

Agenda Item 9

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Report

Report subject: Land at 1 George Street, Salisbury

Report to: Head of Development Services

Date: 12th June 2008

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Report Summary:

To consider the expediency of the Council undertaking direct action to secure compliance with a Notice served under Section 215 of the Act (Untidy Site Notice) in respect of the erection of a partly completed outbuilding, and; the deposit of: building materials including blocks, bricks, roof slates/tiles, boarding including insulation boards, cement and sand; builders' equipment including wheelbarrows, ladders, scaffolding, timber planks and barrier fencing; radiators, chairs, sheeting, timber, rubble, plastic and metal pots, containers, paint tins, LPG cylinders, assorted plastic, sanitary fittings, carpet, household furniture and household items, timber, cardboard boxes, paper, household and general waste and shopping trolleys; all at the above address.

Introduction:

The site is an end of terrace Victorian property at the northern end of George Street adjacent to Marsh Lane. The shell of a recently constructed outbuilding stands right up to the edge of Marsh Lane and occupies most of the width of the plot of 1 George Street. Immediately to the east and adjoining the outbuilding is a commercial garage workshop.

Construction of an outbuilding at the site was first drawn to Officers' attention in September last year. However following an investigation it was concluded that the outbuilding then under construction would be 'permitted development' by virtue of the GPDO when completed. Some concerns were subsequently raised in late June 2007 by the Council's Building Control team concerning the quality of construction and workmanship, however the structure was also then exempt under the Building Regulations.



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Indeed the Council's Building Control Officers inspected the outbuilding pursuant to application S/07/1190 below and made the following observations:

"I have visited the site with the area surveyor and would state that from a technical perspective, this structure is not viable for conversion. All aspects of the superstructure would require demolition and rebuilding. Additional to this would be possible remedial works to the sub-structure as it is highly likely that the ground underneath the floor slab contains contaminants."

On 27th September 2007, Officers noted that the unfinished outbuilding, constructed of a mixture of blocks and brickwork with a slate roof, had been extended towards the dwelling by addition of a poorly constructed, part built lean-to structure. On 15th October, in addition to various building materials, various items including plastic, sheeting, rubble, containers and pots, scaffolding parts and planks, barrier fencing, traffic cones and sanitary fittings, radiators, shopping trolleys, chairs, carpeting, wheelbarrows, household furniture and household items, timber, cardboard boxes, paper, household and general waste, were all observed in the outbuilding and its curtilage. Such materials were also noted on Marsh Lane immediately to the north of the site, which appeared to have emanated from activities at this site.

Subsequently it was established that the lean-to extension to the outbuilding was within 3.5 metres of the nearest part of the dwelling (currently under conversion to flats, but not yet occupied as such) and the outbuilding having a cubic capacity of approximately 93 cubic metres exceeded the development tolerances in Class A of Part 1 to the Schedule to the GPDO and therefore required express planning permission for its retention.

A requisition for information under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 was served personally on the owner of the site, however he declined to respond and he also failed to attend a meeting arranged with Officers from Enforcement and Building Control.

At further visits on 1st and 8th November the site and adjacent lane were observed in a similar condition as that noted on previous visits. However, the roof to the lean-to had been removed and materials stacked within the site.

On 20th February 2008, the site was observed in a similar condition to previous visits, with blocks and other materials, including burnt timber, in the lane. The front of the outbuilding was sheeted over, with various items present inside.

On 20th February, the Council served an Untidy Site Notice on the owner, requiring that he takes the following steps, within two months of the date on which the Notice took effect:

1. *Completely and entirely demolish the outbuilding on the Land to adjoining ground level;*
2. *Remove permanently from the Land all of the materials from the outbuilding demolished under step 1 above;*
3. *Remove permanently from the Land all of the building materials including blocks, bricks, roof slates/tiles, boarding including insulation boards, cement and sand;*
4. *Remove permanently from the Land all builders' equipment including wheelbarrows, ladders, scaffolding timber and planks, cement mixer and barrier fencing;*
5. *Remove permanently from the Land all radiators, chairs, sheeting, timber, rubble, plastic and metal pots, containers, paint tins, LPG cylinders, assorted plastic, sanitary fittings, carpet, household furniture and household items;*
6. *Remove permanently from the Land all cardboard boxes, paper, household and general waste and shopping trolleys.*

No appeal to the Magistrates Court was made and the Notice took effect on 20th March. Therefore, the above steps should have been undertaken by 20th May 2008.

At a site visit on 21st May 2008 it was noted that the outbuilding remained in situ. Various building materials, door and other items were within the outbuilding. Elsewhere the site was almost entirely occupied by various building materials and other items. Building materials and assorted waste was also present in Marsh Lane adjacent. None of the steps set out in the Notice have been complied with. The owner had previously told Officers that he has no intention of complying with the Notice.

On 25th February 2008 the owner was prosecuted and fined £450 with £200 costs for failing to respond to the requisition for information served on him.

Separate investigations are being undertaken by Building Control in relation to the flat conversion, which it is suspected does not comply with the Building Regulations. Furthermore, Environmental Health Services have initiated an enquiry regarding fly tipping in Marsh Lane.

Planning History:

04/1014 28/06/04	New 2 bed dwelling and construction of new access at 1 – 3 George Street	R
04/2219 18/11/04	New dwelling and access with two parking spaces at 1 – 3 George Street	R
06/1054 13/07/06	Subdivide single dwelling to create 2 flats	AC
07/1190 07/08/07	Convert existing outbuilding to one bedroom dwelling	R

Considerations:

Effect on local amenity

This residential area is typified by linear development with residential dwellings facing the main road system. The majority of the dwellings are two-storey terraced properties of similar proportions and design and materials located on modest plots, lending the area a pleasant residential character notwithstanding nearby commercial uses.

The outbuilding has been built right up to the boundary with Marsh Lane and occupies a significant part of the small garden area of no.1. It has been constructed in a mixture of external materials including brickwork, painted blockwork and slates. The above and the seemingly haphazard manner of construction and poor standard of building and workmanship is considered to make the outbuilding appear as an unduly and incongruous feature in views from Marsh Lane, out of keeping with and seriously detracting from the character and appearance of the surroundings.

As noted above, building materials including blocks, bricks, roof slates/tiles, boarding including insulation boards, cement and sand; builders' equipment including wheelbarrows, ladders, scaffolding, timber planks and barrier fencing; radiators, chairs, sheeting, timber, rubble, plastic and metal pots,

containers, paint tins, LPG cylinders, assorted plastic, sanitary fittings, carpet, household furniture and household items, cardboard boxes, paper, household and general waste and shopping trolleys are also present at the site. The storage of these materials, equipment and items appears indiscriminate and is not confined to the outbuilding or the curtilage of the dwelling; the materials, equipment items and waste also being at times strewn haphazardly across Marsh Lane and all apparently attributable to activities at this site.

The significant quantity of materials, equipment, items and waste kept/stored here and its cumulative effect together with the haphazard and the indiscriminate storage of materials, equipment, items and waste extending out onto Marsh Lane, has also given the site an untidy and unduly cluttered appearance, out of keeping with neighbouring and nearby properties and appearing as an alien and discordant feature in the street scene, also being seriously detrimental to the otherwise pleasant, residential character and appearance of the area referred to above and therefore unduly harming local amenity.

As the issue of a Section 215 Notice has clearly not remedied the above harm, it is therefore considered necessary to examine the options for further enforcement to achieve compliance and their relative advantages/disadvantages.

Options for Further Enforcement

1. *Direct action:* Section 219 of the Act provides that the Council can enter onto land, take the steps necessary to comply with a Section 215 Notice and recover the expenditure it has incurred in executing the works. The owner has been forewarned that the Council is actively considering this course of action.

A quote of the cost for clearance of the site to achieve full compliance with the Notice has been obtained from three specialist contractors. To date, the Council has been quoted between **£5,850 - £11,150** (excluding VAT) for works including demolishing the outbuilding, removing building materials, equipment and paraphernalia, shopping trolleys, radiators, chairs, corrugated plastic sheeting, plastic and metal pots, containers, paint tins, gas cylinders, sanitary fittings, carpets, household furniture, household items, cardboard, paper and general waste in order to comply with the Notice.

Such works could also be carried out in the relatively near future, bringing the prospect of the harm to amenity being remedied at an early date.

Members also should be aware that the Council can seek to recover the expenditure incurred in carrying out the works, which could include either placing a charge on the land to recover the expenditure incurred in clearing the site or invoicing the owner and recovering the debt in the event of a failure to pay.

The sum involved in undertaking the works in question is relatively small, in particular in the context of the value of the property. In this case it is considered that the prospects of recovery of the expenditure incurred in carrying out the works in the medium –long term (i.e. when the property is sold) is good and the financial risk associated with this option in terms of recovery of expenditure, is therefore considered relatively low.

2. *Prosecution of the owner for not complying with the Notice:* Failing to comply with a Section 215 Notice is a serious matter. Section 216 of the Act provides that where an owner fails to take steps to comply with such a Notice he is guilty of an offence and is liable on summary conviction to a fine not exceeding £1,000.

The length of time that such proceedings are taking to be disposed of by the Courts is a factor. It should be borne in mind that cases routinely take several months to be disposed of.

In bringing any case before the Courts, the prospect of obtaining a conviction is also uncertain as it rests in the hands of the Magistrates, although Officers consider there are reasonable prospects for a successful outcome having regard to the circumstances of this case.

The owner has advised Officers that he spends several months of the year abroad. It may be therefore that any proceedings brought against the owner are not actually heard for several months, in which time the breach, and therefore the harm to amenity, would continue as there would be no incentive for him to take steps to comply with the Notice until a Court date were imminent.

Furthermore this option has a greater risk of not achieving compliance, either through any prosecution brought being unsuccessful or the level of fine being imposed not being sufficient to discourage him against continued non-compliance.

In this regard, it should be noted that the Courts are still attempting to recover the fine received in February this year, for a separate offence. The owner has previously advised Officers that he would not pay any fine imposed on him by the Courts. The responsibility for collecting fines rests with the Courts Service and is not a process the Council can influence.

The owner has also, as noted above, signaled reluctance to comply with the Notice. There also doubts about his ability to do so. Officers are of the view that prosecution of the owner will at best achieve little more than a further fine for the owner; it will not achieve compliance with the Notice nor encourage the owner sufficiently for him to take further steps to do so in the near future.

In view of the above Officers do not favour this option, which also carries with it the prospect of continued non-compliance and continuing harm to local amenity.

Human Rights

In order to be lawful, any interference in a persons' Human Rights must be in pursuit of a legitimate public interest. Such action where legitimate must also pass a test of proportionality.

There would be interference with the owner's property rights (Article 1, Protocol 1) and also the right to respect for their home under Article 8.

The above is required to be balanced against the legitimate public interest of protecting the environment and general amenities in line with statute.

The recommended action would not result in the loss of the owner's home. Lesser steps would not remedy the injury to amenity caused by the condition of the site and the degree of interference is therefore considered proportionate.

CONCLUSION

The outbuilding as being constructed does not benefit from any grant of planning permission and its construction and the appearance of the site as a whole has detracted from local amenity. Uses incidental to construction works or to the enjoyment of a dwelling house would not, in the ordinary course of events, give rise to the above poor condition/adverse appearance of this site. There is continuing harm to the amenity of the surroundings, caused by the untidy condition of this site and the failure to comply with the Notice.

Direct action to secure compliance with the Notice, in accordance with Option 1 set out above, is considered to offer the Council the greatest opportunity in terms of completely remedying the condition of the site at the earliest possible date, whilst exposing the Council to limited risk in terms of it recovering costs from the owner at a later date.

RECOMMENDATION:

A: That the Committee instructs the Head of Development Services to take direct action to ensure full compliance with the Section 215 'Untidy Site' Notice served in relation to this site, in line with Option 1 above.

B: That Members be updated following the undertaking of action pursuant to recommendation A.

Implications:

- **Financial: Currently, there is no budget to fund direct action; if Members authorise such action it will have to be funded from other sources.**
- **Legal: Detailed in the report.**
- **Human Rights: Detailed in the report.**
- **Environmental implications: Detailed in the report.**
- **Council's Core Values: Efficient service; fairness and equality.**
- **Wards Affected: St Paul.**