

## **Independent Review of matters concerning Harlequin Valet, Cullompton** **Report of the Head of Communities & Governance and Monitoring Officer**

The purpose of this review is to consider the events leading to the collapse of the Harlequin Valet Building in Cullompton and whether Mid Devon District Council acted accordingly, both prior to, and following, the collapse.

In this review the following will be covered:

- Background
- Approach to the Investigation
- Sequence of events
- Conclusion of the Investigating Officer
- Summary and points for consideration

### **Background**

19 High Street Cullompton, the Harlequin Valet Building is owned by Mr Nick James. The first event of note is that the building was gutted by a fire back in January 2010 and has been derelict from this date. In January 2014 there was a partial collapse of the cob wall on to the pavement below.

### **Approach to the Investigation**

Following a request from Councillor Mrs Nikki Woollatt that an independent enquiry be undertaken, the Chief Executive asked the Head of Communities and Governance and Monitoring Officer to undertake an investigation.

The Internal Audit Team Leader assisted with this investigation and gathered evidence from Planning Committee minutes, the planning portal (including numerous sources of evidence) and from asking questions of the staff involved in this case. The Head of Communities and Governance met with Councillors Mrs Nikki Woollatt and Mrs Linda Holloway to go through the sequence of events with them and points raised from this meeting were followed up with relevant officers.

### **Sequence of events**

#### **Planning application reference 09/00710/FULL**

Mr James submitted a planning application on 18<sup>th</sup> May 2009 and this was given the reference of 09/00710/FULL, titled erection of extension and alterations to provide one retail unit and five flats and erection of one single-storey dwelling to rear. This application was approved on the 9<sup>th</sup> November 2009 listing the permission expiry date of 9<sup>th</sup> November 2012.

In early January 2010 there was a fire at the property which left it gutted.

Following the fire there were numerous visits from Building Control and other Council Officers to ensure that Mr James completed the works to the building.

The site inspection dates and actions are as follows:

6<sup>th</sup> January 2011 – parts of soffit and fascia (edge details of roof) falling onto path. Bollards placed around affected area by Operations staff. Building Control Officer spoke with Mr James on the 7<sup>th</sup> January 2011 who promised to visit over weekend

11<sup>th</sup> January 2011 – Spoke again with Mr James – promised builder by end of day. Phone calls from PCSO + neighbour. Site visited with the Repairs Manager to establish necessary works – need to fence and scaffold to protect public

13<sup>th</sup> January 2011 – Scaffold erected by Mr James

18<sup>th</sup> January 2011 – Loose soffit and render locally removed

25<sup>th</sup> January 2011 – Letter written to Mr James advising protection of the wall with tarpaulin. Please note that this was advisory, not a requirement.

17<sup>th</sup> June 2011 – Note on file from the Building Control Officer – confirms contact from neighbours. Scaffolding removed following complaints from neighbouring Public House. Spoke with Mr James to establish status of building. He confirmed he was monitoring the building regularly

9<sup>th</sup> September 2011 – Building Control Officer called out – section of render had come off front of building. Unable to ascertain if fell or was removed

13<sup>th</sup> September 2011 – Message left for Mr James

15<sup>th</sup> September 2011 – Confirmation from Mr James that render had fallen. He will visit site and establish action

30<sup>th</sup> September 2011 – Call from DCC highways

4<sup>th</sup> October 2011 – Message left for Mr James

12<sup>th</sup> October 2011 – Phone call from Mr James, will arrange for builder to remove loose render

9<sup>th</sup> November 2011 – Message left for Mr James, expressing concern about worsening weather conditions

16<sup>th</sup> November 2011 – Letter to Mr James – reiterating need to protect the wall from weather

17<sup>th</sup> November 2011 – Phone call with Mr James – reiterated need to protect wall, expressed concern about potential for degradation. Site visited some patching of render

18<sup>th</sup> November 2011 – Phoned Mr James, discussion regarding need for further action

22<sup>nd</sup> November 2011 – Site meeting by the Building Control Officer and Building Control Manager – building not considered immediately dangerous – some render cracking. Phone call to Mr James advising action required to remove danger

23<sup>rd</sup> November 2011 – Mr James advised builder not available until following Wednesday

30<sup>th</sup> November 2011 – Met with Mr James (Building Control Officer and Building Control Manager) and his builder. Cracked render evident – Builder proposed ply sheathing over walls to prevent further pieces of render falling off

5<sup>th</sup> December 2011 – letter to Mr James confirming his proposed action.

At this point as far as Building Control were concerned the required action had been taken to make the building safe. As listed above Building Control advised Mr James numerous times to protect the walls.

### **Enforcement Action**

On the 13<sup>th</sup> June 2012 the Planning Committee considered a report regarding Harlequin Valet under the enforcement list. This report referred to enforcement reference number ENF/12/00027/UNLD – untidy land/building detrimental to visual amenity in contravention of Section 215 of the Town and Country Planning Act 1990 at Harlequin Valet, 19 High Street, Cullompton.

The report stated the following material considerations:

*“On the 9th November 2009 planning permission was granted for the erection of extension and alterations to provide 1 retail unit and 5 flats, and erection of 1 single storey dwelling to the rear (Revised Scheme) at the building known as Harlequin Valet Ltd, 19 High Street, Cullompton, EX15 1AB. This planning permission was given the reference 09/00710/FULL. This planning permission has not been implemented/commenced.*

*The property is situated within the Cullompton Conservation Area in a prominent position fronting the Higher Bull Ring and almost opposite St Andrews Road. The premises consisted of a mixed planning unit comprising retail and residential. Unfortunately a serious fire occurred at the premises in January 2010 resulting in extensive fire damage which included the total roof loss and serious internal damage. Your Building Control Officers have been involved in relation to this matter and the building is now considered as safe, it has been boarded on the front elevation. It is understood that negotiations have taken place with the property owner in an attempt to establish when refurbishment and remedial works would take place to rectify the damage, or to implement the current and extant planning permission 09/00710/FULL. At the time of writing this report no response has been received from the land owner.*

*It is felt by your Officers that due to the location of this building within the Cullompton Conservation Area that its appearance is currently visually detrimental to that part of the Conservation Area. Your Officer has liaised with Building Control and the relevant Conservation Area Officer and compiled a schedule of works that would be attached to any approved notice. It is felt that schedule, if carried out, would remedy the visual amenity issue. It is important to remember that the works to be required can “only” relate to the visual appearance which is that as seen from the front elevation. No other works can be required as they would be deemed excessive and as a result the notice could fail in the event of any subsequent appeal under the provisions of Section 217 (c)”.*

The resolution made by the Planning Committee was that “within one (1) month from the date of the committee the Head of Legal and Democratic Services be given delegated authority to take the appropriate legal action including the service of a Section 215 Notice, and in the event of a failure to comply with such a notice, consideration of prosecution and/or direct action, or injunction proceedings. Such a notice requiring that steps should be taken to tidy the land.

Published alongside the minutes is an update containing the following wording:

*“ENF/12/00027/UNLD - Untidy land/building detrimental to visual amenity in contravention of Section 215 of The Town and Country Planning Act 1990 (as amended) at Harlequin Valet Ltd, 19 High Street, Cullompton, EX15 1AB*

*Following communication from the land owner, and to allow for the submission of a new planning application.*

*Recommendation page 5-2. To be amended to;*

*Recommendation:*

*Within one (1) month of from the date of this committee authorise the Head of Legal and Democratic Services to take the appropriate legal action including the service of a Section 215 Notice, and in the event of a failure to comply with such a notice consideration of prosecution proceedings and/or direct action, or injunction proceedings.. Such a notice requiring that steps should be taken to tidy the land”*

Following this decision by the Planning Committee the Planning Officers had numerous (without prejudice and confidential) communications from Mr James in relation to the submission of a new planning application.

At the Planning Committee on 31<sup>st</sup> October 2012 the Planning Committee considered the report regarding Harlequin Valet under the enforcement list. This report referred to enforcement reference number ENF/12/00027/UNLD – untidy land/building detrimental to visual amenity in contravention of Section 215 of the Town and Country Planning Act 1990 at Harlequin Valet, 19 High Street, Cullompton.

The report to the Committee contained the following information:

*“Members will re-call that at the planning committee meeting on 13th June 2012 they resolved to ‘defer’ the service of a Section 215 notice in relation to untidy land to allow for the submission of a new planning application which would seek to address the issues on site.*

*Constructive discussions/negotiations have taken place between officers and the agent appointed by the owner. Proposed plans have been viewed by both planning and conservation officers. It is fully expected to result in the submission of a new application in the very near future.*

*In the event no application is registered before the expiry of the extant and current planning permission (09/00710/FULL) on 9th November 2012 then further consideration can be given to the service of the Section 215 notice.”*

The Planning Committee minutes state:

*“The Enforcement Officer reported that a planning application had recently been received in respect of this matter and a further one was expected to be submitted in due course.*

**RESOLVED** *that consideration of this matter be deferred for three months to allow the planning application to be determined”.*

#### **Planning application 12/01534/FULL**

Mr James submitted an application form titled ‘new planning permission to replace an extant planning permission in order to extend the time limit for implementation’ on 29<sup>th</sup> October 2012. On the paperwork Mr James confirms that he did receive pre-application advice from Mrs Alison Fish and Mr John Clarke on the 4<sup>th</sup> September 2013. According to Mr James application the discussion was around the need to preserve the existing planning consent due to expire on the 9<sup>th</sup> November 2012. On the 17<sup>th</sup> January 2013 a delegated decision was made by the planning officer on 17<sup>th</sup> January 2013 giving a permission expiry date of 17<sup>th</sup> January 2016. A letter was sent to the applicant on the 17<sup>th</sup> January 2013 confirming that Mid Devon District Council granted full planning permission subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of six months from the date of this permission.
2. Before their first use, details or samples of the materials to be used for the roofs of the building shall be submitted to and approved in writing by the Local Planning Authority
3. No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.
4. Details of the proposed rooflights shall be submitted to and approved in writing by the Local Planning Authority prior to their installation in the building
5. Prior to its construction on site, full details including materials of construction for the chimney, shall be submitted to and approved in writing by the Local

Planning Authority, and thereafter constructed on site in accordance with the agreed details.

6. Before their installation, working details of the new window frames, including sections, mouldings and profiles, finishes and glazing shall be submitted to, and be approved in writing by the Local Planning Authority. Installation of the window frames shall be in accordance with these approved details, and be so retained.

The letter to Mr James also includes details as to how he can appeal "*if you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions. If you want to appeal against the Local Planning Authority's decision then you must do so within 6 months of the date of this notice*" [notice dated 17<sup>th</sup> January 2013]. The granting of the planning permission was listed on the delegated decision list, which went to Planning Committee on 30<sup>th</sup> January 2013.

Harlequin Valet was also included on the Planning Committee agenda (30<sup>th</sup> January 2013) under the enforcement list. The report produced by the planning officer stated:

*"Members will recall that at the Planning Committee meeting on 13<sup>th</sup> June 2012 they resolved to 'defer' the service of a Section 215 notice in relation to untidy land to allow for the submission of a new planning application which would seek to address the issues on site.*

*Constructive discussions/negotiations have taken place between officers and the agent appointed by the owner. An up to date enforcement agenda report was presented to this committee at their meeting on 31<sup>st</sup> October 2012 informing members that a planning application reference 12/01534/FULL had been submitted to 'replace extant planning permission 09/00710/FULL (to extend time limit).*

*Erection of extension and alterations to provide one retail unit and five flats and erection of a single-storey dwelling to the rear (revised scheme). This planning application has been granted with a six-month implementation (commencement) period which will expire 17<sup>th</sup> July 2013."*

Minute 115 states:

**RESOLVED** that delegated authority be given to the Legal Services Manager to take the appropriate legal action, including the service of a Section 215 Notice, and in the event of a failure to comply with such a notice consideration of prosecution proceedings and/or direct action, or injunction proceedings. Such a notice requiring that steps should be taken to tidy the land. The notice to be served after the expiry of the agreed planning permission (17 July 2013), if the said planning permission 12/01534/FULL had not been progressed to a satisfactory stage where the external appearance of the building had been improved

### **Appeal**

Mr James appealed to the Planning Inspectorate and his appeal form was received on 14<sup>th</sup> March 2013 ticking the box "grant planning permission for the development subject to conditions to which you object". Mr James appealed condition 1 of his

planning permission – giving six months for implementation rather than the usual three years.

The Mid Devon District Council response to the Planning Inspectorate sets out the Mid Devon position.

In the background section the Mid Devon District Council response states:

*“On 9<sup>th</sup> November 2009 the planning permission was granted for the erection of extension and alterations to provide one retail unit and five flats, and erection of one single-storey dwelling to the rear (revised scheme). This planning permission has not been implemented/commenced.*

*Unfortunately a serious fire occurred at premises in January 2010 resulting in extensive fire damage which included the total roof loss and serious internal damage. This authorities Building Control Officers have been involved in relation to this matter and the building was made safe and was boarded up on the front elevation.*

*Since that time, this Authority have sought to liaise with the landowner to seek a resolution to the situation but this has proved unsuccessful and the authority have had to consider other options open to it including the service of a S215 notice.”*

In the section titled current situation the Mid Devon District Council response states:

*“Since the issuing of the planning permission the subject of this appeal, there has been no further contact from the applicant with regards to either discussions relating to a revised scheme or to seek to provide the information required by condition 3, as a pre-commencement condition.*

*The Authority, therefore remains concerned that the applicant has no immediate wish to rectify the current unsightly situation and remain concerned about the impact this is having on the character and appearance of a prominent areas of Cullompton Conservation Area. The Authority, therefore respectfully requests that the Inspector upholds this appeal subject to the conditions set out.”*

On the 25<sup>th</sup> July 2013 the Planning Inspectorate wrote to Jonathan Guscott, the Head of Planning, regarding Harlequin Valet and confirmed that the appeal had been withdrawn. Following receipt of this letter at the next meeting of the Planning Committee on 14<sup>th</sup> August 2013 details of the appeal were included in the appeal list (the previous meeting of the Planning Committee was on 17<sup>th</sup> July 2013).

#### **Further correspondence with Mr James and his agent**

However, whilst Mr James' appeal was being dealt with by the Planning Inspectorate events were proceeding in terms of the Harlequin Valet building.

On the 31<sup>st</sup> May 2013 an Archaeological works report was received from Mr James.

On the 5<sup>th</sup> June 2013 Mrs Alison Fish, the Planning Officer on this case wrote to Mr James to notify him that she was discharging condition 3 of the Planning consent conditions subject to the Written Scheme of Investigation (WSI) being implemented.

On the 1<sup>st</sup> July 2013 the Planning Officer received an email from Mr James' agent stating that works would begin on site at 19 High Street on the 9<sup>th</sup> July 2013.

On the 9<sup>th</sup> July 2013, Mr Andy Self, Building Control Officer visited the site of 19 High Street, Cullompton and then subsequently notified Mr James' agent that he confirmed that the site foundations excavated/constructed are compliant to Building Regulations.

On the 16<sup>th</sup> July 2013, the Planning Officer received correspondence from Mr James' agent notifying her of Mr Self's visit and the fact that works had commenced on site on the 9<sup>th</sup> July 2013.

On the 18<sup>th</sup> July, Mrs Fish wrote to Mr James' agent to notify him that she was discharging condition 1 of the planning consent conditions due to the works starting on 9<sup>th</sup> July 2013.

#### **Planning Application 13/00763/FULL**

On the 13<sup>th</sup> June 2013 (whilst Mr James' appeal was with the Planning Inspectorate) Mr James submitted a further planning application to develop the Harlequin Valet site into six apartments and one single storey dwelling. Plans for these changes were received on the 14<sup>th</sup> August 2013.

On the 3<sup>rd</sup> December 2013 Councillor Mrs Linda Holloway emailed the Planning Officer asking why the decision on the application is still pending. Cllr Holloway states 'I am being asked what is happening and I have no answers for people at the moment, so it is very awkward.'

On the 15<sup>th</sup> January 2014 Councillor Mrs Nikki Woollatt emailed the Planning Officer asking why there had been a delay in determining this planning application when there didn't appear to be any correspondence since August 2013.

In respect of both queries from Councillors the Planning Officers response to this was that the applicant had not yet paid the Section 106 contributions and that they would chase up the applicant.

The planning application was approved by delegated decision on the 14<sup>th</sup> February 2014. A letter was sent to the applicant on the 14<sup>th</sup> February 2014 confirming that Mid Devon District Council granted full planning permission subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of six months from the date of this permission.
2. Before their first use, details or samples of the materials to be used for the roofs of the building shall be submitted to and approved in writing by the Local Planning Authority

3. No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Local Planning Authority.
4. Details of the proposed rooflights shall be submitted to and approved in writing by the Local Planning Authority prior to their installation in the building
5. Prior to its construction on site, full details including materials of construction for the chimney, shall be submitted to and approved in writing by the Local Planning Authority, and thereafter constructed on site in accordance with the agreed details.
6. Notwithstanding the submitted details and before their installation, working details of the new window frames, including sections, mouldings and profiles, finishes and glazing shall be submitted to, and be approved in writing by the Local Planning Authority. Installation of the window frames shall be in accordance with these approved details, and be so retained.
7. Notwithstanding the submitted details and before their installation/provision on the building, working details of the new dormer window structures including finishes and glazing shall be submitted to, and be approved in writing by, the Local Planning Authority. Installation of the dormer windows shall be in accordance with these approved details, and be so retained.
8. No works for the erection of the single storey dwelling at the rear of the site shall begin until drawings to a recognised metric scale of the elevations of the building have been submitted to, and approved in writing by, the Local Planning Authority. The erection of the dwelling shall be carried out in accordance with the approved drawings, along with the roof plan and floor plan for the dwelling, approved as part of this permission.

The granting of the planning permission was listed on the delegated decision list, which went to Planning Committee on 5<sup>th</sup> March 2014.

### **Collapse of the cob wall, subsequent events, communication and correspondence**

Whilst Mr James' latest planning application was being considered the next event to take place was the partial collapse of the cob wall on to the High Street in Cullompton on 19<sup>th</sup> January 2014.

On the 20<sup>th</sup> January 2014 Devon County Council fenced off the area in front of the Harlequin Valet. On the 21<sup>st</sup> January 2014 the Fire Service stretched the existing fencing to enclose a larger area.

On the 21<sup>st</sup> January Councillor Terry Snow contacted Jenny Clifford regarding issues raised with said Councillor from members of the public re the Harlequin Valet situation. Councillor Snow asked Mrs Clifford to provide Cullompton Members with an update on the situation.

On the 22<sup>nd</sup> January Mrs Clifford provided the following response:

“As requested here is information in order to address the email you have received from Mr [REDACTED] and to also provide you and other local Members with an update.

You will by now be aware of a second collapse at the property. Ken McLaren from Building Control is handling the dangerous structure issues from a Building Control perspective and has been in attendance on site. A meeting took place today with a contractor acting for the property owner in order to address requirements for demolition works in order to address the situation. He has made it clear that if the required works to make the building safe are not done, enforcement action under the Building Regulations may take place to achieve them. The Council is looking for the required works to take place urgently.

Following the earlier fire at the property, a representative of Building Control attended site in order to assess the safety of the building and secure its stability. Up until the recent collapse of part of the structure there was no indication that the building was in a dangerous condition or in a state of imminent collapse. Following the initial collapse, in conjunction with the emergency services Building Control assisted in quickly cordoning off of the building to ensure the public were safeguarded. Since then officers have been negotiating with the owner via a contractor to get works done to urgently address the situation.

From a Planning perspective you will be aware that the appearance of the building has been a cause for concern. The Planning Service has sought to address this through negotiation with the owner, determination of planning applications and consideration of enforcement action under Section 215 of the Town and Country Planning Act in order to improve the appearance of the site. Please note that these planning powers under s215 relate to the appearance of the site and do not extend to structural issues. The latter are dealt with under the Building Regulations.

The Planning Service granted planning permission in January 2013 (reference 12/01534/FULL) for a revised scheme for the erection of extension and alterations to provide 1 retail unit and 5 flats, and erection of 1 single storey dwelling to rear. The planning permission required that works start on site to implement the permission within 6 months rather than the normal 3 years in order to secure the renovation of the site as early as possible. The owner commenced work to implement this planning permission on 9th July 2013, but then stopped work due to a wish to undertake an alternative proposal. This alternative proposal has been set out within a second planning application (application 13/00763/FULL) received in June 2013. This currently remains undetermined due to delays by the owner, despite efforts by the Council to resolve outstanding issues and secure a swift decision. It is to be noted that planning permissions cannot require the completion of works.

Enforcement action referred to above was considered by Planning Committee on several occasions and most recently in January 2013. At that time it was agreed to take legal action to secure works to improve the appearance of the site (to tidy the land) after the expiry of planning permission 12/01534/FULL if works under this permission had not progressed to a stage that improved the external appearance.

The Council has been keeping this under review pending the outcome of the current planning application”.

On the 22<sup>nd</sup> January 2014 Building Control asked Devon County Council for more fencing to be put in place but they didn't have any available. On the 23<sup>rd</sup> January 2014 the area was re-fenced by the Contractor and on the 27<sup>th</sup> January 2014 the contractors commenced work on site with this work expected to take three days.

On the 2<sup>nd</sup> February 2014 Councillor Mrs Nikki Woollatt contacted the Communications Manager to notify him that the Gazette have published a story regarding asbestos on the Harlequin Valet site. Councillor Woollatt states 'Will the council please issue a press release in order to reassure people before there is widespread panic and the neighbouring businesses are damaged even more? There has already been a comment from a parent on the Culm Valley Gazette's Facebook page concerned whether this is a risk to her child who attends Noah's Ark Pre-School'.

On the 3<sup>rd</sup> February 2014 The Communications Manager confirmed to Councillor Woollatt that a comment from the Building Control Manager had been sent to the Gazette 'pointing out that the story on their website is a little misleading and asking them to include this comment'.

On the 5<sup>th</sup> February 2014 Building Control meet with the owner and ask him to complete further works to rear of roof to make it safe.

On the 5<sup>th</sup> February 2014 the Communications Manager publishes a Council press release on Harlequin Valet following a number of requests from Councillors Mrs Nikki Woollatt and Mrs Linda Holloway to tell the public what is going on due to the number of queries they have received from their local constituents.

Three updates are made to the Mid Devon news page on the 5<sup>th</sup> February 2014. The first at 12:30 states:

- “Owner and contractor on site, removing the rest of the roof
- Police have removed traffic lights and re-opened road”

The second update is at 14:00 stating:

- “Our Building Control Manager has inspected the building and continues to monitor it. He cannot yet declare the building safe as further work is required to remove roof timbers.
- Partial demolition work has taken place by the owners contractors but not in our opinion enough. Removal of the front elevation to first floor has taken place. We have asked for further work to take place, the contractors will return to the site possibly tomorrow or Friday either instructed by the owners and if not instructed by us. We cannot clear the site as some would want, we can only seek the minimum works necessary to make the structure safe.
- The owner's contractors have been told to inform the owner that the structure requires further work to make it safe, and that if this doesn't take place we will take action.

- Until this has been carried out the barriers will remain in place. Devon County Council is responsible for the barriers and has been informed each time these have blown over.
- The Planning Committee will need to consider what powers they have available to seek redevelopment or site appearance improvement. This will not be a quick process, the owner has rights of appeal against possible actions to be considered. The owner has planning permission to redevelop the site but appears either unable or unwilling to do so”.

The third update is at 16:45 stating:

- “Due to high winds some roof slates are being blown off
- Our Building Control Manager has assessed the situation and is arranging with Devon County Council for a partial road closure for safety reasons
- Contractors are due on site 9am tomorrow morning (Thursday) to remove the rest of the roof”

On the 6<sup>th</sup> February 2014 the requested works are completed by contractors and the structures taken down to first floor level and is once again secure as far as Building Control are concerned. An update is made to the Mid Devon news page at 17:45 on the 6<sup>th</sup> February 2014, stating:

- “All being well, the fencing can hopefully be removed tomorrow after our Building Control Manager has inspected the condition of the remainder of the building”

On the 7<sup>th</sup> February 2014 an update is made to the Mid Devon news page at 14:00 stating:

- The works undertaken by the owner have removed the danger that existed after the initial phase of demolition and our Building Control Manager has said that fencing can now be removed.
- The contractors who erected the fencing have suggested that the earliest they can do this is Monday or Tuesday of next week.
- Our Building Control Manager passed on Devon County Council’s request that the area be cleaned down and has also advised DCC that their barriers can be removed once the contractor’s fencing is gone.

On the 12<sup>th</sup> February 2014 the fencing around the Harlequin Valet was removed

On the 19<sup>th</sup> February 2014 an update is made to the Mid Devon news page stating:

- Our planning team is actively working on recommendations for the next stage of planning enforcement and we hope to be in a position to provide an update at the end of this week. A report will be considered by Planning Committee at the meeting of 5 March 2014.

On the 21<sup>st</sup> February 2014 an update is made to the Mid Devon news page stating:

- The planning team has now reviewed options for further enforcement action to address the appearance of the property. These are set out within a report which will be considered by a meeting of the Planning Committee on 5<sup>th</sup> March 2014. The report recommends action under section 215 the Town and Country Planning Act 1990 to require works including the completion of demolition of the building, making good the gable ends of the adjacent buildings and to erect a new front wall within three months of legal notice being served. The Council continues to work towards securing a long term solution to the site whilst also addressing the current appearance.

### **Enforcement list**

On the 5<sup>th</sup> March 2014 the Planning Committee considered a report regarding Harlequin Valet under the enforcement list.

Under the section background the following was stated:

*“Sections of the building collapsed into the High Street on two occasions in January 2014. The Building Control Manager has been handling the dangerous structure issues from a Building Control perspective and has been in frequent attendance on site since the initial collapse. Discussions took place shortly after the initial collapse with a representative acting for the property owner to identify requirements for demolition works in order to address the situation. The Building Control Manager made it clear that if the required works to make the building safe were not done, enforcement action under the Building Act would take place to achieve them.*

*Following the earlier fire at the property, a representative of Building Control attended site in order to assess the safety of the building and secure its stability. Up until the recent collapse of part of the structure there was no indication that the building was in a dangerous condition or in a state of imminent collapse, however within the past couple of months extreme weather has been experienced. Following the initial collapse, in conjunction with the emergency services Building Control assisted in quickly cordoning off of the building to ensure the public were safeguarded. Since then officers have been negotiating with the owner via a contractor to get works done to urgently address the situation.*

*Urgent works to make the building safe have been undertaken by the owner under the direction of the Building Control Manager. These are now complete”.*

Under the section relevant planning applications the following was stated:

*“09/00710/FULL Erection of extension and alterations to provide 1 retail unit and 5 flats and the erection of a single storey dwelling to the rear was granted in November 2009. The standard time period of three years was given to start work. It was not implemented.*

*12/01534/FULL Planning permission was granted in January 2013 to extend the time for the scheme for the erection of an extension and alterations to provide 1 retail unit and 5 flats, and erection of 1 single-storey dwelling to rear. The planning permission required that works start on site to implement the permission within 6 months rather than the normal 3 years in order to secure the renovation of the site as early as*

*possible. The owner appealed against this condition, but this appeal was subsequently withdrawn. He commenced work to implement this planning permission on 9th July 2013, but then stopped work due to a wish to undertake an alternative proposal.*

*13/00763/FULL This alternative proposal was received in June 2013. It is for the erection of 6 apartments and a single storey dwelling. It was granted permission on 14th February 2014 and requires that work commences within 6 months. The applicant has only recently resolved outstanding planning issues resulting in the delay in the determination of the application”*

The Planning Committee **RESOLVED** that:

- (i) the Legal Services Manager be given delegated authority to take any appropriate legal action including the service of a Section 215 Notice and in the event of a failure to comply with such a notice consideration of prosecution proceedings and/or direct action, or injunction proceedings. Such a notice requiring that steps should be taken to tidy the land; to include in (3) the repainting of the render and maintenance.
- (ii) in light of the length of time that the site had been derelict and its impact upon the area, it is requested that the Cabinet consider the option of compulsory purchase of the site together with the steps necessary to achieve it.

Following the Planning Committee meeting, on the 12<sup>th</sup> March 2014 an update is made to the Mid Devon news page stating:

- “At the meeting of Planning Committee on 5 March, it was resolved to take enforcement action to require works to be carried out including demolition of the remaining building to ground level, removal of demolition material from the site, making good the party walls on either side, reinstating the front elevation to at least 3 metres (unless the most recent planning permission for the redevelopment of the site has been implemented and work has advanced to build the new front elevation to at least 3 metres high). Works required also include rendering, painting and the insertion of window frames. Three months will be given for these works to take place from the date the notice takes effect.
- At the meeting, it was also resolved that in light of the length of time that the site had been derelict and its impact upon the area, that the Council’s Cabinet consider the option of compulsory purchase of the site together with the steps necessary to achieve it. A report will be presented to the Council’s Cabinet on this shortly”.

The Section 215 Notice was served on the 20<sup>th</sup> March 2014 and a press update was added to the Mid Devon news webpage on 21<sup>st</sup> March 2014 stating:

- “The S215 Notice (planning enforcement action) was issued on 20 March and requires a list of works to be completed. The owner has until 1 August to complete the works.”

The information posted on the website is not accurate – see the information under current position for details on the dates.

On the 3<sup>rd</sup> April 2014 the Cabinet considered a report from the Head of Planning and Regeneration which outlined the case for instigating early stage investigations in advance of the Council considering whether it is appropriate to seek authority for formal compulsory purchase of the property.

Cabinet **RESOLVED** that “the Head of Housing and Property Services, in conjunction with the Head of Planning and Regeneration and the Legal Services Manager, be authorised to investigate:

- a) the redevelopment options for the site together with the necessary funding and associated preparatory work towards potential future compulsory purchase action.
- b) other preparatory work to identify legal requirements for formal compulsory purchase action including the necessary procedural steps.”

### **Current position**

Mr James, the owner of Harlequin Valet has until the 1<sup>st</sup> September 2014 to implement the latest planning permission as well as the requirement to action the Section 215 Notice by the 1<sup>st</sup> August 2014. Officers will be monitoring the situation closely and will follow up and take action as necessary following the expiry of these dates.

### Conclusion of the Investigating Officer

#### **Planning Process**

Reviewing the stages of the process in terms of this case has led the Investigating Officer to the conclusion that this has been very complex and that the owner has used the planning process to his advantage.

Whilst there might be a public perception that the Council has been doing little to progress the situation from the evidence gathered this is not the case (please refer to conclusions on communication).

Whilst the Investigating Officer can see that people are frustrated that legal action has not been taken against the owner there are valid reasons for that. In terms of a Section 215 Notice the Council must try to resolve matters first through discussion with the landlord but where this cannot be dealt with to a satisfactory conclusion, a formal notice can be served. Each time the serving of a S215 Notice was discussed the owner was either in discussion with the Planning Officer about submitting a new planning application or had already done so. The owner had a current planning consent at the time the Harlequin Valet suffered fire damage in January 2010 (09/00710/FULL permission granted 9<sup>th</sup> November 2009) and submitted a new application approximately 10 days before his previous permission was due to expire on 29<sup>th</sup> October 2012 requesting an extension to the time (permission granted 17<sup>th</sup> January 2013). The owner then decided to appeal the conditions attached to the planning permission (14<sup>th</sup> March 2013) but then several months later (25<sup>th</sup> July 2013) decided to withdraw his appeal. Works then started on site on the 9<sup>th</sup> July 2012 but then promptly stopped due to the owner submitting a further planning application on 13<sup>th</sup> June 2013 which changed the plans compared to the first two applications.

The Enforcement Officer stated in an email to Councillor Linda Holloway on 23<sup>rd</sup> July 2013 “my concern is that if we pursue the Section 215 (untidy land) to notice and

non-compliance at a Magistrate's Court the owner would no doubt say that he has started/implemented his lawful planning permission and should be allowed to continue with it as and when he wishes". Due to the fact that the Planning Officer had written to Mr James following the visit of Building Control on the 9<sup>th</sup> July 2013 discharging condition 1 of the planning permission it is likely that Mr James argument would hold up in Court. Once a S215 Notice has been served the owner also has the right to appeal and this can mean a further significant delay to things happening. Also a S215 notice would require a new schedule of works and in the case of collapses of cob wall the notice would only apply to restore visual amenity. It does not address the structural condition and is not therefore a long-term solution.

From the evidence collated and discussions with relevant officers it is the conclusion of the Investigating Officer that the Planning Officer and team endeavoured to adopt the approach of working with Mr James with the outcome being that in the long term a suitable development be achieved at 19 High Street.

The only time when action could have been taken more promptly was in the period of August 2013 to December 2013/January 2014 where there was a delay to the last planning application being determined due to a hold up with the Section 106 agreement. The Planning Officer has confirmed that they should have been more proactive in chasing up the owner and the planning department have taken on board this matter and a recommendation has been made in respect of this matter.

### **Building Control**

Discussions with officers confirmed that following the fire, the building was assessed by Building Control and was not considered dangerous. It was subsequently monitored by them on numerous occasions as identified earlier in the document. Up until the collapse of part of the structure earlier this year there was no indication that the building was in a dangerous condition or in a state of imminent collapse. There were therefore no grounds to issue a notice under the Building Act at an earlier stage.

Following discussions with Councillor Mrs Nikki Woollatt and Mrs Linda Holloway the investigating officer followed up a number of queries with the Building Control Manager.

The first issue was in respect of a comment that had been made to Cllr Mrs Woollatt whilst she was on site following the collapse of the Harlequin Valet Building in January where she asked the Building Control Manager whether the building had been regularly monitored and received the response that "officers had looked at it as they drove past". On discussion with the Building Control Manager the investigating officer confirmed that a Building Control Officer is likely to have passed the building on almost a daily basis and kept an eye on the building to watch for signs of degradation of the structure. However this is in addition to the meetings that were held with the owner to discuss the building. The Building Control Manager stated that "the building continued to be monitored for signs of distress and none were noted prior to its collapse. As can be seen from the nearby property The King's Head, cob collapses occur very rapidly with little or no prior warning."

The second issue was around whether there are any risk assessments relating to the Harlequin Valet building. The Building Control Manager stated that “in effect each site inspection is a risk assessment, weighing the condition of the building against the likelihood of collapse and the consequences should one occur. The building was in a prominent location, in a poor state and warranted an increased level of vigilance. In a similar vein, another building near Harlequin Valet partially collapsed several weeks afterwards with no prior warning.”

The third issue was around whether Building Control recommended to the owner that the cob wall be covered to protect it from the elements and whether this would be followed up with the owner if he failed to action the recommendation? It is clear from the information provided by Building Control that they advised Mr James on numerous occasions that he should protect the cob walls. Mr James chose to ignore the guidance given by Officers. In terms of the provisions for dangerous structures the Council can only require the demolition works which are necessary to make the building safe and no more. From the evidence included in this report it is clear that the Building Control Officers worked with Mr James and his contractors to ensure that the building was a safe structure.

Building Control didn't need to take action under S77 of the Building Act 1984 because the owner did carry out the works Building Control required if somewhat reluctantly so it didn't get as far as court action. Following the collapse in January the Building Control Manager instructed the owner to sort out the safety issues with the structure and if he failed to do that then Building Control would take action to make the structure safe themselves under Section 78 emergency measures.

The fourth issue followed up with the Building Control Manager was in terms of whether we have a policy or guidance i.e. a factsheet relating to cob available for members of the public. The Building Control Manager stated that “We have links on our website to various Devon Earth Building Association leaflets regarding care and maintenance of cob”.

From the evidence collated and discussions with relevant officers it is the conclusion of the Investigating Officer that the Building Control team worked with Mr James to ensure that the Harlequin Valet building was a safe structure. This involved numerous visits where the building was monitored and where Mr James was told to take action when risks were identified.

### **Communication**

This is an area where I feel the Council can make improvements.

From the discussions with Councillors Mrs Nikki Woollatt and Mrs Linda Holloway it is clear that the local community perceive that the Council have not done anything in respect of progressing the situation and that the Council's reputation has suffered as a result of this perception.

It is also apparent that the planning procedure is a complicated one and maybe greater information should be available on the Council website explaining what the Council can and can't do in terms of legal action in order to ensure that the public

expectations is not different to what the Council can actually achieve, even if notices and powers are progressed.

From the details collated in respect of the timeline it is clear that the Council should have communicated via a press release as soon as possible after the buildings cob wall collapsed on the 19<sup>th</sup> January 2014 rather than waiting until the 5<sup>th</sup> February 2014.

However, following the 5<sup>th</sup> February release the Mid Devon webpages were updated more frequently (following further intervention from Councillors Mrs Nikki Woollatt and Mrs Linda Holloway) in order to give the public more information as to what was happening.

Also until the beginning of July the last update on the website was dated 21<sup>st</sup> March 2014 when further things have happened since that date. Again Councillor Mrs Linda Holloway had to get in touch with the relevant officer to ask for further updates to be given on the website.

From the correspondence received from Councillors Mrs Nikki Woollatt and Mrs Linda Holloway it is clear that they were very active in contacting the relevant officers in the planning department for updates and information that they could give to their community. Ideally in this situation the planning officers should have given the Ward Councillors regular briefings on the situation.

However, it also needs to be mentioned that lessons have already been learnt from the Harlequin Valet case and that steps have already been taken to improve communications. This can be seen following the further incidence of a partial collapse of cob wall in respect of the King's Head public house in Cullompton on the 23<sup>rd</sup> February 2014. A press release was issued on the 24<sup>th</sup> February 2014 stating:

"Yesterday saw a further incidence of collapse of a cob structure in central Cullompton. Part of the wall of The King's Head in High Street collapsed leading to the cordoning off of the area in order to safeguard public safety. The Council's Head of Building Control is coordinating with the owner of the property to assess the remaining structure and instigate repairs.

This case, together with that of Harlequin Valet in Cullompton raises the wider issue of the maintenance and repair of buildings and structures constructed of cob, especially given the extreme wet weather experienced this winter and the sensitivity of this construction material to moisture. Owners of cob buildings are advised to ensure that they undertake a visual inspection, looking for cracking, movement or water penetration and that they are aware of appropriate techniques of cob maintenance and repair. Further general advice may be gained from the Devon Earth Building Association website <http://www.devonearthbuilding.com/> where guidance leaflets on cob are available. Should anyone have concerns over a suspected dangerous structure, Mid Devon's Building Control service should be contacted on 01884 234345 or use our 24 hour emergency number 01884 255255".

## Summary and points for consideration

It is the opinion of the Investigating Officer that the Planning and Building Control teams have endeavoured to work with Mr James to secure a positive outcome in this case.

As outlined in the section above there are some areas where improvements can be made and the Investigating Officer concludes/recommends that:

1. Planning investigate a system (either via the CAPS/Uniform system or by diarising dates) for chasing up delayed information from planning applicants to prevent future issues of this nature.
2. More could have been done to advise Councillors and the public throughout the various stages of the process with the Harlequin Valet, particularly following the collapse of the cob wall and asbestos issue
3. Officers should have been more proactive in keeping the Ward Councillors up to speed with what was happening rather than the Councillors having to chase for communication
4. A press release and updates should have been issued as soon as the collapse occurred (19<sup>th</sup> January 2014) rather than waiting until the 5<sup>th</sup> February.
5. Consideration should be given to providing details on the Council website on the courses of action that can be taken by the Council and exactly what that means
6. On the Building Control pages on the Council website include useful information on what do I need to know if I have a cob wall

It is recommended that these points are considered and implemented to ensure that a similar situation to the Harlequin Valet situation does not occur again.