

Case No. 16/00189/LIS & 16/00190/LIS

Address:

18 & 19 Exeter Road, Crediton, EX17 3BL

Alleged Breach:

Without listed building consent, the execution of works for the alternation to the listed building, namely:

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|----------------|---|
| 18 Exeter Road | The removal from the front façade of two timber framed sash windows and two timber framed casement windows and their replacement with uPVC windows |
| 19 Exeter Road | The removal from the front façade of one timber framed sash window and stone cill and one timber framed casement window and stone cill, and their replacement with uPVC windows |

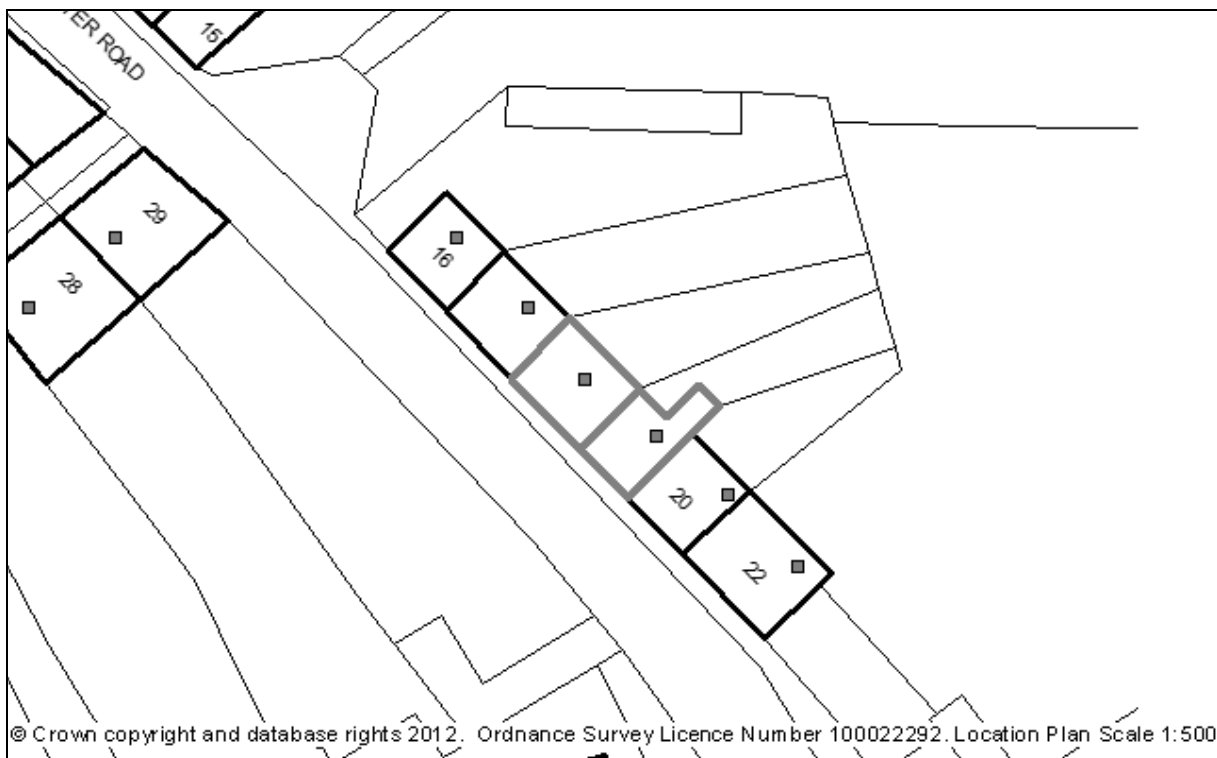
Recommendation:

That Members, having regard to the provisions of the Mid Devon Development Plan and all other material planning considerations in accordance with Section 172, Town and Country Planning Act 1990, ("the Act") should grant authority to the Legal Services Manager to take all such steps and actions necessary to secure the removal and replacement of the unauthorised windows, including the issue of an enforcement notice and prosecution and/or Direct Action in the event of non-compliance with the notice.

Site Description:

Numbers 18 and 19 Exeter Road form part of a row of 6 adjoining grade II listed cottages located on the west side of Exeter Road, approximately 1 mile south-east of Crediton town centre. The list description states that "the combination of brick and thatch is an unusual one in Devon [and] these houses are an important part of the entrance into the town from the Exeter side".

Site Plan:



Site History:

None relevant

Development Plan Policies:

National Planning Policy Framework 2012 – Chapter 12 “Conserving and enhancing the historic environment”

Mid Devon Core Strategy (Local Plan 1)

COR2 – Local Distinctiveness

Mid Devon Local Plan Part 3 (Development Management Policies)

DM27 – Development affecting heritage assets

DM31 – Planning enforcement

Reasons/Material Considerations:

Members will recall passing a resolution authorising the issue of two Listed Building Enforcement Notices for the removal of unauthorised uPVC windows from the front façade of the listed buildings at 18 and 19 Exeter Road on 3 August 2016.

Prior to issuing the notices, the enforcement officer undertook a site visit to check whether the breach(s) remained and found that the requirement to remove and replace the two first floor windows at 18 Exeter Road had been omitted from the original report and the description for the window to be installed at ground floor level at 19 Exeter Road was incorrect. The requirements of the original listed building enforcement notices have been amended as follows (shown in bold):

Requirement of the notice in the case of 18 Exeter Road:

- (a) **Remove the four uPVC windows installed in the front façade of the building at ground and first floor level**
- (b) **Within the aperture vacated by the unauthorised uPVC at ground floor level, install a 3/3 timber framed sliding sash window on the left hand side of the entrance door and a 2/2 timber framed sliding sash window on the right hand side of the entrance door (when viewed externally). The new windows shall be painted white and set back so as to provide a 100mm external reveal**
- (c) **Within the two apertures vacated by the unauthorised uPVC windows at first floor level, install two 2-light timber casement windows with horizontal glazing bar. The new windows shall be painted white and set back so as to provide a 100mm external reveal**
- (d) All new timber windows to be glazed with slim **profile** double glazing

Requirement of the notice in the case of 19 Exeter Road:

- (a) **Remove the two uPVC windows installed in the front façade of the building at ground and first floor level**
- (b) Install stone cills at the base of the window apertures on both the ground floor and first floor vacated by the unauthorised uPVC windows. The cills shall match as far as reasonably practicable the stone cills installed in the window aperture of number 20 Exeter Road
- (c) **Within the aperture vacated by the unauthorised uPVC window at ground floor level, install a 3/3 timber framed sliding sash window.** The new sash window shall be painted white and set back so as to provide a 100mm external reveal
- (d) Within the aperture vacated by the unauthorised uPVC window at first floor level, install a 2-light timber casement window **with horizontal glazing bar**. The new window shall be painted white and set back so as to provide a 100mm external reveal
- (e) All new timber windows to be glazed with slim **profile** double glazing

The uPVC windows installed in the front façade of 18 and 19 Exeter Road continue to adversely affect the character of the row of cottages of special architectural or historic interest. Members are, therefore, requested to authorise the issue of the two amended listed building enforcement notices directing the unauthorised works at numbers 18 and 19 Exeter Road are corrected.

Human Rights and Equality Issues:

The expediency of Enforcement action has been assessed with reference to the National Planning Policy Framework (NPPF). Expediency has also been assessed with regard to the statutory Development Plan, comprising the Core Strategy 2026 (July 2007), the Allocations and Infrastructure Development Plan Policies (January 2011) the Local Plan Part 3 Development Management Policies (October 2013) the Proposed Local Plan Review Policies 2013 - 2033.

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies.

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.

Reasons for issuing the Notice

The insertion of uPVC windows in the front façade of the listed buildings constitutes unsympathetic and inappropriate alterations which adversely affect the character and appearance of the buildings. The unauthorised works are contrary to the advice contained in paragraphs 126-141 of the National Planning Policy Framework, policy COR2 of the Mod Devon Core Strategy 2026 and policies DM27 and DM31 of the Mid Devon Local Plan Part 3.