

**PLANNING COMMITTEE
26 AUGUST 2015**

**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 latest situation regarding the repair works at The Manor House Hotel, 2-4 Fore Street, Cullompton and to seek authority to serve an urgent works notice in the event that current work stalls.

RECOMMENDATIONS:

- i) That delegated authority be given to the Legal Services Manager in conjunction with the Head of Planning and Regeneration to take legal action to include the service of an urgent works notice or notices if satisfactory progress is not made to undertake and complete works to the building. In the event of failure to comply with the urgent works notice or notices the consideration of prosecution proceedings, the issue of injunction proceedings or direct action.**

- ii) That delegated authority be given to the Legal Services Manager in conjunction with the Head of Planning and Regeneration to specify the requirements of the urgent works notice.**

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 At the meeting of Planning Committee on 5 November 2014 the service of a Repairs Notice on the owner of The Manor House Hotel in Fore Street Cullompton was authorised. 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. Whilst some of the specified works have started, they have not so far been undertaken in their entirety. 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 A further report was considered at the meeting of Planning Committee on 4th March 2015, at which it was resolved:

- i) If within 2 weeks of the date of this meeting, the property owner's structural engineer has not completed a report of the structural investigations and compiled a schedule of works and submitted them to the Local Planning Authority, then 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) and ii) are available with updated options for further action including the consequences of compulsory purchase and any back to back sale including valuation and costs.

1.5 The owner of Manor House Hotel has appointed the specialist structural engineer who has carried out the initial assessment of the building, a detailed investigation of the causes of the structural problems and has investigated the structural concerns and specified remedial works. These investigations and remedial works were specified within Listed Building consent application Listed Building Consent 15/00544/LBC for structural repairs to masonry, involving part demolition and rebuilding of the north east corner and removal of the existing cement render to the north elevation. Listed Building Consent was granted on 1st June 2015.

1.6 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.

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

2.0 RECENT EVENTS.

- 2.1 Following a report of further cracking, an assessment was carried out by the authority's Building Control officers in mid January 2015. 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.
- 2.2 Following investigation by the applicant's structural engineer, a specification of works and mitigation measures were compiled to address the most immediate issue of the corner of the building. These were incorporated into a listed building consent application which was granted.
- 2.3 Works started on site to implement the listed building consent in late July 2015. However removing render from the Tiverton Road elevation revealed additional stonework in poor condition. The outer face of the stone was unstable. As a result a larger area of wall / stonework will need to be dismantled and rebuilt. In order to do this, the scaffolding has been reconfigured to support the weight of the front and side of the building and has also been supplemented by internal scaffolding to give additional support. It has also been designed to allow the storing and sorting of removed stone at height before rebuilding. The revised scaffolding scheme has been constructed and structural works on site resumed on 3rd August 2015. The contractor estimates that this phase of the overall works needed to the building will take in the order of six weeks. However this timescale is dependent upon no further problems being found as the works progress.
- 2.4 The repairs notice also included a requirement for 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. The latter is reliant upon scaffolding to implement the works to guttering and downpipes and should be scheduled to take place with the stonework repairs. These aspects of the repairs notice remain outstanding although we have received verbal confirmation that the owner has now instructed these to take place. This has not yet been received in writing.
- 2.5 A knock on effect of the structural problems with the building and scaffolding on site has been the restriction in the use of Tiverton Road. Until recently Tiverton Road was closed for use other than by the emergency services and pedestrians. The revised scaffolding erected in late July has been designed to take more of the weight of the building and accordingly projects further into Tiverton road. It allows for the sorting of removed stone at height. Access for emergency vehicles is not available at present although pedestrian access has been retained.
- 2.6 In order to reduce congestion and other traffic related impacts during the period of Tiverton Road closure, Devon County Council as Highway Authority has issued a temporary traffic regulation notice restricting waiting , loading and unloading in parts of Fore Street between 07:30 – 10:00, 14:00 – 20:00 Monday to Friday and 10:00 – 17:00 Saturday and Sunday. These restrictions are intended to remain in place for 18 months or until Tiverton Road can be reopened to traffic, whichever is sooner.

2.7 The Conservation Officer is inspecting the works weekly. In the time of writing this report works are progressing well and in accordance with the estimated timescale. Both the Conservation Officer and representative from Historic England have inspected work on site and are satisfied with progress as of 13th August.

3.0 **UPDATE: OPTIONS AVAILABLE FOR FURTHER ACTION OR REMEDY.**

3.1 The report considered at Planning Committee on 4th March 2015 identified a range of options available for further action and was written at a time when detailed investigation of the structural problems had not taken place and no mitigation measures had been specified. The options considered at that stage were:

- Take no action.
- Section 2015 notice (untidy land).
- Compulsory purchase.
- Sections 77 and 78 Building Act 1984.
- Section 54 urgent works notice.
- Allow the owner more time for the completion of structural investigation and for remedial works to be specified.
- That the Council appoint an independent structural engineer to investigate and specify works.

3.2 Authority was gained for the Council to appoint a structural engineer to undertake the necessary investigations and compile a schedule of remedial works if this information was not forthcoming from the owner's structural engineer. The work in question was subsequently undertaken and delivered by the owner's structural engineer.

3.3 Options available for action have been updated below to take account of the latest position.

3.4 **Take no action.**

3.4.1 Scaffolding is in place to support the fabric of the building and safeguard public safety. Whilst works are in progress, they have not yet been completed and the underlying condition of the building is still cause for concern. **No action is still not considered appropriate in this case as public safety has only been addressed in the short term with the addition of the scaffolding, as structural works are not completed, 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. Whilst verbal confirmation has been received of an intention to undertake other works in the repairs notice, no written details to date have been received nor this aspect of the works completed.**

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

3.5.1 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. However were works to cease having only partly been completed, the external appearance of the building could be cause for concern. **The serving of a s215 notice under the Town and Country Planning Act 1990 is not considered to be appropriate at this time.**

3.6 **Compulsory Purchase.**

3.6.1 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 Magistrates' 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.

3.6.2 The issuing of a Repairs notice is a required first step to acquisition of the building under these 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.

3.6.3 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 in the event that attempts to acquire by agreement fail. 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.

3.6.4 On the 4th of March 2015 Committee resolved to gain valuations of the property and that a further report be brought before Planning Committee once the results of structural investigation and valuation were available with updated options for further action including the consequences of compulsory purchase and any back to back sale including valuation and costs.

3.6.5 The property is currently being marketed for circa £625,000 without much of the rear parking area. The Council has secured a valuation of the property from a specialist valuer experienced in public houses and hotels. Details of the valuation together with the associated assumptions that underlie it will be provided to Committee at the meeting verbally under restricted Part 2 information due to its sensitive financial nature.

3.6.6 Whilst the Council has gained a valuation for the property, the scope and therefore cost of overall works needed to the property as a whole are still not clear. The works taking place to date are limited to those that address the most immediate structural problems with the building. Further works are needed to comply with the full requirements of the repairs notice together with other non-urgent repairs and maintenance. A full specification of such works is not currently available. The owner has authorised the most urgent structural works including the removal of the render from the Tiverton Road elevation to reveal the stonework /cob beneath. We have just received verbal confirmation that the owner has instructed timber treatment and rainwater system repairs. The cost of further works is therefore also currently unknown.

3.6.7 Officers are of the view that the 'last resort' stage has still not yet been reached, particularly as certain works are currently taking place and other powers such as the serving of an urgent works notice have not yet been exhausted. Initiation of compulsory purchase at this stage would be premature. **Formal compulsory purchase action is still not appropriate at this stage, however preparatory work can continue in the background and would benefit any such formal action that may be reconsidered in the future.**

3.7 Sections 77 and 78 Building Act 1984

3.7.1 Where a building (or part of) is in a dangerous condition, the authority may apply to a Magistrates' 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).

- 3.7.2 Works to be specified under such an order can only be those 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.
- 3.7.3 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 Magistrates' 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 any damage sustained.
- 3.7.4 **Action under sections 77 or 78 is still not considered appropriate at this time, as action via an urgent works notice has not taken place. In addition works to address the dangerous condition of the building are currently taking place.**

3.8 **Section 54 Urgent works notice**

- 3.8.1 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.
- 3.8.2 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.
- 3.8.3 Action under section 54 was previously not considered appropriate at that time as information was not available about the cause of the structural problems with the building and it was not possible to specify detailed works to address the safety concerns. This situation has now changed as structural assessment has now taken place, a specification of works and a scheme of

mitigation has been agreed. Works are currently taking place. At present they are proceeding in accordance with the timescale provided by the contractor for this stage. Having inspected the works, officers consider that satisfactory progress is being made to date. However there is an ongoing concern that works may cease or not be completed within a reasonable timescale. In order to safeguard against this, officers recommend that authority be given for the issue of an urgent works notice if required so that the Council control the timing of these works by having the ability to step in to ensure their completion. It is intended that such authority would only be implemented in the event of unsatisfactory progress with works or if they cease with no immediate prospect of resumption.

3.8.4 The scope of works within such a notice is that they are 'urgently necessary' and would be likely to cover the following:

- Measures to make the building safe from structural collapse.
- Measures to make the building weather tight.

It is also recommended that delegated authority is given for a specification of the works required within the Urgent Works Notice. It is expected that this would be drawn up with specialist conservation advice from officers and Historic England.

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

3.9.1 This previous option is considered out of date and no longer appropriate.

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

3.10.1 This option is considered out of date and no longer appropriate.

4.0 **FINANCIAL IMPLICATIONS.**

4.1 Historic England encourages local authorities to serve Urgent Works Notices on owners who allow historic buildings to fall into an unacceptable state of decay as soon as the need for them becomes apparent. Grants are available to local authorities to both serve such a notice and if necessary for the local authority to carry out the works required themselves. Historic England will consider applications from local authorities for grants to underwrite up to 80% of the cost of undertaking urgent works including essential professional services bought in and where necessary the cost of carrying out the urgent works.

4.2 In the event that the local authority needs to step in do works urgently necessary for the preservation of a listed building, their expense can be recovered from the building owner.

4.3 Historic England is also 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 they will also 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.

4.4 Officers have discussed the option of applying for a grant from Historic England as set out in 4.1 above with the local office in Bristol to establish whether the case would be a priority for support. Whilst a formal grant application process would need to be gone through, early indications are encouraging.

4.5 Since the condition of The Manor House Hotel was last considered at the meeting on 4th March 2015, works to address the most immediate structural issues have commenced. These works and others required under the repairs notice are not complete, but progress is being made. There remains concern over the condition and appearance of the property although the immediate structural issues are being addressed. A valuation exercise has been undertaken based on certain assumptions about the cost of the works. However no formal costing of the works underway or for the wider required works has yet taken place. A cost benefit type analysis would be needed for compulsory purchase purposes together with an understanding of the residual value of the property after taking the cost of works fully into account. The heritage significance of the building would also be taken into account in such an analysis. 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. The services of a structural engineer and quantity surveyor would need to be secured to inform this. Additional historic building conservation resource may also be required.

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 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 external scaffolding which has now been revised in design terms and supplemented by internal scaffolding. Works are also currently taking place to address the structural problems with the corner of the building onto Fore Street / Tiverton Road. However these

works are not yet complete. There has already been a short period of inactivity whilst revised specifications were drawn up and for the receipt of revised instructions from the owner. The works currently do not cover all elements specified within the repairs notice although it is understood that the timber treatment and rainwater system works required in the repairs notice are to be undertaken as an addition to the current works. To date neither written confirmation nor details of these works have been received. There are therefore further outstanding works that can be regarded as being urgently necessary.

- 6.2 Revised analysis of options for further action lead officers to conclude that despite recent progress on site, delegated authority should be sought for the issue of an urgent works notice. This would only be served in the event that satisfactory progress to undertake and complete works to the building does not continue. This is a high grade listed building the preservation of which needs to be secured. In addition inconvenience is being experienced in Cullompton through road closure and there is also a detrimental appearance of the site within the town centre and Conservation Area. The intention is to draft a specification of works for the notice in the event this it needs to be served.
- 6.3 Through this requested delegated authority the Council will gain a fall-back position that will secure control over the timescale for works as the Council will have the ability to step in and undertake them if not completed by the owner. Grant assistance for up to 80% of the cost of the works may be available from Historic England.

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

List of Background Papers: Planning Committee 5th November 2015 and 4th March 2015.