

# Council



Forest Heath  
District Council

<b>Title of Report:</b>	<b>Queensbury Lodge, Cottage and Stables, Newmarket</b>	
<b>Report No:</b>	<b>COU/FH/15/011</b>	
<b>Report to and dates:</b>	<b>Cabinet</b>	17 February 2015
	<b>Council</b>	27 February 2015
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<b>Purpose of report:</b>	To seek approval to take appropriate action to secure the preservation of the Listed Buildings at Queensbury Lodge Stables.	
<b>Recommendation:</b>	<b>RECOMMENDED:</b>  <b>That the Head of Planning and Growth, subject to approval of costs and regular reports, be given delegated authority to:</b>  (1) <b>Continue to negotiate with the owners with the aim of securing the preservation of the buildings and an acceptable end use for the site.</b> (2) <b>Commence action under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990, if necessary, to secure the preservation of the buildings.</b> (3) <b>Take action under Section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990, if necessary, to secure the preservation of the buildings.</b> (4) <b>Appoint consultants to undertake a feasibility study and development brief for the site (after a tender process) in order to</b>	

	<p><b>establish a viable use which meets the Council's objectives.</b></p> <p><b>(5) Begin compulsory purchase proceedings, if necessary, to secure the preservation of the buildings.</b></p> <p><b>(6) Serve a Notice to require tidying of the site under Section 215 of the Town and Country Planning Act 1990.</b></p>		
<p><b>Key Decision:</b></p> <p><i>(Check the appropriate box and delete all those that <b>do not</b> apply.)</i></p>	<p><i>Is this a Key Decision and, if so, under which definition?</i></p> <p>Yes, it is a Key Decision - <input type="checkbox"/></p> <p>No, it is not a Key Decision - <input checked="" type="checkbox"/></p>		
<p><i>The decision made as a result of this report will be published within <b>48 hours</b> and cannot be actioned until <b>seven working days</b> have elapsed. This item is included on the Decisions Plan.</i></p>			
<b>Consultation:</b>	<ul style="list-style-type: none"> <li>Necessary for any development brief in line with the Councils' joint Statement of Community Involvement.</li> </ul>		
<b>Alternative option(s):</b>	<ul style="list-style-type: none"> <li>No action would result in further deterioration of the listed building.</li> <li>Await Planning Application: To date no proposal has been submitted that meets the Council's planning objectives.</li> </ul>		
<b>Implications:</b>			
<p>Are there any <b>financial</b> implications? If yes, please give details</p>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <ul style="list-style-type: none"> <li>As detailed in report</li> </ul>		
<p>Are there any <b>staffing</b> implications? If yes, please give details</p>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <ul style="list-style-type: none"> <li>Time and resources of existing staff and need to appoint consultants</li> </ul>		
<p>Are there any <b>ICT</b> implications? If yes, please give details</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>		
<p>Are there any <b>legal and/or policy</b> implications? If yes, please give details</p>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <ul style="list-style-type: none"> <li>As detailed in report.</li> </ul>		
<p>Are there any <b>equality</b> implications? If yes, please give details</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>		
<b>Risk/opportunity assessment:</b>		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
<b>Risk area</b>	<b>Inherent level of risk</b> (before controls)	<b>Controls</b>	<b>Residual risk</b> (after controls)
Listed Building at Risk	High	Section 54 &/or 48 Notice.	Medium/Low
Recovery of costs	High	English Heritage may underwrite unrecoverable costs. A feasibility study would ensure an acceptable viable use for the site could be implemented following CPO.	Medium/Low
<b>Ward(s) affected:</b>		St Mary's	

<b>Background papers:</b> <i>(all background papers are to be published on the website and a link included)</i>	None
<b>Documents attached:</b>	Location Plan: Appendix 1.

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## **Key issues and reasons for recommendation(s)**

### **1. Background**

- 1.1 Queensbury Lodge, together with Queensbury Cottage and Stables are each individually Listed Buildings (Grade II) and are situated on a prominent site at the entrance to Newmarkets town centre. The buildings are all listed in the Suffolk Historic Buildings at Risk Register due to neglect or prolonged lack of maintenance. They are on one of the main approaches to the town centre within the Newmarket Conservation Area and create a poor impression of the town and its attitude towards its horse racing heritage. The yard is considered to be the second oldest racehorse-training establishment in the town after Palace House Stables.
- 1.2 Members will be aware the site has a long planning history, and has been the subject of a number of planning applications and appeals, culminating in the recent proposal for an Asda supermarket on Fitzroy Paddock to the rear of the site. It is thought the site was last used as a training yard for a short period in the late 1980s and since being in its current ownership has remained disused. The Council's approach to the site has had two primary aims; to protect the Listed Building and its setting, and to keep the use of the site as a racehorse-training establishment in line with its established horse racing policies or a use ancillary to the horse racing industry.
- 1.3 The District Council has been poised to serve a Section 54 (Urgent Works) Notice on the owner of the property on a number of occasions between 1999 and 2006. These however have not been pursued for a variety of reasons including various development proposals being put forward, the cost of litigation, the uncertainty of being able to recover costs from the owner, the scale of necessary repairs, and the absence of any third party such as a building preservation trust willing to acquire the site. Site visits during the recent Asda appeal caused concern regarding the buildings current condition and the need for works to stop further deterioration. Since this appeal various proposals have been submitted for pre application consideration, but to date there has been no agreement on an acceptable way forward. Although it is desirable to continue negotiations in the hope of achieving an acceptable proposal it is considered the buildings condition needs to be addressed as a matter of urgency.

### **Synopsis of the powers the Council has to secure repairs to a listed buildings.**

2. **Urgent Works - Section 54** of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act)
- 2.1 Section 54 of the Act allows a local authority to carry out urgent works to preserve a listed building after giving at least seven days notice to the owner. These powers can only be used on an unoccupied building, or the unused part of a partly occupied building.
- 2.2 The Council has to be satisfied that these works are urgently necessary to preserve the listed building. This could include emergency repairs to keep the building wind and weather tight, and safe from collapse, and secure from

vandalism and theft. The steps taken should be the minimum necessary to achieve this and not involve the owner in great expense.

2.3 The owner is given a timescale in which to carry out the specified works. If the works are not done, or substantially completed, within this timescale, the Council can carry out the works in default. The Council can recover the cost of the works carried out under Section 54, having given notice to the owner requiring him to pay. The owner has the right to make representations to the Secretary of State within twenty-eight days of receiving the notice. This can be on the following grounds:

- That some or all of the works are unnecessary.
- That temporary arrangements have continued for an unreasonable time.
- That the amount claimed is unreasonable
- That recovery of costs would cause the owner hardship.

2.4 The cost of such works can be recovered through the courts as a common debt. If the building is in the ownership of an individual or body with nominal assets recovery of the costs would be very difficult.

### 3. **Repairs Notice – Section 48** of the Act

3.1 A repairs notice (under section 48 of the Act) should be considered when prolonged failure by an owner to keep a listed building in reasonable repair places the building at risk. A repairs notice can be served on the owner of an occupied building, and is not restricted to urgent works.

3.2 The notice must specify the works that the authority considers reasonably necessary to preserve the building, and explain the relevant provisions of the legislation. The notice can be used to secure the buildings preservation in the condition it was in when listed, but should not be used to restore other features, unless those repairs are necessary to preserve what remains of the rest of the building. The notice is in effect a preliminary to a Compulsory Purchase Order.

### 4. **Compulsory Purchase Orders (CPO)**

4.1 If, two months after serving a repairs notice, no reasonable steps have been made to preserve the building the local authority can begin compulsory purchase proceedings. Two months gives the owner the opportunity to carry out the works required in the notice. The local authority must get the Secretary of State (SoS) to confirm the order, and he in turn will consult English Heritage before doing so.

4.2 The SoS will need to be satisfied that the means and resources to secure the buildings repair will be available if the CPO is authorised.

4.3 If, in the opinion of the local authority, a building has been deliberately neglected for the purposes of justifying its demolition for redevelopment, they may submit to the SoS a direction for minimum compensation with a CPO. This can be challenged by the owner in the Magistrates' Court. If deliberate neglect cannot be proved, the Council may be faced with paying market value.

- 4.4 A notice is served on the owner of the property and any other interested parties. They have the right to apply to the Magistrates' Court for an Order that the compulsory purchase proceedings should be stayed on the grounds that reasonable steps have been taken for preserving the building. If an application is granted, then the CPO cannot proceed. If aggrieved, any party has a further right of appeal to the crown court.
- 4.5 If no application is made, or legal challenge is unsuccessful, the Secretary of State can then consider confirming the Order.
- 4.6 Any objections received, whether they be from the owner or the general public, which are not withdrawn, must be considered and the objector be given the chance to be heard by the Secretary of State (usually by way of public inquiry). If no objections are received the Secretary of State can proceed to make the Order.
- 4.7 A listed building CPO may also include land that the authority wishes to acquire for access, amenity or management of the building.
- 4.8 The SoS considers that privately owned listed buildings should stay in the private sector if possible. Local authorities are therefore encouraged to find a private individual, company or body such as a building preservation trust, which will have access to funds to carry out repairs, and to which the building can be sold as quickly as possible. Covenants should be imposed on any such purchaser to ensure suitable repairs are carried out.

## 5. **Other Considerations**

- 5.1 Section 137 of the Act gives an owner of a property the right to serve a Purchase Notice on the Council in certain circumstances. To avoid this, the council must, after serving a repairs notice, commence compulsory purchase proceedings within 3 months.
- 5.2 **Section 215 of the Town and Country planning Act 1990** is a relatively straightforward power to require the owner or occupier to carry out works to improve the external condition of a building or land if its neglect is adversely affecting the surrounding area.
- 5.3 Statistically it is estimated that in over 60% of cases service of a formal notice was enough to encourage owners to either begin repairs or to sell the building to a third party. Only around 13% of cases are estimated to end up reaching a CPO inquiry.
- 5.6 Compulsory purchase does not imply a local authority has to carry out repairs to the building, or pay for them. It is preferable to obtain a firm commitment from a private purchaser to repair the building and meet the costs.
- 5.7 It is very hard to give an accurate time-scale to get a building repaired as there are many variables and potential for delay. It is estimated that if no public inquiry were held the process from the first warning letter to acquisition would take about two years, an inquiry would probably add another year to the process. The temporary works carried out under section 54 should protect the building from further deterioration during this time.

## 6. Finance/Budget/Resource Implications

- 6.1 Any action taken to secure the preservation of a listed building will have financial and resource implications. The scale of these will be dependent on the circumstances of the individual building and its owners. Further reports to Members will detail costs before expenditure is incurred.
- 6.2 'Back to back' deals are explained in the English Heritage document 'Stopping the Rot – A Guide to Enforcement Action to Save Historic Buildings' (2011) and should have no adverse financial implications.
- 6.3 Minimum compensation will be paid to the owner if they have deliberately allowed a building to fall into disrepair in order to justify its demolition and secure permission to redevelop the site. Evidence of this would include:
- Submission of a planning application to demolish the building.
  - Lack of any planning or listed building application to convert the building.
  - Non compliance with an urgent works notice.
  - Not putting the building on the open market to see if someone else would take on its upkeep.
- 6.4 If minimum compensation does not apply, the normal market value is used. However if the cost of repair is high, combined with limited possibilities for development, the property may have a very low or even nominal value.
- 6.5 A feasibility study in 2006 undertaken for Suffolk Architectural Heritage Trust Ltd. estimated the cost of restoring the existing buildings for use as a training yard to be £992,000. The estimated value of the yard for equine use with restored buildings at that time was £450,000 with an expected rental value of £24,000 per annum. This shortfall between the cost of repair and market value is known as a 'conservation deficit'. It was also estimated that at that time the site had an estimated value of £1,350,000 if the buildings on the site were restored to create a total of six dwellings. This figure does not take into account the potential to build further homes on the site in the location of the stable range demolished after a fire.
- 6.6 'Enabling development' is a mechanism which in exceptional circumstances is sometimes used to address a conservation deficit. This involves granting permission for development which would otherwise not normally be acceptable, in order to secure the proper repair of a listed building. In this instance allowing some development on Fitzroy Paddock (an area protected from development by conservation and horseracing policies) could facilitate this. In order to ascertain the amount of enabling development necessary to repair the listed buildings and establish viable uses for the site that meet the councils objectives it is recommended that a an updated feasibility study/design brief is undertaken. This would allow the council to be both more informed when assessing development proposals put forward for the wider site and also inform any emerging site allocation in the emerging Site Specific Allocations Local Plan.