

SCRUTINY COMMITTEE

9 JANUARY 2015

HARLEQUIN VALET PREMISES, CULLOMPTON - FURTHER REPORT FOLLOWING THE INDEPENDENT REVIEW REPORT CONSIDERED ON 10 NOVEMBER 2014

Cabinet Member Cllr Richard Chesterton
Responsible Officer Head of Planning and Regeneration

Reason for Report: The report was requested by Scrutiny following their consideration of the Independent Review Report considered on 10 November 2014. The Scrutiny Committee requested this report address the time-line and any gaps within it, and also wished to see recommendations developed from the section entitled summary and points for consideration in the November report.

RECOMMENDATIONS: That the Scrutiny Committee recommend Cabinet consider and adopt the recommendations set out in paragraphs 4.1 to 4.6.

Relationship to Corporate Plan: Community well-being is a key component of the Corporate Plan.

Financial Implications: Policies set out in the recommendations identify a more proactive approach by the Council in dealing with dangerous structures. This more proactive approach is likely to incur greater expenditure on dangerous structures and legal work.

Legal Implications: There will be additional legal work in adopting a more proactive approach. Both on terms of obtaining court orders and reclaiming expenditure incurred in legal and intervention costs.

Risk Assessment: Costs may not always be recovered. Owners may contest the amount of work undertaken as the minimum necessary. Owners may contest that emergency intervention was necessary.

1.0 Introduction

1.1 At its meeting on 10 November 2014 the Scrutiny Committee resolved that consideration of the **Independent Review Report** into matters concerning **Harlequin Valet, Cullompton** be deferred until the next meeting of the Scrutiny Committee so that:-

A) Officers could further investigate the time-line and fill any gaps, and

B) Bring forward recommendations developed from the section entitled summary and points for consideration.

1.2 The original Independent Review Report completed by the Head of Communities, Governance and Monitoring Officer (considered at the November meeting) is attached for Members information at appendix 1.

1.3 Set out below are the answers to questions A and B above.

2.0 **A) - Time line and any gaps**

- 2.1 There are no additions to make to the time line in the original report. The last formal written communication from the Council's Building Control department prior in respect of the dangerous structure was in December 2011 when the owner was requested to take action to secure the safety of the render and cob at first floor level. Action was taken by the owner boarding the wall at that time and it was considered the minimum works necessary had been carried out to remove the danger at that time. Contact between the owners agents and the Planning Department were maintained during the processing of the various planning applications between the time of the fire and the wall collapse and reference is made to the involvement of building control officers in those considerations. This history is fully set out in the earlier report.
- 2.2 The first floor cob wall collapsed in January 2014.

3.0 **B) - Considerations and Recommendations**

- 3.1 Before considering the recommendations under item two it may help to identify the provisions in the Building Act 1984 which provide powers to deal with dangerous structures.
- Dangerous structures are the responsibility of the building owner.
 - The owner has a general duty of care in law to protect other people from any harm arising from the unsafe condition of their property.
 - The involvement of the local authority does not remove this liability from the owner.
 - The Council has legal powers under the Building Act, **but not an obligation**, under sections 77 and 78 of the Building Act 1984, to investigate and to take whatever action is necessary to remove the danger.
- 3.2 **Section 77** is used where a building or part of a building is in such condition or used to carry such loads as to be dangerous.
- 3.3 The Council can apply to a Magistrates court for an Order.
- 3.4 If the court is satisfied that the danger exists then an Order is given and the owner must remove the danger. Or the owner can demolish the building within a stated time period.
- 3.5 If the person does not carry out the work in the stated time, the Council can carry out the work and attempt to get back the costs from that person.
- 3.6 Also, the person may be given a fine for not complying with the original order.
- 3.7 **Section 78** is used in similar circumstances to the above, but this is when action needs to be taken right away to remove the danger.

3.8 The Council carries out work to remove the danger, but in getting back its costs from the owner it may have to show to the Court that it (the Council) could not reasonably have gone ahead under Section 77.

3.9 The Council would only deal with a 'dangerous structure' under these provisions if the owner:

- cannot be contacted
- is unable or refuses to remove a danger, or
- is in default of a court order

4.0 **Recommendations**

4.1 Following the initial assessment and any remedial action to make a dangerous structure safe, the structures shall (unless fully demolished or fully repaired) **be monitored on a two monthly basis** to ensure any further decay is identified as early as possible. A detailed record of those inspections and any actions requested will be kept.

4.2 Ward Members will be notified following inspections of the findings and any proposed action.

4.3 A leaflet will be published on the Council's website identifying the powers the Council has with regard to dangerous structures and the actions the Council may pursue where public safety is being put at risk where no action is taken by the owner. The proposed policies are set out in 4.6 below.

4.4 Information should also be displayed on the Council's website of the risks that poorly maintained cob structures can create.

4.5 Delegated authority be given to Building Control officers to take action under Section 77 and 78 of the Building Act, as deemed necessary, and that expenditure incurred in those cases be agreed by the Cabinet Member for Planning and the Head of Finance as an expenditure outside of set budgets on a case by case basis. (The Council will always seek to recover its costs in such circumstances but recovery cannot be guaranteed).

4.6 The Council will set out the following policies (subject to Cabinet and Council approval) on its website for dealing with dangerous structures as follows:-

- In an **EMERGENCY** situation, without prior notification to the owner, the Council will employ a contractor to do the minimum amount of work necessary to remove the danger. The owner will later be notified of the action and the fact that he/she is liable for the Council's full costs.
- Where a dangerous structure is identified **BUT IS NOT AN EMERGENCY**, the Council will attempt to obtain a verbal commitment from the owner to remove the danger immediately. If not achieved, formal notice will be served on the owner requiring that the danger is removed within a week. If the owner fails to comply, the Council will employ a contractor to do the minimum amount of work necessary to remove the danger.

Contact for more Information: Jonathan Guscott, Head of Planning and Regeneration. 01884 234938 (jguscott@middevon.gov.uk)

Circulation of the Report: Jonathan Guscott, Richard Chesterton, Jenny Roach, Nikki Woollatt, Linda Holloway

List of Background Papers: The Previous Independent Review Report considered on 10 November 2014 can be found on the following web link.

<http://www.middevon.gov.uk/CHttpHandler.ashx?id=24558&p=0>