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## **Report**

**Report subject:** Dance studio at Paddock View, 17 Beechfield, Newton Tony.

**Report to:** Northern Area Committee

**Date:** 13<sup>th</sup> December 2007

**Author:** Terry Morley

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### **Report Summary**

To consider the expediency of further enforcement action in relation to a breach of planning control consisting of a breach of condition by failing to erect a boundary wall, at the above address.

### **Introduction**

On 27<sup>th</sup> February 2004 planning consent was granted for a new house on land to the rear of Little Old Thatch, Beechfield, Newton Tony. This site has an extensive planning and enforcement history subsequent to that planning permission in relation to the erection of a conservatory in breach of condition 17 of the above permission and subsequent enforcement and prosecution proceedings brought against the owner Mrs Witney and her (then) agent.

In 2005 a retrospective planning application was made by Mrs Witney for the retention of a Fitness Dance Studio, which was sited within the grounds of the new property, now known as Paddock View. This application was refused by this authority on the 21<sup>st</sup> November 2005 and an enforcement notice was subsequently issued. However Mrs Witney appealed to the Planning Inspectorate against this decision and on the 1<sup>st</sup> August 2006 the Planning Inspectorate allowed the appeal and planning consent was granted for the Fitness Dance Studio subject to conditions. Condition 2 of the permission stated that:

**The studio hereby permitted shall not be brought into use until a screen wall has been constructed along the north-east boundary of the site with Little Old Thatch, in accordance with details that have been approved in writing by the local planning authority.**

As noted above, the building described as The Dance Studio has been constructed; however the wall as required by condition 2 of Planning Permission S/2005/2087 has never been erected.

In 2007 a planning application was made by Mrs Witney to vary condition 2 of the planning consent S/2005/2087 to allow for a close boarded fence to be erected instead of the wall. This was also refused by this authority of the 18<sup>th</sup> September 2007 for the following reason:-

**The proposed close-boarded fence due to its design is of an unsuitable appearance, which would be an incongruous addition in relation to the existing rendered block wall. As a result of this and the close proximity of the wall to the grade II listed building known as 'Little Old Thatch', the fence would cause additional adverse harm to the character and setting of the listed building, contrary to policies CN3 and CN5 of the adopted Salisbury District Local Plan.**

In view of this decision Mrs Witney was written to on the 22<sup>nd</sup> October 2007 and advised that the Council was considering the issue of a Breach of Condition Notice, but before the issue of the notice officers from this authority would discuss the matter with her on Monday 29<sup>th</sup> October 2007.

On Monday 29<sup>th</sup> October 2007 Officers attended Paddock View and in the presence of Mrs Witney they inspected the interior of the Dance Studio in question. The building was in a poor state of repair, the entrance door did not fit properly, the roof had buckled in at least one place and gaps were visible in a number of places. There was no form of heating in the building and stored inside the building at the far end of the building from the entrance door were items of a general household nature in carrier bags. Also in the building was a pedal cycle.

This building being situated to the rear of the site, with a close boarded fence to its rear and buildings on both sides is hardly visible within the Conservation Area.

The building has not yet been brought into the intended use for which it was permitted, namely a Dance Studio, it is being used for the informal domestic storage and as mentioned above is in a poor condition.

Mrs Witney is an elderly lady, she is semi infirm and she clearly has memory problems. It is unlikely that she will use the building for its stated purpose.

### **CONSIDERATIONS**

A Breach of Condition Notice could be issued requiring the erection of the wall. However it is considered that she is very unlikely to comply in the light of the above facts. Any subsequent decision to prosecute, would have to balance the facts such as the limited harm and offender's age and infirmity in considering the public interest. Even if subsequent proceedings were deemed to be in the public interest it is considered unlikely that a significant

fine would be achieved in the light of the above facts nor would compliance be obtained.

Moreover, there is ambiguity in the wording of the condition imposed by the Inspector in that the condition could be read as only requiring erection of the wall prior to the building being brought into use as a dance studio. As the building has not yet been brought into use as a dance studio, there is a considerable risk of the Council being unable to defend any decision to issue a Breach of Condition Notice, on the basis that no breach has yet occurred.

### **CONCLUSION**

Whilst this site has been the subject of considerable local controversy and the neighbour in particular remains vociferously in favour of further enforcement action, it is concluded that the balance of consideration in this case is that further enforcement action is not expedient at this time.

### **RECCOMENDATION**

That further enforcement action is not expedient at this time and that no further action should be taken in relation to the Breach of Condition.