
- (a) the nature of the material / accumulation;
  - (b) its proximity to people, buildings etc; and /or
  - (c) the presence of other associated problems such as vermin.
6. Whilst the law allows for the eventual recovery of costs, including through the imposition of a charge on land, in cases such as Birchfield, costs recovery has to be seen as unlikely.

**Statement in support of recommended action**

7. Since the site has been vacated and become derelict, the acknowledged harm already caused by the unlawful use and associated works is being exacerbated. Moreover, the use of the additional vehicular access to the site off Epping Lane causes additional harm to the safe and free flow of traffic using Epping Lane.
8. To remedy the harm already caused and to prevent further exacerbation of that harm it is necessary to take steps to secure compliance with the enforcement notice and return the land to its original condition. That would create the conditions for the lawful use of the land to resume.
9. Given the constraints of the alternative non planning based remedies, action in support of the enforcement notice is recommended.

**Other options for action**

10. The following options for action are:
- (a) take direct action to partially secure compliance with the requirements of the enforcement notice thus employing a phased approach to full compliance and create the conditions for the land to be returned to its lawful use but it would expose the Council to unknown costs;
  - (b) do nothing. That would leave the site in its present condition and the requirements of the enforcement notice would not be met.

11. There is no legal mechanism for the Council to secure the site.

**Consultation undertaken:**

12. Internal consultation only.

**Resource Implications**

**Budget provision:** As detailed in the report and as updated by the Portfolio Holder at the meeting.

**Personnel:** Nil.

**Land:** The site is some 3 hectares/7.3 acres in extent and in private ownership.

**Community Plan/BVPP Ref:** Policy Theme One Aim 1(A).

**Relevant Statutory Powers:** Town and Country Planning Act 1990.

**Background Papers:** Unsolicited quotation for clearance works.

**Environmental/Human Rights/Crime & Disorder Act Implications:** N/A.

**Key Decision Ref (if required):** Will advise when key decisions have ref no's.