

Case No. ENF/09/00048/LIS

Grid Ref: 272435 101712

Address:

5 Dukes Cottages, Bow, Crediton, Devon

Alleged Breach:

Without listed building consent the execution of Works for the alteration ("the Works") to the listed building namely the removal of timber windows and doors in the façade and inserting uPVC windows and a door.

Recommendations:

That Members, having regard to the provisions of the Mid Devon Development Plan comprising the Mid Devon Core Strategy Local Plan Part 1), the Mid Devon Local Plan Part 3 (Development Management Policies) and all other material planning considerations in accordance with Section 38, Planning (Listed Building and Conservation Areas) Act 1990, should grant authority for the issuing of Enforcement Notices in respect of the following breaches of planning control;

That the Legal Services Manager be authorised to take any appropriate legal action including the service of a Notice or Notices to reflect the recommendation as set out in the report and summarised above. In addition, in the event of a failure to comply with any Notice served, authorisation for prosecution, direct action and/or authority to seek a court injunction.

Site Description:

5 Dukes Cottages, Bow, Crediton, Devon

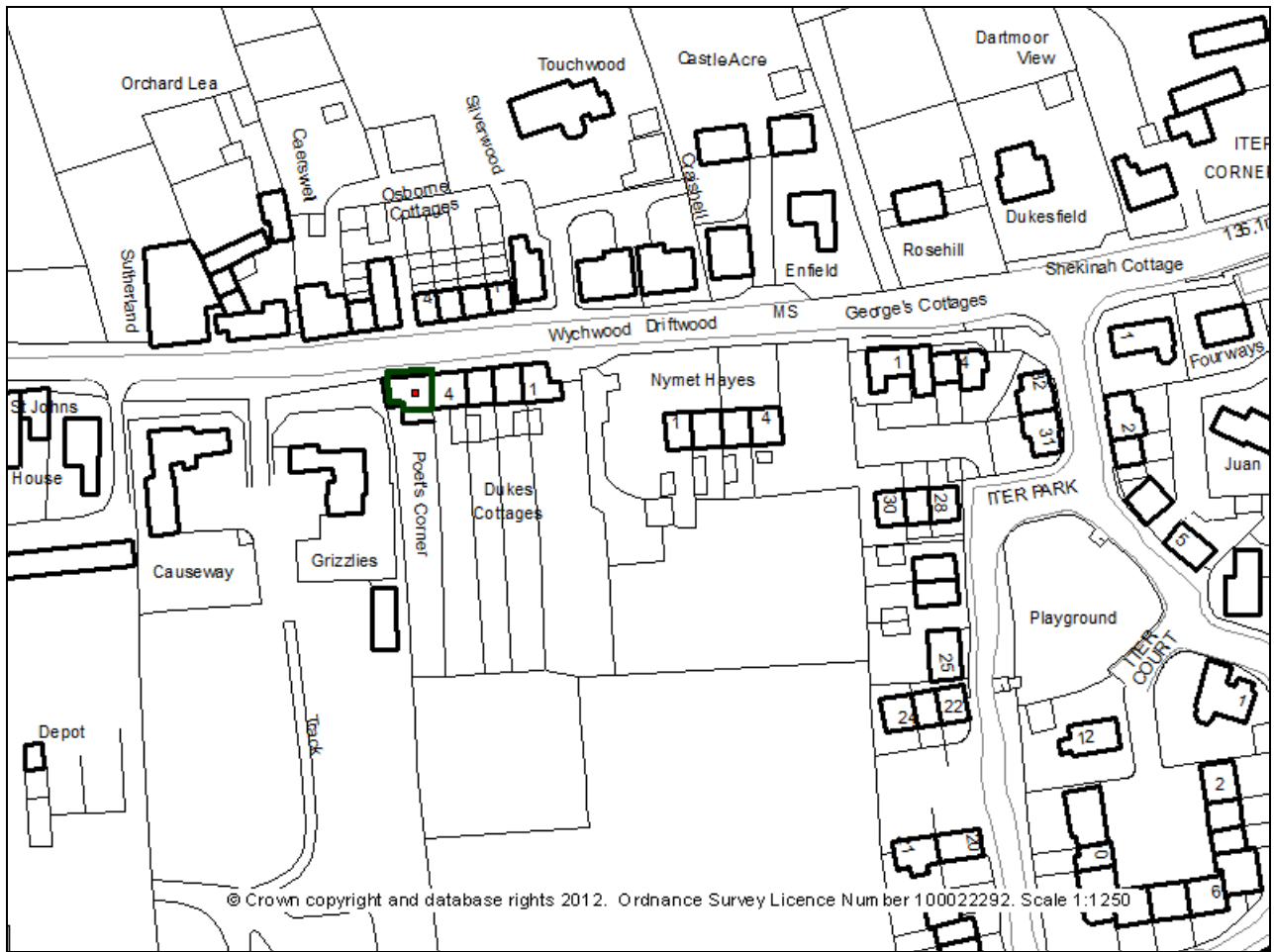
Numbers is a terrace of five plastered cob cottages under a thatched roof. On 2 November 1986, they were entered onto the list of buildings of special architectural or historic interest.

The dwellings are described in the list as:

"5 cottages. Probably late C16-early C17, much rebuilt in C18. Plastered cob on rubble footings; stone rubble stacks topped with C20 brick; thatch roof. Row of 5 1-room plan cottages facing north under continuous roof. No. 1 at left (east) end was renovated circa 1984 with new slate-roofed extension on end recessed from front. Nos. 1 and 2 share axial stack in party wall which serves back-to-back fireplaces. No. 3 has left end axial stack and Nos. 4 and 5 have right end stacks, the latter projecting from end. 2 storeys. Irregular overall 8-window front of various C19 and C20 casements most with glazing bars. No. 1 has 1-window front of circa 1984 PVC casements and left of 2 ground floor window occupies site of original door which was blocked and moved to extension in circa 1984. Nos. 2, 3, and 4 have C19 doors in the original positions. No. 4 has exposed rubble footings.

No. 5 has a 2-window front and first floor right 3-light casement has rectangular panes of leaded glass in outer panes and may be as old as late C18. Left of 2 ground floor casements in position of original doorway. Present doorway in C20 corrugated iron roofed outshot on the end. Roof is half-hipped at each end. Interiors show mainly plain carpentry detail but some late C16-early C17 timbers are exposed. For instance both No. 4 and 5 have chamfered and step stopped crossbeams, both with later oak scarfed onto rear end. Possibly these timbers are reused. Roof not inspected but bases of principals suggest C18 A-frame trusses surviving. The row was formerly known as The Barracks and the tradition that they were used to house Napoleonic prisoners-of-war was confirmed by discovery of several coat buttons in rear gardens."

Site Plan:



Site History:

None.

Development Plan Policies:

National Planning Policy Framework

Mid Devon Core Strategy (Local Plan 1)

National Planning Policy Framework

NPPF, Chapter 12: Conserving and Enhancing the Historic Environment. Of which paragraph 132 states: "When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting."

NPPF, Decision-taking - "Effective enforcement is important as a means of maintaining confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

Mid Devon Core Strategy (Local Plan Part 1)
COR2 - Local Distinctiveness

Allocations and Infrastructure Development Plan

Mid Devon Local Plan Part 3 (Development Management Policies)

Policy DM27 - Development affecting heritage assets
Policy DM31 - Planning enforcement

Reasons/Material Considerations:

Our records show that in April 2009, it came to our attention that works had been undertaken, without listed building consent to number 5 Dukes Cottages. The unauthorised works included the removal of the timber windows and the entrance door from the façade.

When, in 2009, the owners of 5 Dukes Cottages were interviewed they explained that the cottage had been owned by their father and had been left to them when he died. Both claimed that they had no idea that the cottage was a listed building but agreed to remove the uPVC fenestration and door and reinstate timber copies of those removed without consent as soon as possible. However the remedial works were not undertaken.

When on 27 June 2016, the owners were asked why they had not undertaken the remedial works they merely prevaricated. Consequently, they were advised that unless the uPVC windows and door was removed within 28 days, that a report would be submitted to the Planning Committee seeking authority to issue an enforcement notice requiring the windows and door to be replaced with timber to match, as far as is reasonably practicable, those currently at numbers 2 & 3 Dukes Cottages. That advice was not heeded.

Officer opinion is that the unauthorised works adversely affect the character of the listed building and should be reversed.

Conservation of our heritage assets does not mean freezing a building in its present state for perpetuity, but it does mean that all alterations must be carefully justified beforehand, taking into account not only the effect of the works in the short term but also their consequences for the building, its character and its historic interest. Windows manufactured in uPVC, fail to match the appearance of old windows: they invariably have larger, heavier sections than timber windows; black rubber gaskets are visible around the glass; and fine glazing bars cannot be incorporated convincingly. As a consequence, uPVC fenestration and uPVC doors adversely affects the character as buildings of special architectural or historic interest.

The uPVC windows and uPVC door installed in the façade of numbers 5 Dukes Cottages affects the character of the row of five cottages, as a building of special architectural or historic interest. Members are therefore requested to authorise the issue of a Listed Building Enforcement Notice directing that the unauthorised works at 5 is corrected.

The Conservation Officer has been consulted and agrees with both the recommended course of action to alleviate the harm and the suggested steps required by the Listed Building Enforcement Notice.

Human Rights and Equality Issues:

The expediency of Enforcement action has been assessed with reference to guidance contained in the National Planning Policy Framework (NPPF). Expediency has also been assessed with regard to the statutory Development Plan, comprising the Mid Devon Core Strategy (Local Plan Part 1), the Allocations and Infrastructure Development Plan Policies (January 2011) the Mid Devon Local Plan Part 3 (Development Management Policies).

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies. This will enable them to make an informed decision in respect of an application.

In addition, Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

The power to issue an Enforcement Notice is discretionary and should only be used where the Local Planning Authority are satisfied that there has been a breach or breaches of planning control.

It must also be satisfied that it is expedient to issue the Notice having regard to the provisions of the Development Plan and to any other material considerations. Consequently the Council must decide based on the particular circumstances of each individual case the question of expediency. The decision to take enforcement action must be reasonable and not based on irrational factors or taken without proper consideration of the relevant facts and planning issues or based on non-planning grounds.

Options for action or remedy:

The list of options available is as follows:

Take no action:

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Take no action - This would not be appropriate as it would allow the unauthorised uPVC and windows and door to remain in situ adversely affecting the character of row of cottages.

Invite an application to grant consent to regularise the change of use - This again would not be appropriate for the reasons outlined in the body of the report.

Recommendation:

That Members, having regard to the provisions of the Mid Devon Development Plan and all other material planning considerations in accordance with Section 38, Planning (Listed Building and Conservation Areas) Act 1990, ("the Act") should grant authority to the Legal Services Manager to issue Listed Building Enforcement Notice in respect of the alleged breaches, which adversely affects the character the building as one of special architectural or historic interest, and also to take any legal action deemed appropriate including prosecution or Direct Action in the event of non-compliance with the notice.

Listed Building Enforcement Notices:

In order to alleviate the effect of the works which have been carried out without listed building consent:

- (a) Remove all uPVC windows installed on the façade at both ground floor level and first floor level.
- (b) Remove the uPVC entrance door installed in the façade.
- (c) Install timber framed 'cottage style' casement windows, in the apertures vacated by the unauthorised uPVC windows. The new window to match as far as is reasonably practicable the style of those currently installed in numbers 2 and 3 Dukes Cottages. All windows to be set back so as to provide a minimum 100mm external reveal.
- (d) Install a planked timber door. The door to match as far as is reasonably practicable the door currently installed in number 3 Dukes Cottages.
- (e) All new timber windows to be glazed with slim profile double glazing.

Reasons for Decision:

The Works relate to a building included on the Statutory List of Buildings of Special architectural Interest (Grade II)

The Works constitute unsympathetic and inappropriate alterations which adversely affect the character and appearance of the building. Consequently, the Works are contrary to the advice contained in paragraphs 126 - 141 of the NPPF, Policy COR2 of the Mid Devon Core Strategy (Local Plan Part 1), and Policies DM27 & DM31 of the Mid Devon Local Plan Part 3 (Development Management Policies).

Period for Compliance:

Three (3) months after the notice takes effect.