

**PLANNING COMMITTEE
1ST MARCH 2017**

**REPORT OF MRS JENNY CLIFFORD, THE HEAD OF PLANNING AND REGENERATION
BELL COTTAGE, WOODLAND HEAD, YEOFORD EX17 5HF**

Cabinet Member Cllr Richard Chesterton
Responsible Officer Mrs Jenny Clifford, Head of Planning and Regeneration

Reason for Report: To seek approval to an Urgent Works Notice under Section 54 and a Repairs Notice under s48 of the Planning (Listed Building and Conservation Areas) Act 1990 for the temporary works to a grade 2 Listed Building namely Bell Cottage, Woodland Head, Yeoford, EX17 5HF to make it wind and weather tight and for works necessary to preserve the building. Additionally authority is also sought to commence preparatory work for compulsory purchase.

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 and / or repairs notice or notices. In the event of failure to comply with the urgent works notice, repairs 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 and repairs notice.**
- iii) That authority be given to the Legal Services Manager in conjunction with the Head of Planning and Regeneration to commence preparatory work for compulsory purchase.**

Relationship to Corporate Plan:

Homes: priority of planning and enhancing the built environment.

Environment: Aim 1 – Look after our heritage assets by managing designated conservation areas, protecting listed buildings and monuments and preserving trees that are important.

Financial Implications:

Cost of carrying out the works and costs to recover money spent. See main body of the report.

Legal Implications:

Service of notices and possible recovery of monies. See main body of the report.

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. Continued damage to the Listed Building and neighbouring property if essential repair works are not carried out.

Consultation carried out with:

1. Legal Services.

1.0 URGENT WORKS NOTICE.

- 1.1 The condition of this Grade 2 listed house has been of concern to MDDC and the owners of the attached neighbouring property for some years. The last action agreed by the Planning Committee was in December 2012 when members agreed to the serving of an Urgent Works Notice on the owner to carry out repairs to make the house wind and weather tight. This involved comprehensive patch repairs rather than full recovering.
- 1.2 The procedure for serving the Urgent Works Notice includes giving formal written notice to the owner to carry out the works within a specified period. In the event that the work is not carried out as required then the Council has the authority to instruct the work to be carried out. The cost will then be claimed against the owner and a charge will be put on the building so that if and when it is sold the Council's cost can be recovered.
- 1.3 Attempts were made before the 2012 report to Committee to contact the owner with no success. The work was therefore carried out early in 2013 by a contractor engaged by MDDC. Since 2013 more attempts have been made to contact the owner. It has been discovered that he had purchased another property in MDDC area but this seemingly was not his permanent residence and to complicate matters has no letter box.
- 1.4 In December 2015 a Member of MDDC had an impromptu meeting with the owner at this other property and then in September 2016 a letter was received from him. The owner stated that he had not received any correspondence from MDDC other than the one sent in August 2016 that prompted his reply. The letter stated that it was his intention to 'fully and completely restore' Bell Cottage and to improve and extend it. Despite a further letter to the owner to seek to enter into meaningful dialogue no reply has been received. To date there is no further news of his current whereabouts despite attempts to locate him.
- 1.5 In the meantime Bell Cottage is vulnerable to further decay. A thatcher (the same contractor who carried out the previous work) has inspected the property and in his opinion more temporary repairs to the thatch are required to keep in intact. This action will again be a short term fix. But it will ensure that it remains wind and weather tight.

The work required would take approximately one day. The costs of the work will be charged against the property.

- 1.6 The use of an Urgent Works Notice is the most appropriate and quickest formal procedure that is open to the Local Planning Authority to address this current concern of upkeep. Authority is sought for this course of action.

2.0 REPAIRS NOTICE.

2.1 The need to serve a Repairs Notice.

2.1.1 The Planning (Listed Buildings and Conservation Areas) Act 1990 under section 48 provides a specific power to serve a Repairs Notice. Such notices are used in cases where protracted failure by an owner and/or management company to keep a listed building in reasonable repair places the building at risk. It is considered that the ongoing lack of repairs and maintenance place the building at risk. Given the listed status of the building it is considered that action is needed to prompt its repair.

2.1.2 The Repairs Notice must specify the works which the Authority considers reasonably necessary for the proper preservation of the building. These powers are not confined to urgent works (as discussed above) and therefore provide an opportunity to specify comprehensive works that are reasonably necessary for the preservation of the building. The works considered necessary will be drawn up through discussions with Building Control officers, Private Sector Housing and be based on a condition survey.

2.1.3 The works are likely to include:

- re-roofing in thatch (including re-pointing of chimney stacks where applicable),
- comprehensive repairs to guttering and rainwater systems,
- repairs to exterior render and internal plaster,
- repairs to all windows or replacement where necessary (including the replacement of window sills and lintels where water penetration has caused their deterioration),
- repairs to door cases where necessary to together with repairs to internal and external doors,
- repairs to internal staircases,
- repairs to interior flooring and ceilings where appropriate and
- checking and repair of electrical and fire alarm systems throughout the building.
- There has been partial collapse of an internal wall before the 2013 thatch work was carried out and this would be included in the specification.

2.2 Financial Implications.

2.2.1 There is no appeal against a Repairs Notice itself. If after a period of two months it appears that reasonable steps are not being taken for the proper preservation of the building the local authority can begin compulsory purchase proceedings under Section 47 of the Act. However, an owner who disputes some works contained in the Notice could undertake the non-disputed works alone. He/she will receive a Notice, initiating compulsory purchase. At this point the owner can apply under section 47(4) of the Listed Buildings Act 1990 for an order to halt compulsory purchase proceedings. The owner

would be entitled this if the court was satisfied that the non-disputed works which had been done by the owner constituted reasonable steps for preserving the building, and the remaining disputed works were excessive.

- 2.2.2 In accordance with section 48(3), a Repairs Notice may be withdrawn at any time. Notice of such withdrawal would need to be given immediately to the owner.
- 2.2.3 Members should note that serving a repairs notice does not commit the Council to purchasing the building and members would specifically need to approve such action. The aim of the Repairs Notice is to force the owner to undertake appropriate repairs, or for the freeholder to sell the property.
- 2.2.4 Currently there is no specification of works that would need to be included within repairs notice and accordingly no details of likely cost. This would be informed by a condition survey of the building which would allow such a specification to be drawn up. The first step in preparing for the issue of a repairs notice is therefore the commissioning of the condition survey of the building. Officers would like to commence this aspect in order to understand the works needed and cost and have authority in place to issue a repairs notice should it still be considered warranted once this information is gained.
- 2.2.5 It is hoped that the Council will not need to issue a repairs notice as a result of other legal avenues beyond the remit of the planning system. See 'note' below.

3.0 COMPULSORY PURCHASE.

- 3.1 It is clear from the history of this case that whilst actions such as the serving of an urgent works notice and / or repairs notice may address immediate concerns over the condition of the property, this is not a long term solution. This is underlined by the serving of a previous urgent works notice on a previous occasion and the currently need for another. Accordingly options need to be considered for a long term solution that will secure the future of the building given the lack of cooperation by the owner and difficulties in contacting him.
- 3.2 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. The issuing of a repairs notice is a required first step to acquisition of the building under these compulsory purchase powers.
- 3.3 The Department of Communities and Local Government issued updated guidance on the use compulsory purchase powers in 2015 including the following:

- 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.

3.4 Recommendation (iii) above seeks authority to commence preparatory work for compulsory purchase. This does not commit the authority to purchase, but will allow early stage work to take place in the background and would benefit any such formal action that may be reconsidered in the future. Further authority would be needed for compulsory purchase itself and would be the subject of a further report. Preparatory work is expected to involve:-

Full specification of works.

The preparation of a full schedule of works to include the following list. This schedule will need to be carried out by a qualified building surveyor/architect commissioned by MDDC:

- essential preliminary works to comply with health and safety regulations, eg decontamination, asbestos management comprehensive repairs to the structural envelope, roof structure, roof covering, chimneystacks and flues, brick, stone masonry or other construction materials, timber frame, external finishes and cladding, rainwater goods and flashings
- measures to secure general structural stability in accordance with specialist structural engineering advice
- repair or reinstatement of external joinery, ironwork and architectural features
- internal structural repairs to floors, ceilings, walls and partitions
- repair and reinstatement of internal finishes – including plasterwork, floor surfaces
- basic internal and external redecoration
- repair or reinstatement of internal joinery, staircases, features and fittings
- works to enable the building to return to beneficial use, such as repairs to existing services/reinstatement of missing services

- repairs to boundary walls, gates, railings, and associated fittings, surfaces, pathways, entrance steps
- installation of additional security measures to prevent vandalism or unauthorised access following completion of works

(Reference: 'Stop the Rot' Heritage England publication)

Valuation

A full valuation of the property needs to be undertaken on behalf of MDDC.

This valuation need to include:-

- the optimum use of the building compatible with its historic character and setting, and relevant planning policies
- the marketability of the property: could it be marketed in its current state, or will a specialist purchaser, building preservation trust (BPT) or developer need to be lined up and a funding package assembled, perhaps as a back-to-back agreement.
- the amount of relevant land (if any) to be included in a CPO
- the estimated market value of the property in its present state and in a repaired state
- the estimated level of compensation

(Reference:'Stop the Rot' HE publication)

4.0 HUMAN RIGHTS AND EQUALITY ISSUES:

4.1 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 listed building, so as to prevent demonstrable harm to interests of acknowledged importance and to protect the environment.

4.2 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.

5.0 CONCLUSIONS.

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5.1 These measures are commended to Members due to the continuing deteriorating condition of Bell Cottage. A further report will come before this committee in the event that compulsory purchase is pursued.

NOTE

It is of importance to note here that MDDC Legal Service are in the process of taking separate action that it is not appropriate to elaborate on in this report. Suffice to say it is hoped that that action will lead to a satisfactory conclusion of the matter. However the authority sought within the recommendations will ensure that MMDC retains additional control over the future of this building.

Contact for any more information

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Background Papers

Stop the Rot - Historic England Advice
Planning Committee December 2012

File Reference

N/A

Circulation of the Report

Cllr Richard Chesterton
Members of the Planning Committee