WEST OXFORDSHIRE DISTRICT COUNCIL
COUNCIL WEDNESDAY 29TH JUNE 2016
THE UNICORN PUBLIC HOUSE, GREAT ROLLRIGHT - PROPOSED
COMPULSORY PURCHASE ORDER

JOINT REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING AND
THE HEAD OF LEGAL AND PROPERTY SERVICES

(Contact: Phil Shaw, Tel: (01993 861687) and Jonathan Noel, Tel: (01993 861591))

(The decisions on this matter will be resolutions)

1. PURPOSE

To outline options and to seek authority to compulsorily purchase the Unicorn Public House, Great Rollright, a Grade II listed building.

2. RECOMMENDATIONS

(a) That the Head of Planning and Strategic Housing be authorised to serve a repairs notice under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 on the owner of the Unicorn specifying the works which he considers reasonably necessary for the preservation of the building;

(b) In the event that the requirements of the repairs notice have not been complied with after 2 months from the date of service of the notice on the owner then the Head of Planning and Strategic Housing be authorised to (i) commence the process to compulsorily purchase the Unicorn under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and (ii) in consultation with the relevant Cabinet member to decide on the arrangements for the use or disposal of the building if it is compulsorily acquired;

(c) That should the process to compulsorily purchase the Unicorn commence the Head of Planning and Strategic Housing be authorised to request that the Secretary of State under section 50 of the Planning (Listed Buildings and Conservation Areas) Act 1990 make a direction for minimum compensation as the building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development or redevelopment of the building and its curtilage land;

(d) That the Head of Planning and Strategic Housing be authorised to withdraw the repairs notice relating to the Unicorn made under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and dated 6th June 2006;

(e) In parallel the Council should seek a charging order for the outstanding debt and seek an enforced sale of the property to satisfy that debt should the landowner fail to take action to either repay the debt or sell the property.

3. BACKGROUND

3.1. Members will be aware that the Council in its capacity as Local Planning Authority has various functions in relation to Listed Buildings. These are buildings and structures that are of particular architectural and historic interest and which benefit from statutory protection, with unauthorised internal or external work constituting a criminal offence.
3.2. The Unicorn in Great Rollright is scheduled as a Grade II listed building. The list description advises it was constructed late 18th/early 19th century of limestone with ashlar dressings on 3 storeys with a symmetrical frontage and ashlar plinth chimney stacks. It is located within the Great Rollright Conservation Area and the village is located within the Cotswolds AONB. A public footpath runs through the site in immediate proximity to the gable end of the main pub building which itself sits tight to the back edge of the road running through the village. The listing consists of the building, outbuildings and all the adjoining curtilage land. This is shown edged red on the plan at Appendix 1 to this report. Any reference in this report to the Unicorn or the building includes all the land edged red on the plan unless otherwise stated.

3.3. The site was purchased by the current owners in 1987 and traded successfully for 2 years but in 1989 the owners started making applications for change of use of the pub and or its outbuildings to residential use along with the erection of further dwellings. Between 1989 and 2010 there were six such proposals- all refused, and with 4 of those refused applications subsequently being dismissed at appeal. The other two refusals were not appealed. Also within that period planning enforcement action was taken in 1993 to ensure the cessation of residential use of the pub and in 2006 to prevent the storage of un-roadworthy, unlicensed and scrap vehicles. Both these notices were complied with.

3.4. With the owner leaving the pub vacant it started to fall into increasing disrepair as tiles slipped and water started to enter the building. In 2006 a Listed Building Repairs notice was served requiring both internal and external repairs to the building and was partially complied with. As this repairs notice is still in force it is appropriate for it to be formally withdrawn and one of the recommendations above deals with this. In 2010 action under section 215 of the Town and Country Planning Act 1990 was undertaken requiring the owners to tidy up the building and its surrounds and again this was only partially complied with.

3.5. More recently Officers became increasingly concerned that the poor state of the building was such that not only was its value as a listed historic asset being significantly undermined but that there was a danger to the public from falling tiles and masonry, potential collapse, or from children entering the unsecured building. Structural Engineers' reports were commissioned that indicated some of the structural roof timbers had failed and that urgent works were required to preserve the building. The owner was provided with the details but no such works were undertaken. As such the Uplands Planning Sub-Committee authorised the issuing of a notice requiring the owner to undertake the works urgently necessary to ensure the preservation of the building. He did not do so and so the Council undertook those works in default. Essentially they involved building a scaffolding tower within the building to carry the weight of the roof structure, removal of tiles to reduce the weight on the roof and provision of a temporary roof covering to seek to limit the further ingress of water. These works have stabilised the building in the short term but clearly will not offer a long term solution to properly preserve the building. Building Control Officers have been using separate powers under the Building Act 1984 to seek to ensure that the building is not dangerous. The fact that a footpath runs through the site and the building sits tight to the road only serves to increase the potential risks to health if the building were to fail or to children if unauthorised access to the building were made.
3.6. A key issue that has inhibited a successful outcome is that the owners do not appear to be interested in the preservation of the building. At various points officers have engaged with them to advise as to how applications for a partial change of use could be supported or as to the form of enabling development that officers might support as a mechanism to provide funds for investment into the property. Many promises of action have been made but outcomes have not been delivered. The appeal Inspector in 2010 summed up the position accurately when she concluded “...it is hard to understand why no attempt appears to have been made by the relevant building owner to sell or lease the property as a PH for the 20 year period 1989-2009 during which time there were periods when the economy generally was far more buoyant and the possibility of selling the premises as a PH were far better and easier than at present. As such there was a deliberately imposed period of dormancy for 20 years. Moreover, in the absence of regular maintenance and repair, whether by the appellants or by his father, the property has fallen into serious disrepair which I am bound to conclude amounts to deliberate neglect” (underlining added for emphasis).

3.7. Officers have been advised that in more recent times a number of third parties have apparently made offers to purchase the building or to run it as a public house or other community venture. These offers have seemingly not been accepted. The Parish Council and a number of local Members have retained an on-going interest in the poor state of the building and the Council’s actions in undertaking the emergency works were commended in a local press report.

3.8. Thus the current position is that:

- Negotiations have failed in seeking to resolve matters
- Refused applications and dismissed appeals have not acted to deter the owner from his ‘deliberate neglect’
- Enforcement action has not resolved matters
- The owner does not appear to be motivated by normal market forces in terms of repairing and keeping his asset in good order
- There is on-going public, Member and Parish Council interest in pressing WODC to resolve matters
- The building is temporarily stabilised but this is not a long term solution
- Most critically the position of the building in relation to the road and footpath means that there are public safety issues regarding entry, collapse or falling masonry and the building itself is in a parlous condition that detracts from its listed status and the character and appearance of the Conservation Area.

3.9. Officers are proposing action under sections 47 and 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to attempt to resolve this current position the consequences are explained below.


3.10. The power to issue a repairs notice allows the council to specify to the owner the works it reasonably considers necessary for the proper preservation of the listed building explaining that if the works required by the notice are not carried out
compulsory purchase proceedings may be taken. If the Council has no intention to compulsorily purchase the building then it cannot authorise the issuing of a section 48 Repairs Notice.

3.11. There is no right of appeal against the repairs notice. If the owner complies with it then the Council need do no more. If however, after 2 months from service of the notice, reasonable steps have not been taken for properly preserving the building, the Council can commence compulsory purchase proceedings. The Council cannot enter the land and complete the works specified in a repairs notice until the building has been acquired by them.

3.12. The works to be specified in a repairs notice are those necessary for the preservation of the building in the state that it was in at the date of listing and the type of works that are allowed under this type of notice are much more extensive than those allowed under an urgent works notice. A detailed assessment of these works is being prepared by the Council’s conservation and design officer which will then provide the information for the repairs notice, if authorised.

3.13. A report by structural engineers was commissioned in 2013 and again in 2015 but given the passage of time it is now likely that much of the internal structural joinery would need to be replaced, together with much of the secondary joinery and finishes. In addition, all of the roofing may need to be rebuilt and re-covered, with major work to the structural elements here too. These reports highlight the serious nature of the deterioration of the building and the consequences if nothing is done. Copies of the reports have been left in the Members room.

3.14. Before the repairs notice and the compulsory purchase process starts the Council needs to be clear as to what it wants to do once it has purchased the building. The possible options include:
   (a) Enter into a back to back agreement with a builder/developer or a private individual to sell the building as soon as it is acquired
   (b) Carry out the repairs itself via a builder and retain it, sell it, or lease it to a new user or community body.

3.15. As these alternatives require further consideration at the point that a decision has to be made one of the recommendations in this report is for the Head of Planning and Strategic Housing to be delegated this decision in consultation with the relevant Cabinet member.

3.16. The threat of compulsory purchase proceedings may have the effect of persuading the owner to sell the building. If that is not the outcome, then Members should be aware that pursuing the compulsory purchase of the property is a course of action that would involve additional officer time and is likely to incur external legal and valuation costs.

3.17. The Council has power to apply to the Secretary of State to compulsorily purchase the building. The Secretary of State can authorise this if he is satisfied that reasonable steps are not being taken for properly preserving a listed building and that it is expedient to make provision for the preservation of the building. Where there are objections to the draft compulsory purchase order by the owner against the principle of compulsory purchase then a public inquiry must be held unless the objector agrees the matter can be dealt with by written representations.
3.18. The Secretary of State will need to be satisfied that the means and the resources for securing the building’s repair will be available. The Council should therefore have in place a scheme to deal with the building – either to put it on the open market or to pass it to a specialist body who can restore and then dispose of it. If the Secretary of State authorises the compulsory acquisition of this building then the council will have to pay compensation to the owner of the building (see ‘Financial Implications’ section below).

**Human Rights Act 1988**

3.19. Should Council support the officer recommendations then it also needs to clearly consider the Human Rights Act implications of the decisions and these are set out below.

3.20. The Human Rights Act 1998 incorporates into English law most of the rights protected by the European Convention of Human Rights. Section 6 of the Act makes it unlawful to act in a manner which is incompatible with a convention right. The Convention right that is relevant to this matter is:

*Article 1 of the First Protocol – right of the individual to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

3.21. If members are minded to authorise compulsory purchase action then before making their decision they need to ask themselves the following questions:

i) are the reasons for taking this action sufficiently important to justify the action?

ii) is the action proposed proportionate to the planning harm being caused?

iii) will the action have a disproportionate effect on the person(s) affected?

iv) are there alternative measures which would result in less interference with the individual Convention rights but would still achieve the desired planning objective?

4. **ALTERNATIVES/OPTIONS**

4.1. There are a range of other options which could be considered and these are set out below for Council consideration.

**OPTION 1: No Further Action:**

4.2. Members could decide to take no further action and leave the building as it is.

4.3. The advantages of this course of action are that there are likely to be no additional financial costs apart from those associated with future monitoring of the building to assess whether it has become dangerous. However, such inaction would create a considerable degree of ambiguity/uncertainty as to the eventual outcome and would leave a heritage asset in an on-going state of decline with risks of injury to the public. There are likely to be reputational concerns for the Council as well. Consequently, Option 1 is not recommended.
OPTION 2: Section 215 Town and Country Planning Act 1990

4.4. A section 215 notice requires the owner to carry out works to improve the external condition of a building or land if its neglect is adversely affecting the surrounding area. This type of notice cannot be used to improve the internal condition of a building or to improve the external appearance solely because its state is leading to damage to the interior of the building and whilst Section 215 action did result in some improvement to the exterior of the building it has not been sufficient to bring matters to a head and the extent of deterioration to the building is now such that external works are no longer considered sufficient in themselves to secure the future of the building. Consequently this option is also not recommended.

OPTION 3: Urgent works notice under section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990

4.5. This is a power that allows the Council to directly carry out works itself that are urgently necessary for the preservation of the listed building but is largely restricted to keeping the building wind and weatherproof and safe from collapse or to take action to prevent theft or vandalism. Whilst an urgent works notice was served on the owner in December 2015 the Council cannot use this power to secure the future of the building or to properly preserve it and so it is no longer an immediate option, albeit that if the building continues to deteriorate in the period before a compulsory purchase order is confirmed (assuming this is authorised) or the building is sold then a new urgent works notice could be issued.

OPTION 4: Acquisition of the listed building by agreement under section 52 of the Planning (Listed Buildings and Conservation Areas) Act 1990

4.6. The Council has power to acquire by agreement the listed building. At present the owners have given no indication that they would be willing to sell the building to the council and whilst it remains an option it is not currently recommended.

OTHER ACTIONS

4.7. Officers have also given consideration to other options such as continuing negotiation seeking an application for either enabling development or change of use of the building - but given the history of the building where these options have been explored and the owner does not appear to be motivated by a desire to resolve matters this is not recommended. Consideration has also been given as to whether the registration of the pub as an Asset of Community Value would assist but it is likely to fail the “recent past” test and in any event would only apply when the pub came up for sale - which the owner has shown no inclination to do. Again it is not recommended.

Charging order and power of sale

4.8. The Council has already undertaken urgent works to the building the cost of which was £35,854. The owner has been served with a demand for payment but he has not paid any of this money. The Council now needs to commence legal proceedings to recover the debt and once judgement has been obtained a charging order can be applied for. If the court allows the charging order it will be registered against the title of the building. Should the owner then not pay the debt the Council can apply to the
court for an order for sale. If this is granted by the court the Council can sell the building for the best possible price.

4.9. This process will help to mitigate the financial risk to the Council and the threat of it may additionally result in the building being repaired quicker than using the compulsory purchase process. However it may not achieve that result as the owner could pay the outstanding debt before the order for sale is made. Also if the building were sold under a power of sale the Council has no ability to ensure that the purchaser is going to properly repair the building or if they did repair it that they would do so in a timely manner. The power of sale procedure will be followed but officers do not believe it negates the need to also start compulsory purchase action in parallel with it.

5. ASSESSMENT AS TO THE PREFERRED OPTION/WAY FORWARD

5.1. Whilst the above powers are discretionary the Council has a duty to consider whether they should be exercised. Members are not required to take any action if after carefully considering all the relevant facts they believe that financial and/or other matters outweigh the need to preserve the listed building.

5.2 If the owner decides not to co-operate with the Council and to contest any compulsory purchase action then it is likely to take some time before the building can be acquired and the works in the repairs notice can be carried out.

5.3 However, as can be seen above, there are no clear cut courses of action or inaction that will definitely resolve matters, are entirely without risk or that do not expose the Council to additional financial (or political/reputational) risk.

6. FINANCIAL IMPLICATIONS

6.1. If the Secretary of State authorises the Council to compulsorily acquire the building then the Council will have to pay compensation to the owner. It is very likely that the Council will sell the building on, either straight away or after the repairs have been carried out. In that case the proceeds of sale should be sufficient to at least cover the compensation costs. If the compulsory purchase process is authorised by the Council there will need to be prepared a draft compulsory purchase order and associated documents and other work. There is unlikely to be capacity in house to do this work and so external lawyers would then have to be instructed. If the owner objects to the compulsory purchase then a public inquiry is usually held which will incur further external legal and other officer costs. Officers will investigate whether some or all of these costs can be reclaimed from the owner if the compulsory purchase is authorised by the Secretary of State.

6.2. The compensation payable by the Council to the owner for the compulsory purchase of a listed building is in general its value if sold on the open market by a willing seller. In addition there are various statutory assumptions that are made in deciding the compensation. One of the assumptions is that planning permission would be granted for a purpose specified in the Local Plan. Compensation would increase if the Council would be willing to grant planning permission for refurbishment proposals involving a change of use or some new building works.

6.3. Under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 there is a special method of assessing compensation where the listed building to be acquired has been deliberately left derelict. The Council would have to prove that the neglect was not merely deliberate or reckless but also that the underlying motive was
to facilitate demolition and redevelopment. Such a claim can be difficult to prove but in this case there is significant evidence of deliberate neglect including the comments by the inspector referred to at paragraph 1.6 of this report. Consequently recommendation (c) requests the Secretary of State to make a direction for minimum compensation.

6.4. If the direction was made then when compensation is being assessed it will be assumed that

(a) planning permission would not be granted for any development or re-development of the building; and

(b) listed building consent would not be granted for any works for the development, alteration, or extension of the building other than development or works necessary for restoring it to and maintaining it in a proper state of repair.

6.5. The likely amount of compensation payable by the council will be provided in a separate exempt update report.

7. **RISKS**

As set out above, there are a number of risks associated with the course of action proposed, or indeed, any of the alternate actions including taking no action. Officers believe the risks of the recommended course of action balance the heritage risks of the property against the financial and other risks to the Council including the risks of challenge on human rights grounds.

8. **REASONS**

To protect the natural and built environment.

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Date:

**Background Papers:**
Structural engineers report September 2013
Structural engineers report February 2015
The Unicorn, Great Rollright

Appendix 1: Site plan