

## **Planning Committee – 23 March 2011**

### **Report of the Legal and Democratic Services Manager**

#### **Enforcement item**

#### **Drakes Lodge Wellington**

#### **Background**

In December 2006 it came to the Council's attention that all the windows and doors at Drakes Lodge Taunton Road Wellington had been replaced with uPVC units. This would have required listed building consent as the property is listed Grade 11. The owner was advised of the position but said he had been unaware that the property was listed.

On the 28 March 2007 the matter was reported to the Planning Committee, along with representations from the then owner, but the Committee resolved to take enforcement action. The owner was at that stage on the point of exchanging contracts for the sale of the property. The purchasers, Mr and Mrs Mather, were fully aware of the position and the Council's officers agreed to defer the service of the Enforcement Notice for 12 months to allow them to rectify the problem. It is understood that the sale price reflected the works that would need to be done.

However, an application to carry out the remedial works was not received and when the Enforcement Officer called at the premises in February 2008, no works had been done and she was advised that the monies allowed against the purchase price had been used to carry out other repair work on the property.

Following further discussions the Mathers applied to English Heritage to have the property de-listed but this application was refused in October 2008. A meeting with the owners followed and it was agreed that a Listed Building Notice would be issued against which the owners could appeal.

The notice was issued requiring the doors and windows to be replaced with timber units by the 29 June 2009. An appeal was lodged. The appeal was dismissed in November 2009. with a nine month compliance period allowed.

## **The present position**

Since September 2010, when the works should have been completed, the Council has tried to secure compliance with the notice without the need for formal enforcement action, as both the present owners are elderly and in poor health. However, despite suggestions that the Council could deal with a relative or friend, the owners continue to prevaricate with suggestions of “going to the Ombudsman”. The Enforcement Officer called at the premises recently when she was told that the owners believed the Council were out of time to take any action and therefore did not feel they needed to do anything to address the problem.

Meanwhile, the former owner who says he sold the property at a considerable discount, is concerned that the matter remains unresolved and the works undone. He confirms that at the time of the sale the owners’ children were active in the negotiations.

## **Assessment**

The owners have had the opportunity to test the Council’s enforcement notice at appeal and have had the benefit of the additional time for compliance allowed by the Inspector on appeal. They have refused to allow a family member or friend to deal with the matter and although their age and ill health are factors that have to be considered, the Council must also be seen to be dealing consistently as between parties. It should also be noted that they purchased in full knowledge that the works needed to be done and at a price that reflected the costs of such works.

## **The options**

There are therefore the following options to secure the works;

1. Members could agree that no further action to secure compliance with the Notice is taken until both the current owners leave the property.
2. Members could resolve to take prosecution action against one or both of the owners, subject to such proceedings not being issued for a period of three months to allow a third party to become involved and take satisfactory steps to resolve the matter.
3. The Council does have the power to carry out works in default and charge the costs against the property. There would however be logistical problems in doing so if the owners were not co-operative and there is no money budgeted for such works.

## **Recommendation**

It is therefore recommended;

1. That the Solicitor to the Council be authorised to issue prosecution proceedings against Geoffrey Mather and Alison Mather for failure to comply with the Listed Building Enforcement Notice served on the 22 May 2009 and upheld on appeal on the 1 December 2009.
2. That such proceedings are not issued for a period of three months during which time Mr and Mrs Mather be encouraged to engage with the Council in order to secure compliance with the Notice or appoint a representative to do so on their behalf.

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