

Wards Affected:

Stony Stratford

DEVELOPMENT CONTROL COMMITTEE

30 MARCH 2017

**REVIEW OF ACTIONS AND PROCESSES WITH REFERENCE TO
UNAUTHORISED WORKS AND ALTERATIONS TO A GRADE II LISTED BUILDING**

Report Sponsor:

Brett Leahy - Head of Development Management

Author and contact:

Gavin Treen - Interim Senior Enforcement Officer Tel:
01908 2522580**Executive Summary:**

3 Wolverton Road, Stony Stratford, Milton Keynes, MK11 1DZ, formally known as The Foresters Arms, and now known as the "Smoke Shack".

Purpose

The report seeks to provide information and background to the investigation undertaken in relation to the unauthorised works that took place at 3 Wolverton Road, Stony Stratford. A 'lessons learned' exercise on procedures has been formally undertaken and recorded, and recommendations on future improvements to internal processes are made (Annex).

1.0 Recommendation(s)

That the recommendations in the Annex be supported and approved.

2.0 Introduction

- 2.1 In September 2014 the Councils Planning Enforcement Team received a notification internally from an Environmental Health Officer that works had or were being carried out to a Grade II Listed Building. Initial investigations were carried out, however those investigations were somewhat hindered by the owners initially refusing access to the property. Once Officers had gained access, they established works had been carried out to the Listed Building, these included damage and removal of lime plaster, substantial drilling and removal of structural elements.
- 2.2 The above works had been carried out in two phases in preparation to establish a new restaurant. The leaseholder had not sought any guidance from the Local Planning Authority before carrying out any works and without listed building consent, which would have been required prior to the commencement of works.
- 2.3 Officers subsequently collated the evidence that demonstrated that the recent alterations to the listed building were unauthorised. In addition a Conservation Officer confirmed that the evidence gathered showed that the works carried out to the building were in their opinion harmful to the special architectural character, therefore the history of the building. The owners were cautioned and invited for interviews. According to Council records Officers tried to engage with the leaseholder to try and seek solutions prior to any consideration of further actions. However, the owners failed to participate.

3.0 Actions and Responses

- 3.1 Discussions between a Solicitor in Legal Services and the Conservation and Archaeology Manager confirmed that action to apprehend the breach and correct the works to the Listed Building should proceed. Preparation to prosecute pursuant to Section 9(1) of the Planning (Listed Building and Conservation Areas) Act 1990 was undertaken. It was further considered that a Listed Building Enforcement Notice should be served to enable the unauthorised works to be corrected. It should be noted as a point of background that the prosecution case would only give a financial penalty to the offenders and would not on its own correct the unauthorised works. Therefore the enforcement notice was needed to reasonably require any unauthorised works to be corrected to the satisfaction of the Council.
- 3.2 Officers served the requisite notifications on the owners explaining the process and that the Council were preparing a case for prosecution. These documents were hand served.
- 3.3 The Officer who delivered the Council's notifications (in carrying their duties) was threatened by the leaseholder. Therefore the Officer contacted the Police directly after informing the Council.
- 3.4 A report was prepared and presented to Development Control Committee requesting authorisation to take prosecution action and serve a Listed Building Enforcement Notice on the "Smoke Shack" with justification as to why Members should authorise such actions. That report and request was granted and those actions pursued. The Enforcement Notice was appealed by the leaseholder.

4.0 Prosecution and Enforcement Actions for the Works

- 4.1 Prosecution action was prepared and The Defendants (Smoke Shack) elected for a trial at the Crown Court. Consequently, in conjunction with a solicitor in Legal Services the Council instructed a Barrister to represent the Local Authority.
- 4.2 The case was set to be heard on 14 December 2015 (some one year after the initial site investigation). At court the Councils Barrister spoke with Council Officers including the Legal Solicitor raising concerns of; poor case files; poor presentation of case papers; and concern that a specialist Council witness had not attended the property, relying on another officer's information. Collectively these matters were considered by the Barrister to be detrimental to the Councils case.
- 4.3 An agreement between solicitors representing both parties was reached. That agreement was that the case would not proceed (case for prosecution) and both parties would stand their own costs. The above was accepted by all parties.
- 4.4 Subsequently, and not until some 11 months later, the Enforcement Notice was determined by the Planning Inspectorate on 6th December 2016. The decision was that some works were required to repair the listed building and partly dismissed the appellants appeal.
- 4.5 A letter went out to the leaseholders confirming the decision and requesting compliance with a date in accordance with the Inspectorates decision, which is to ensure all works required are completed by 6 April 2017.

5.0 Conclusion and Overview

- 5.1 The Council is the Local Authority responsible for the protection of Listed Buildings and Conservation Areas. Its duties include advice, guidance and the control of any unauthorised works that are carried out with regards to all matters relating to proposals for the repair, alteration, extension, redevelopment or demolition of listed buildings.
- 5.2 The Council received complaints that some works had been carried out that may affect the building. An investigation was carried out, establishing the facts and, despite some reluctance from the leaseholder of the premises to engage, a position was reached that the works were unauthorised and that the special character and therefore the history of the building would be adversely affected. A report was prepared and presented to Development Control Committee requesting authorisation to take prosecution action and serve a Listed Building Enforcement Notice. This was supported by Members of the Committee.
- 5.3 The actions of Officers and their decisions at the time would appear reasonable, however having reviewed the case for lessons learned, and in particular the issues that led to the withdrawal of the prosecution, improvements to internal processes are recommended. These are summarised at the Annex.

Annex: Details of the Review of Actions and Processes with Reference To
Unauthorised Works and Alterations to a Grade II Listed Building