

**MANOR HOUSE HOTEL 2-4 FORE STREET CULLOMPTON
ENF/14/00142**

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

Reason for Report: To update members on the Repairs Notice to secure the preservation of The Manor House Hotel, 2-4 Fore Street, Cullompton.

RECOMMENDATIONS:

- i) That the Council appoint a structural engineer to undertake structural investigations and compile a schedule of remedial works.**
- ii) That the Council gain valuations of the property as set out in the report.**
- iii) That a further report be brought before Planning Committee once the results under i) are available with updated options for further action.**

Relationship to Corporate Plan:

Thriving economy- regeneration and improvement of market towns

Financial Implications: As set out in Section 4.

Legal Implications: As set out in section 3.

Risk Assessment: Without further intervention the risks are that the future of the building will remain uncertain with further deterioration to the detriment of its fabric; the building will continue to detract from the setting of the recently restored Grade I listed building of The Walronds as well as the appearance of the wider Cullompton Conservation Area; the closure of Tiverton Road will be unnecessarily extended with ongoing inconvenience to residents and local businesses.



1.0 BACKGROUND INFORMATION.

- 1.1 The Manor House Hotel comprises two linked buildings; the first a four gabled Grade II* listed medieval building dating from 1603 and extended in 1718; the second a Grade II listed 19th century building which may retain some earlier fabric. The Hotel is located in the Cullompton Conservation Area in a prominent position in the town centre.
- 1.2 The Manor House Hotel is part of a row of high grade listed buildings on the west side of Fore Street, including the recently restored listed Grade I The Walronds and Grade II* The Merchants House.
- 1.3 Members will recall that at their meeting on 5 November 2014 they authorised the service of a Repairs Notice on the owner of The Manor House Hotel in Fore Street Cullompton. The notice was served because the condition of the building, particularly the structural stability of the oldest part of the building at the junction of Fore Street and Tiverton Road was giving rise to concern. The notice gave two months for specified works that are reasonable necessary for

the proper preservation of the building to be undertaken. This two month period expired on 2nd February 2015. The specified works have not been undertaken. Works required under the notice were:

- i) to investigate and assess the condition of the building including identification of the underlying causes of structural movement observed;
- ii) to repair various areas of stonework and cob; to repair window lintels and timber floors. All works to address the structural issues must be in accordance with the structural engineer's recommendations.
- iii) treatment of any timbers affected by insect attack or rot, repair of damaged decorative plaster work, repairs to glass and leadwork of windows and overhauling of the rainwater goods.

1.4 The owner of Manor House Hotel has appointed the specialist structural engineer who carried out the initial assessment of the building, to carry out a detailed investigation of the causes of the structural problems. A measured survey of the building is now complete. However to date no progress has been made with the detailed investigation of the structural concerns or with specifying appropriate remedial works.

1.5 English Heritage has assessed the building with a view to including the property on the register of Heritage at Risk. A building on the register of Heritage at Risk would be eligible to apply for grant aid although the amount of money that English Heritage has available is limited and there are very stringent requirements associated with any grant offered including production of a conservation management plan for the future of the building as well as detailed studies of all elements of the fabric. To date English Heritage has not made a decision on inclusion in the register.

1.6 The property is currently for sale and actively being marketed by the owner.

2.0 RECENT EVENTS.

2.1 The condition of the building has continued to deteriorate. Following a report of further cracking, an assessment was carried out by the authority's Building Control officers in mid January. This led to the closure of Tiverton Road and part of Fore Street on safety grounds and the subsequent scaffolding of the cracked stone corbelling at the corner of Fore Street with Tiverton Road. The scaffolding system was designed by the owner's structural engineer to provide support to the corner of the building. In this way the immediate risk to public safety has been addressed.

2.2 With the erection of the scaffolding, the traffic restrictions in Fore Street have been removed. However part of the pavement in Fore Street and the whole of the carriageway of Tiverton Road remain closed. The closure of Tiverton Road to all but emergency vehicles is due to the impact of the scaffolding upon highway visibility.

3.0 OPTIONS AVAILABLE FOR FURTHER ACTION OR REMEDY.

3.1 **Take no action.**

- 3.1.1 The condition of the property has deteriorated further and to the extent that scaffolding has now had to be erected in order to support the fabric of the building and safeguard public safety. However the underlying condition of the building has not as yet been addressed. **No action is not considered appropriate in this case as public safety has only been addressed in the short term with the addition of the scaffolding, the condition of this high grade listed building continues to deteriorate, the scaffolding is resulting in road closure and associated inconvenience and the appearance of the property / scaffolding is detrimentally affecting the town centre and Conservation Area of Cullompton.**

3.2 **Section 215 Town and Country Planning Act 1990 (Untidy Land).**

- 3.2.1 A notice may be served under s215 of the Town and Country Planning Act where the local planning authority considers that the amenity of part of their area is adversely affected by the condition of land. A notice would need to set out works to remedy the condition of the land, but can only require works that relate to the visual appearance as seen from public vantage points, or in this case, the front and side elevation to Tiverton Road. 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 structural condition therefore is not able to be addressed through this notice. In addition it is the scaffolding, rather than the appearance of the building itself that is adversely affecting the amenity of the area. **The serving of a s215 notice under the Town and Country Planning Act 1990 is not considered to be appropriate in this instance.**

3.3 **Compulsory Purchase.**

- 3.3.1 Local authorities have a range of legal powers to compulsorily acquire land in their area. Section 47 of the Planning (Listed Building and Conservation Areas) Act 1990 Act gives this power where it appears that reasonable steps are not being taken for properly preserving a listed building. A compulsory purchase order must be authorised by the Secretary of State. If the owner objects, he may apply to the Magistrate's Court for an order to stay compulsory purchase proceedings. The owner has a right of appeal to the Crown Court against the decision of the Magistrates Court over this order. Compensation is payable to the owner if compulsory purchase action is taken. If the authority considers that the building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development / redevelopment of the site, it may include in the compulsory purchase order a direction of minimum compensation.
- 3.3.2 The issuing of a Repairs notice is a required first step to acquisition of the building under compulsory purchase powers. In this instance a Repairs notice was issued giving two months for specified works that are reasonably necessary for the proper preservation of the building to be undertaken. This two month period expired on 2nd February 2015. The authority is now able to begin compulsory purchase proceedings under Section 47 as referred to above.

3.3.3 Further guidance on the use compulsory purchase powers lie within Circular 06/2004. Important in any consideration of compulsory purchase is the following guidance taken from the circular:

- i) An order should only be made where there is a compelling case in the public interest and should be regarded as a last resort measure. The public benefit needs to outweigh the private loss as the human rights of the landowner will be interfered with, for which justification is required.
- ii) The authority should first seek to resolve the planning issue by other means.
- iii) The acquiring authority needs to show that it has a clear scheme for the use of the land, that the resources including funding are in place to achieve the scheme within a reasonable time-scale.
- iv) The authority will need to demonstrate that there is a reasonable prospect of the scheme going ahead and that impediments such as consents are in place or are unlikely to be withheld.
- v) The authority should first seek to acquire the land by negotiation. Informal negotiations with the owner can be undertaken in parallel with making preparations for compulsory purchase.

3.3.4 The 'last resort' stage has not yet been reached, particularly as there is currently still a lack of critical information on the condition of the building, the cause of the structural problems and the mitigation works needed to address the condition. This information is also considered necessary for compulsory purchase action to succeed. In addition the council would need to gain valuations of the property as existing and post remedial work. Initiation of compulsory purchase at this stage would be premature. **Formal compulsory purchase action is not appropriate at this stage, however preparatory work can be commenced that would benefit any such formal action that may be reconsidered in the future.** Such preparatory work could include gaining valuations and the Council appointing a structural engineer. More information on the latter is included at section 3.7 below.

3.4 **Sections 77 and 78 Building Act 1984**

3.4.1 Where a building (or part of) is in a dangerous condition, the authority may apply to a Magistrate's Court under section 77 of the Building Act 1984 for an order. Where the danger arises from the condition of the building, the order can require the owner to undertake works to obviate the danger or if he elects, demolition of the building, or any dangerous parts of it and remove any rubbish resulting from the demolition. If the order is not complied with within the required timescale, the local authority may undertake the works and recover the expenses reasonably incurred. (Listed Building Consent would be required before the building could be demolished).

3.4.2 Works to be specified under such an order can only be those reasonably necessary to make the building safe. The scope of works cannot extend beyond this. Before making such an order, Councils are required under section 56 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider whether instead they should take action under this latter

legislation by way of compulsory purchase following the issue of a Repairs notice or the issue of an Urgent works notice.

3.4.3 Where a building or part of a building is dangerous and immediate action should be taken to remove the danger, the authority may take step in to do the works and recover the cost from the owner under section 78 of the Building Act 1984. Notice of the intention to do works should be given to the owner in advance if reasonably practical. In order to recover the expenses of the work, the authority must demonstrate to the court why proceedings could not take place under section 77. If the court determined that section 77 powers could have been used instead, the cost of works to the authority is not recoverable. Furthermore the owner may apply to the Magistrate's Court to determine whether the authority was justified in using powers under this section. If the court determined not, the owner is entitled to compensation for damage sustained.

3.4.4 **Action under sections 77 or 78 is not consider appropriate at this time, as information is not currently available about the cause of the structural problems with the building and there is not currently a schedule of remedial works to address the safety concerns.**

3.5 **Section 54 Urgent works notice**

3.5.1 Section 54 of the Planning (Listed Building and Conservation Areas) Act 1990 allows for a local authority to undertake urgent works necessary for the preservation of a listed building in their area. If the building is occupied, works may only take place to those parts that are not in use. The Council has been advised that the area of the building in question is not in use.

3.5.2 The owner must be given no less than 7 days' notice in writing of the intention to carry out the works through the issue of a notice specifying the proposed works. The cost of the works is recoverable from the owner. The owner may apply to the Secretary of State for a determination on the cost of the works:

- i) That some or all of the works are unnecessary for the preservation of the building;
- ii) That in the case of works for temporary support or shelter, that the temporary arrangements have continued for an unreasonable length or time;
- iii) That the amount specified in the notice is unreasonable;
- iv) That the recovery of that amount would cause him hardship.

3.5.3 **Action under section 54 is not considered appropriate at this time, as information is not currently available about the cause of the structural problems with the building and it is therefore not possible to specify detailed works to address the safety concerns.**

3.6 **Allow the owner more time for the completion of structural investigation and for remedial works to be specified.**

3.6.1 The owner's structural engineer has been commissioned to design a specification of remedial works in order to address the condition of the building. Measured survey drawings have now been undertaken by surveyors

and are available to inform the remedial works. The structural engineer has yet to carry out detailed building investigations in order to design and detail the remedial works. Whilst he anticipates that these detailed investigations will take place in the next couple of weeks, he has been unable to set a specific timeframe for the work as it will in part depend upon what is uncovered and found at the building and the process that needs to be gone through before the work is specified. Due to the high grade listing of the building, specialist conservation advice from the Council's Conservation Officer and from English Heritage will need to feed into the specification of the works.

- 3.6.2 An option available is for a further period of three months to be allowed for the investigation and specification of works. The situation could be reviewed at the end of that time period. Little progress has been achieved in investigation / specification of works within the two months since the Repairs Notice was issued and despite attempts, the Council has not been able to get a clear timescale for the completion to this stage from the owner's structural engineer. **There is therefore no guarantee that allowing this further period of time would result in significant progress and this is not recommended.**

3.7 **That the Council appoint an independent structural engineer to investigate and specify works.**

- 3.7.1 This option would allow the Council to control the timescale for detailed investigations and formulation of a schedule of remedial work. The detailed report will allow the Authority to get a clear picture of the range and likely cost of remedial works reasonably necessary for the proper preservation of the building. This information can then be taken into account in the consideration of any other further action which could include the serving of a further Repairs notice or Urgent Works notice. The detailed investigation results and specification of remedial works is considered a pre-requisite for undertaking further formal action and set out within other options in this report.

- 3.7.2 Specialist structural engineers that have the requisite experience in historic buildings have been identified and are available to undertake this work on behalf of the Council. Letters have been sent out to a number of specialist structural engineers asking for an estimate of fees for carrying out a detailed survey, specifying the remedial works and providing costings for the various remedial works recommended together with a timescale for producing the information required. Responses are awaited and Members will be updated verbally at the meeting.

- 3.7.3 Given that the property owner has also commissioned this work, it is unlikely that the Council could reasonably recover the cost of its own structural engineer from the owner. It is the speed of the investigation and works specification stage that is the issue rather than whether it will be done. Cost recovery from an owner is where remedial works have been undertaken. **It is recommended that this option is taken in order to control the pace of investigation and specification of works.** It would also inform other options for action that are currently not appropriate.

4.0 **FINANCIAL IMPLICATIONS.**

- 4.1 Little information is currently available in respect of the financial implications of many of the options for action. A valuation of the property as existing and with remedial works having been completed will inform future decision making. The cost of the remedial works themselves is currently unknown and will be required. Instructing such valuations to be undertaken at this stage is considered appropriate and would be required before any compulsory purchase action is taken.
- 4.2 More cost information will also be required in order to undertake a full cost benefit analysis of the works in relation to the value of the building and its heritage significance. This is particularly important in any application that the owner may wish to make for its demolition in the event that the cost of repairs is greater than its monetary value.
- 4.3 It is also worth considering whether any enabling works are appropriate and could assist in covering the cost of the repairs. Investigation is needed to see if there is any potential for this on part of the existing car park associated with the property.
- 4.4 English Heritage is keen to encourage authorities to follow Repairs Notices through until the future of a building that is at risk has been secured. To this end English Heritage will consider underwriting up to 80% of the costs of acquisition through compulsory purchase procedures with eligible costs including professional services as well as the purchase price. Any grant offer would be dependent upon the local authority having a convincing strategy for resolving the long term future of the listed building, including where the building effectively has a negative value that “conservation deficit” can be funded.
- 4.5 Similarly English Heritage encourages local authorities to serve Urgent Works Notices as soon as the need for them becomes apparent and will consider applications from local authorities for grants to underwrite up to 80% of the cost of undertaking urgent works including essential professional services brought in and where necessary the cost of carrying out the urgent works.
- 4.6 Officers propose discussing the option of applying for grants from English Heritage as set out in 4.4 and 4.5 above with English Heritage’s local office in Bristol to establish whether the case would be a priority for support.

5.0 **HUMAN RIGHTS AND EQUALITY ISSUES:**

- 5.1 Many of the actions being considered in relation to this report could affect the land/property and the owner’s rights under the provisions of Article 8, 6 and Article 1 of the First Protocol of the Human Rights Act 1998. However, the Local Planning authority feels it is pursuing a legitimate aim in seeking to ensure the preservation of a high grade listed building, so as to prevent demonstrable harm to interests of acknowledged importance and to protect the environment.
- 5.2 The Human Rights provisions in relation to this case are qualified rights and the interference with those rights is considered to be proportionate so as to

protect harm to the visual amenity identified. The steps proposed in the recommendations are considered proportionate and expedient way forward.

6.0 CONCLUSIONS.

- 6.1 The immediate concerns relating to the safety of the site have been addressed following the erection of supportive scaffolding. However this has currently achieved no more than placing the situation on hold in the short term pending further investigation works and the specification of remedial works to address the situation. Once specified, the remedial works themselves will also take time to be completed. It is therefore clear that the resolution of the condition of this building will not be quick and that Tiverton Road is unlikely to be able to reopened for at least a further six to nine months.
- 6.2 Analysis of options for further action has highlighted the current lack of information about the condition of the building and what works are required to remedy this. This information is critical to safeguarding this high grade listed building, to resolving the inconvenience being experienced in Cullompton through road closure and in addressing the current detrimental appearance of the site within the town centre and Conservation Area. It is needed for formal action as set out in the options considered above and therefore must be the first priority.
- 6.3 Given the current uncertainty over the timescale for this information being produced if left to the applicant, it is appropriate for the Council to commission the work in order to control the timescale. Valuations can also be obtained that will also inform future decisions. It is proposed that a further report be prepared for Planning Committee once the Council has received the required structural investigations and remedial works. These will be sought on an urgent basis.

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Circulation of the Report: Cllr Richard Chesterton, Members of Planning Committee

List of Background Papers: Planning Committee 5th November 2015