

**WEST OXFORDSHIRE DISTRICT COUNCIL**  
**LOWLANDS AREA PLANNING SUB-COMMITTEE**  
**MONDAY 18 APRIL 2016**

**UNAUTHORISED CHANGE OF USE FROM ANCILLARY PUB**  
**ACCOMMODATION TO USE AS AN INDEPENDENT ONE BED DWELLING,**  
**MASON COTTAGE, STATION ROAD, SOUTH LEIGH**

**REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING**

**(Contact: Kim Smith, Tel: (01993) 861676)**

(The decisions on this matter will be resolutions)

**1. PURPOSE**

To enable the Sub-Committee to consider whether it is expedient to authorise enforcement action to secure cessation of Mason Cottage as an independent dwelling.

**2. RECOMMENDATIONS**

That if:

- (a) Members approve the parallel application for Planning Permission for use as a separate dwelling; or
- (b) Members refuse planning application 16/00460/FUL for the sub division of Mason Cottage from the Masons Arms,

the Sub Committee resolves to take no formal enforcement action at this time as it is not considered expedient to do so.

**3. BACKGROUND**

3.1. The Mason Arms is the only Public House in South Leigh. It was operational until fairly recently whereupon the pub ceased to trade and the site ownership changed. Members will also be aware from recent press reports and the parallel reports that have been placed before Cabinet regarding the status of the pub as an Asset of Community Value (ACV) that the planning position at the pub has been changing and that this has given rise to considerable community interest. The two matters (ACV and planning position) are essentially separate.

3.2. The pub, which is listed, has a series of outbuildings to the rear which were used ancillary to the use of the pub and form part of the planning unit with it. One of these outbuildings was until recently used by the publican as his private accommodation. Upon the sale of the pub by the last landlord/owner, a new owner moved into this residential outbuilding and has subsequently let it on a short term basis to a third party. The site has also been physically divided by the erection of a new fenced enclosure dividing the garden and parking space between the two elements, blocking of a connecting doorway that linked the two elements and re use of a different vehicular access to the residential unit. The pub has also passed into separate ownership distinct from the manager's accommodation. The sub division of the site is a breach of planning control and planning application 16/00460/FUL and parallel application 16/00463/LBC have been submitted in an attempt to regularise the breach.

- 3.3. Officers are recommending approval of the applications and if they are approved there will be no breach of control and no need for enforcement action. However if Members refused the applications noted above at the meeting dated 18 April then the expediency of whether or not to take formal enforcement action to remedy the breach needs to be considered. In this regard your Officers advice is as follows:
- a) In light of your Officers recommendation in respect of the planning merits of the application, Officers do not consider that it is necessary to take formal enforcement action to remedy the breach of planning control given the planning assessment outlined under 16/00460/FUL; Members would need to identify harms that necessitated the taking of enforcement action;
  - b) Given that the existing occupier/s of the dwelling have over oversight of the adjacent pub, providing a surveillance/security function and ensuring that the listed building is wind and weather proof, then Officers consider that the issue of an enforcement notice at this time to seek to secure cessation of this pseudo caretaking role is short sighted and not in the interests of the listed heritage asset;
  - c) Serving an enforcement notice at this time will be revealed on any Search in respect of the property and could potentially substantially discourage potential purchasers of the pub thereby reducing the likelihood of it being sold to an operator wishing to reopen it as a pub.

### **Conclusion**

- 3.4. In light of the fact that the time frame for taking formal enforcement action is four years from the date of the initial breach of planning control, that being the Autumn of 2015 when the site was sub divided, your Officers conclusion is that it is not expedient to take formal enforcement action at this time for the three reasons set about above, more particularly in the interests of selling the community asset as a going concern and in the interests of providing oversight of the listed heritage asset.
- 3.5. For the avoidance of doubt, should the circumstances of the occupation change ( e.g. no longer an oversight role), then the issue of the expediency of taking formal action can be reviewed as long as it is within four years of the first occupation of the sub divided dwelling.

### **Human Rights Act 1998**

- 3.6. Notwithstanding the above if Members do resolve it is expedient to take formal enforcement action then the human rights of the occupants need to be considered.
- 3.7. 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 two Convention rights that are relevant to this matter are:

*Article 8 – right to respect for private and family life, home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

*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.*

If the sub-committee is minded to authorise enforcement action then before making its decision members need to ask themselves the following questions:

- i) Are the planning reasons for taking enforcement action sufficiently important to justify the action?
- ii) Are the enforcement measures proposed proportionate to the planning harm being caused?
- iii) Will the action have a disproportionate effect on the person(s) required to comply?
- iv) Are there alternative measures which would result in less interference with the individual Convention rights but would still achieve the desired planning objective?

### **Enforcement Action - Expediency of Taking Action**

- 3.8. Government guidance advises that where unauthorised development causes significant harm to interests of acknowledged importance formal enforcement action is justified. In addition the Planning Act requires that planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. Enforcement action would require the occupant/s to cease residential occupation of the one bed dwelling known as Mason Cottage. Such action would potentially result in the current occupiers being evicted from the property that they regard as home. Bearing this in mind it is likely that such action will interfere with their human rights.
- 3.9. However, this interference needs to be weighed against any harm caused by the development in terms of the loss of the residential accommodation to serve the community facility. In this respect, based on the reason for refusal determined by Members in respect of 16/00460/FUL, the sub division of the residential use from the pub may constitute a significant breach of planning control and having weighed the above questions if it is considered that the public interest in protecting the community facility from the adverse effect of such unauthorised development outweighs the interference with the occupiers' rights to a peaceful enjoyment of their property/possessions and that there are no alternative lesser options that would remedy the breach of planning control then enforcement action may be considered proportionate.
- 3.10. In that regard the taking of formal enforcement action to remedy the breach will have an impact upon the present occupiers of the dwelling but given that the role of the occupier is that of a caretaker in effect, the impact on his human rights will be less than if it were their full time, permanent and only dwelling in your Officers opinion.
- 3.11. In respect of the above assessment regarding human rights the taking of enforcement action if harm can be identified and having considered the four relevant tests may potentially be proportionate - albeit that it is not recommended for the reasons set out earlier in this report.

## **4. ALTERNATIVES/OPTIONS**

The Committee may consider that the harm to interests of acknowledged importance as outlined in this report, is so 'significant' such that it is expedient to take formal enforcement action and that the occupiers Human Rights are not unduly interfered with. Alternatively they may defer consideration of such action (as is recommended), may approve the applications such that there is no breach or may defer consideration for some other reason.

## **5. FINANCIAL IMPLICATIONS**

None at this stage.

## **6. RISKS**

None at this stage.

## **7. REASONS**

See Section 3 above.

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Background Papers:

None