

Agenda Item

Executive Board

6 October 2010

SS/MS



Proposed legal action to secure a property

Exempt Information

Para 6 Schedule 12A information which reveals that the authority proposes -

- (a) To give under any enactment a notice or by virtue of which requirements are imposed on a person; or
- (b) To make an order or direction under any enactment.

Summary

The Fortfield Hotel, Sidmouth has been empty since 2006/07 and its condition has deteriorated over the years. Concerns have been raised by local Members, residents, Police and Fire Service about the lack of security of the building resulting in risk of fire, and risk to people, especially young people, who are able to gain access to it. Despite informal approaches, the owner has failed effectively to secure the building against unauthorised access.

The Council has various powers it can use to secure the building and these would involve carrying out the work and reclaiming costs from the owner at a later date.

Recommendation

That, subject to further investigation of the ownership and financial liability regarding the property and if Officers are unable to make progress by negotiation, the Portfolio Holder (Communities) be given delegated authority to approve any actions detailed in the report to bring about the effective securing of the property concerned against unauthorised access and to maintain the site in a clean and tidy condition

a) Reasons for Recommendation

To secure the building against unauthorised access thereby reducing the risk of fire, anti-social behaviour or injury

b) Alternative Options

The Council could continue to take informal action/persuade, the owner to secure the site although this has had little or no effect to date.

c) Risk Considerations

Risk of non-recovery of money spent on carrying out of works

Liability risk to the Council, for injury to persons accessing the property or claims from the owner, if the works are carried out in default and are not effective

Risk to the Council if it fails to exercise its power, and fire or injury occurs at a later date

d) Policy and Budgetary Considerations

Cost to the Council in carrying out works in default as identified in the report.

Costs of defending an appeal by the owner

Costs of recovering the costs of the works in default

e) Date for Review of Decision**1 Introduction**

- 1.1 The Fortfield Hotel has been closed since 2006/7 and the owner has been seeking planning permission to re-develop the site.
- 1.2 The property is in a state of serious disrepair. Externally, most of the windows have fallen out and access doors are missing, slates have fallen off the roof. Internally there are no fire doors, floorboards have been removed leaving wooden joists exposed, rainwater is ponding in the basement area, and plaster is falling off the walls and ceilings. There was a substantial amount of furniture and furnishings remaining in the building which have been used by trespassers. There is evidence of short term occupation and drink and drug taking.
- 1.3 The owner provided Heras type fencing around the perimeter of the site, approximately 2 years ago, but this has not deterred people gaining access to the site and into the property.
- 1.4 Building Control have worked informally with owner on several occasions, over the past few years, to get tiles removed, windows removed and site fencing secured.

2 Present situation

- 2.1 A meeting was held on 21 June 2010 with the Fire Service, Police, Community Safety Co-ordinator and Environmental Health Manager (Housing).
- 2.2 The Fire Service advised that they had carried out a risk assessment of the property and written to the owner explaining that it was a serious fire risk. Following this meeting, the Fire Service met with the owner and requested that all of the furnishings within the building be removed and disposed of, and that it be effectively secured to prevent people getting into it.
- 2.3 The owner agreed to do this work, and provide security personnel during the Sidmouth Folk Festival Week.
- 2.4 The owner then removed some of the furnishings and left them outside the building.
- 2.5 The Police have also received numerous complaints about people in the property and have attended several incidents over the past 3 years. Most recently during Sidmouth Folk Week they attended because people were standing on the roof of the building.
- 2.6 Both the Fire Service and the Police have visited local schools to raise awareness of the dangers of playing in and

around empty derelict properties. The Police have also visited the homes of youngsters who have been caught on the Fortfield Hotel site to reinforce the message to the parents how dangerous this property is.

- 2.7 Environmental Health (EH) and Planning Enforcement have also received numerous complaints from residents in Sidmouth and have worked together with the owner. This resulted in the Heras Fencing being put in place 2 years ago and some small improvements to the fencing, approximately 12 months ago.

3 Latest Actions

- 3.1 On 11 August 2010 a further meeting was called by the Ward Councillors for Sidmouth and was attended by all the various agencies and services who had concerns about the building.
- 3.2 Following that meeting further letters were sent to the owner requesting him to board up the property and clear debris and rubbish from the site within 28 days.
- 3.3 The owner of the site has cleared the site of rubbish but no other effective work has been carried out to secure the building against unauthorised access.

4 Future Actions and Implications

- 4.1 The Council has the following powers to secure the building and clear the site:
- (i) Environmental Health can serve a statutory notice Local Government (Miscellaneous Provisions) Act 1982 Section 29 with a schedule of works to effectively secure the property against unauthorised access, giving the owner a minimum of 48 hours notice that the Council intends to carry out the work to prevent the property becoming a danger to public health.

The owner may appeal to the County Court within 21 days of the service on any of the following grounds:-

- The works specified are not authorised by section 29 procedure
 - The works are unnecessary
 - It was unreasonable for the local authority to undertake the works
- (ii) In the event of an appeal the local authority must stop the works which it has commenced and await the determination of the court. If the works have been completed, the court may still determine the position regarding recovering of costs.
- The court may confirm, vary or quash the notice and make provision in its order relating to recovery of costs by the LA.
- (iii) The local authority may recover the costs from the person served with the notice. Again the owner can appeal to the County Court within 21 days of the request for payment for determination.
- (vi) Building Control may serve a statutory notice Building Act 1984 Section 77 (Dangerous Buildings and Structures) and take action in default and recover the costs from the owner.

This would require the owner to create a secure site boundary fence and then board up the building to prevent access into the building itself, effectively creating two lines of defence.

- 4.3 Planning Enforcement may serve a statutory notice Town & Country Planning Act 1990 section 215.
- (i) This would require the removal of all furnishings, rubbish etc from the grounds and maintain the site in a clean and tidy condition.
 - (ii) If the owner does not carry out the work, action can be taken in default and the costs recovered from the owner.

5 Implications of exercising powers

- 5.1 Estimates of the cost of carrying out effective boarding up of the building have been obtained and range from £15,470-£22,025 (incl VAT) These costs would have to be met from the Council's reserves and reclaimed from the owner.

Legal Implications

Authority is sought for the proposed actions in section 4 of the report, all of which could result in 'direct action' by the Council. Members need to be aware of the implications of authorising steps under the various legislative provisions: depending upon the individual merits of a case concerning properties which may be considered in disrepair, constituents/members of the public may reasonably expect the local authority to pursue direct action in the event of other instances where alternative, informal strategies have not proved successful; this may have a continuing impact on budgets which should be reviewed on a regular basis.

Financial Implications

The financial implications are indicated in the report. There is no budgetary provision to cover the costs which will have to be met from reserves until they can be recovered from the owner, although there is the possibility that this will not happen.

Consultation on Reports to the Executive

Background Papers

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Executive Board
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