ALTERATION TO LISTED BUILDING, SILVERHOLME, GRAYTHWAITE

1 SUMMARY

1.1 In this report I set out the issues in relation to a breach of listed building control and recommend a course of action.

Recommendation that: enforcement action be taken to secure the reinstatement of three chimney stacks at Silverholme, Graythwaite

2 BACKGROUND

2.1 Silverholme is a large grade II listed building on the western shore of Windermere Lake. The property is split into three houses, which I believe are in the same ownership.

2.2 Since receiving a concern about alteration to the building we have identified that three chimney stacks have been removed. This alteration has affected the character of the property, as a building of special architectural or historic interest. This means an offence has been committed.

2.3 We are attending a meeting at the property on 17 June 2009 to discuss the issues and inspect the building internally. Members will be updated verbally if further breaches of listed building control are identified.

2.4 My assessment of the identified breach is set out in Annex 1.

3 POLICY CONTEXT

3.1 See Annex 1 for development plan and other policy considerations.

4 OPTIONS

4.1 We can do nothing about the breach of listed building control, we can try to negotiate a solution or we can issue a listed building enforcement notice to remedy the breach. As an offence has been committed we could also bring a prosecution. We must decide which course of action is in the public interest and be able to clearly set out our reasons for our decision.

5 PROPOSALS

5.1 I propose that action be taken and my reasoning is set out in Annex 1.

6 BEST VALUE IMPLICATIONS

6.1 My recommendation has no Best Value implications.

7 FINANCE CONSIDERATIONS

7.1 My recommendation has no financial implications for the Authority.
8  RISK

8.1 I have identified no particular areas of risk in my recommendation. I have set out clear reasoning in Annex 1, which is sufficient to justify this as a reasonable decision in circumstances of the case.

9  LEGAL CONSIDERATIONS

9.1 My recommendation attempts to strike a balance between rights under the Human Rights Act and the way we have regard to the country’s economic well being and protect the rights and freedoms of others. It is for the committee to decide whether to accept the recommendation based on their knowledge of the facts.

9.2 The Human Rights Act 1998 (HRA) gives greater effect to the rights and freedoms guaranteed under the European Convention on Human Rights, incorporating some of the rights set out in the Convention and its Protocols into British law. The HRA places an obligation on public authorities to act compatibly with these rights.

9.3 Article 6 of the Act states that everyone is entitled to a fair and public hearing. If an enforcement notice is issued the appeal process would allow the owners a fair trial.

9.4 My recommendation is a proportionate response.

10  HUMAN RESOURCES

10.1 My recommendation has no staffing implications.

11  DIVERSITY IMPLICATIONS

11.1 My recommendation has no diversity implications.

12  SUSTAINABILITY

12.1 My recommendation has no significant environmental, economic and social effects other than those I refer to in Annex 1.

Background Papers Listed building photographs ref 9/171
Author/Post Julie Birkett (Compliance Planner)
Date Written 10 June 2009
ANNEX 1: EXPEDIENCY REPORT

A report leading to a decision whether formal enforcement action should be taken.

Enforcement reference no: E/2009/0061
Location: Silverholme, Graythwaite
Description: Alteration to listed building

1. Context

1.1 The Government, in Planning Policy Guidance 18: Enforcing Planning Control advises that in considering any enforcement action the decisive issue should be whether the breach of control would unacceptably affect public amenity or the existing use of the land and buildings meriting protection in the public interest. It also states that enforcement action should always be commensurate with the breach of planning control to which it relates.

1.2 PPG 18 also states that:

- it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity
- an enforcement notice should not be issued solely because the development is unauthorised, if it is acceptable on its planning merits
- where an initial attempt to secure a voluntary remedy to the harmful effects of unauthorised development fails formal action should not be hampered by negotiations

1.3 As a Local Planning Authority we have a discretionary power to issue an enforcement notice where it appears to us:

- that there has been a breach of planning control, and
- that it is expedient to issue the notice, having regard to the provisions of the development plan and any other material considerations

1.4 In November 2005 we adopted the central and local government Concordat on Good Enforcement. In our enforcement policy, adopted at the same time, we set out our commitment to the principles of good enforcement including: clear standards, openness, helpfulness, proportionality and consistency. Our policy states that when we identify a breach of control we will consider whether there is a voluntary solution, but will not let this hinder effective formal action when this is warranted. It also commits us to acting proportionately to ensure that our action is commensurate with the breach.

1.5 This report contains:

- the background to the investigation including relevant planning history
- the breach of planning control
- that we are within the relevant time limit for enforcement action
- relevant development plan policies
- material planning considerations including the views of any interested parties
- the reasons why enforcement action is or is not expedient in the public interest
- a recommendation
2. Background

2.1 Silverholme is a large property on the western shore of Windermere Lake. The property is located down a drive from the Newby Bridge to Hawkshead road. On three sides it is surrounded by mature woodland. On the forth (southern) side there is a field, which runs down to the lake shore. A public footpath runs along the shore.

2.2 The property was built around 1800 as a replacement for Graythwaite Old Hall. There appears to be three dwellings within the property, but they are all within the same ownership. It is a grade II listed building. The list description is as follows;

‘House. c1800. Stone with slate roof. 2 Storeys, 10 bays, the 6th to 10th bays recessed and higher under hipped roof. 1st floor sill band and top modillioned cornice to 1st floor of 6th to 10th bays. Windows have plaster surrounds and are sashed with glazing bars; 5th bay has inserted windows over entrance. 6th bay has tripartite window over entrance. Plain entrance between 2nd and 4th bays and to 5th bay, that to 6th bay has panelled pilasters to flanking small paneled glazing, entablature with wreaths to frieze, and 6-fielded-panel door with overlight with glazing bars. Gable-end stacks and 2 cross-axial stacks, 3 stacks to roof slope. Rear similar; 1st to 5th bays project with small return outshut under single-pitch roof; 7th bay projects under gable with sashed stair windows; C20 flat-roofed extension to end 2 bays. One return lateral stacks. Built for the Rawlinsons of Graythwaite as a replacement for Graythwaite Old Hall (q.v.).’

2.3 It is clear from our historic listed building photographs that three chimney stacks have been removed. The removal of the chimney stacks is an alteration which has affected the character of the property, as a building of special architectural and historic interest.

3. Breach of listed building control

3.1 Without listed building consent the removal of three chimney stacks from a grade II listed building.

4. Relevant time limit for enforcement action

4.1 Unauthorised works to listed buildings do not become lawful, so there is no time limit for taking further action.

5. Relevant development plan policies

5.1 The property is a listed building in the open countryside.

5.2 The relevant North West of England Plan Regional Spatial Strategy to 2021 policy is:
   - DP7 - Promote Environmental Quality

5.3 The relevant extended Cumbria & Lake District Joint Structure Plan 2001-2016 policies are:
   - E37 – Landscape character
   - E38 – Historic environment

5.4 The relevant saved Lake District National Park Local Plan policies are:
• NE1 - Development in the open countryside
• BE13 – Alterations and extensions to listed buildings

6. Assessment

6.1 Planning Policy Guidance Note 15 – Planning and the Historic Environment (PPG15) states that chimney stacks are both formal and functional features of the roofscape and can be important indicators of the date of a building and of the internal planning. In many cases chimneys also perform a vital structural function, and they should normally be retained, even when no longer required.

6.2 PPG15 also says that chimney pots can sometimes be valuable decorative features in their own right, but they are also functional features: plain Georgian pots such as those at Silverholme are often important as part of a traditional roofscape which will be damaged if they are removed.

6.3 Policy E8 of the Structure Plan states that proposals which damage or remove historic features or are detrimental to the character of a listed building will not be permitted. This approach is mirrored in Local Plan policy BE13.

6.4 Our Conservation and Design Adviser has confirmed that the removed stacks were significant features on the roofscape and essential to the character of the listed building. The property has simple Georgian roofs and the stacks were prominent and attractive features.

6.5 The removal of the three chimney stacks has adversely affected the unique character and appearance of this listed building. This is contrary to our Development Plan policies and government guidance.

7. Recommendation

7.1 On the basis of the above I recommend that enforcement action is taken to secure the reinstatement of three chimney stacks at Silverholme. The details of the case should also be discussed with our Solicitor before deciding whether to bring a prosecution.
Land at Silverthwaite, Graythwaite

LOCATION MAP
1:50000

N
Scale 1:1250

Area = 0.042 ha
NGR for centre of map
SD 3748 9088
Land at Silverthwaite, Graythwaite

SITE

Area = 0.042 ha

NGR for centre of map
SD 3748 9088
RESIDENTIAL CHALET CARAVAN, LANE END FARM, LOWICK

1 SUMMARY

1.1 In this report I set out the issues in relation to a breach of planning control and recommend a course of action.

| Recommendation that: enforcement action be taken to secure the removal of the unauthorised residential chalet caravan and associated decking at Lane End Farm, Lowick |

2 BACKGROUND

2.1 Planning permission was granted in October 2008 for the change of use of the agricultural land at Lane End Farm to an equestrian use (commercial rearing of horses). The application also included new exercise areas, improvements to an access and the siting of an administration and staff block.

2.2 A chalet caravan has been sited in the field adjoining the farmyard. It has a similar appearance to the approved administration and staff block, but the chalet caravan is not covered by the permission as it is not sited as shown on the approved plan.

2.3 The chalet caravan is now being permanently occupied on a residential basis by the owners of the site and their two children. Decking has also been erected around two sides of the chalet caravan.

2.4 The chalet caravan and the associated decking are a breach of planning control.

2.5 My assessment of the breaches is set out in Annex 1.

3 POLICY CONTEXT

3.1 See Annex 1 for development plan and other policy considerations.

4 OPTIONS

4.1 We can do nothing about the breach of planning control, we can try to negotiate a solution or we can issue an enforcement notice to remedy the breach. We must decide which course of action is in the public interest and be able to clearly set out our reasons for our decision.

5 PROPOSALS

5.1 I propose that action be taken and my reasoning is set out in Annex 1.

6 BEST VALUE IMPLICATIONS

6.1 My recommendation has no Best Value implications.

7 FINANCE CONSIDERATIONS

7.1 My recommendation has no financial implications for the Authority.
8 RISK

8.1 I have identified no particular areas of risk in my recommendation. I have set out clear reasoning in Annex 1, which is sufficient to justify this as a reasonable decision in circumstances of the case.

9 LEGAL CONSIDERATIONS

9.1 My recommendation attempts to strike a balance between rights under the Human Rights Act and the way we have regard to the country's economic well being and protect the rights and freedoms of others. It is for the committee to decide whether to accept the recommendation based on their knowledge of the facts.

9.2 The Human Rights Act 1998 (HRA) gives greater effect to the rights and freedoms guaranteed under the European Convention on Human Rights, incorporating some of the rights set out in the Convention and its Protocols into British law. The HRA places an obligation on public authorities to act compatibly with these rights.

9.3 Article 6 of the Act states that everyone is entitled to a fair and public hearing. If an enforcement notice is issued the appeal process would allow the owners a fair trial.

9.4 Article 8 states that everyone has the right to respect for their private and family life, their home and their correspondence. This is a qualified right allowing a public authority to interfere in accordance with law and when necessary in a democratic society (amongst other things) for the protection of the rights and freedoms of others. An enforcement notice would not fail to respect the private or family life of the owners or others.

9.5 Article 1 of the First Protocol relates to the Protection of Property. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law. This is a qualified right allowing enforcement as is necessary to control the use of property in accordance with the general interest. The enforcement notice would deprive the owners of their current residence, but they do have a house in Backbarrow. Therefore we would not deprive them of their home.

9.6 My recommendation is a proportionate response.

10 HUMAN RESOURCES

10.1 My recommendation has no staffing implications.

11 DIVERSITY IMPLICATIONS

11.1 My recommendation has no diversity implications.

12 SUSTAINABILITY

12.1 My recommendation has no significant environmental, economic and social effects other than those I refer to in Annex 1.

Background Papers Planning application file reference 7/2008/5230
Author/Post Julie Birkett (Compliance Planner)
Date Written 10 June 2009
ANNEX 1: EXPEDIENCY REPORT

A report leading to a decision whether formal enforcement action should be taken.

Enforcement reference no: E/2009/0058
Location: Lane End Farm, Lowick
Description: Residential Chalet Caravan

1. Context
1.1 The Government, in Planning Policy Guidance 18: Enforcing Planning Control advises that in considering any enforcement action the decisive issue should be whether the breach of control would unacceptably affect public amenity or the existing use of the land and buildings meriting protection in the public interest. It also states that enforcement action should always be commensurate with the breach of planning control to which it relates.

1.2 PPG 18 also states that:

- it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity
- an enforcement notice should not be issued solely because the development is unauthorised, if it is acceptable on its planning merits
- where an initial attempt to secure a voluntary remedy to the harmful effects of unauthorised development fails formal action should not be hampered by negotiations

1.3 As a Local Planning Authority we have a discretionary power to issue an enforcement notice where it appears to us:

- that there has been a breach of planning control, and
- that it is expedient to issue the notice, having regard to the provisions of the development plan and any other material considerations

1.4 In November 2005 we adopted the central and local government Concordat on Good Enforcement. In our enforcement policy, adopted at the same time, we set out our commitment to the principles of good enforcement including: clear standards, openness, helpfulness, proportionality and consistency. Our policy states that when we identify a breach of control we will consider whether there is a voluntary solution, but will not let this hinder effective formal action when this is warranted. It also commits us to acting proportionately to ensure that our action is commensurate with the breach.

1.5 This report contains:

- the background to the investigation including relevant planning history
- the breach of planning control
- that we are within the relevant time limit for enforcement action
- relevant development plan policies
- material planning considerations including the views of any interested parties
- the reasons why enforcement action is or is not expedient in the public interest
- a recommendation
2. Background

2.1 Lane End Farm is adjacent to the A590 near Lowick. It has been a farm and consists of a mix of traditional and modern buildings accessed by a narrow lane from the A5092 and the A590. On the opposite side of the lane is the original farmhouse, which is now in separate ownership.

2.2 The farm buildings and 6.56 hectares of the surrounding land are now being used for equestrian uses as approved by planning permission reference 7/2008/5230. The permission approved the siting of an administration and staff block for a three year period. The staff block was shown as a timber style chalet caravan, with the windows removed from the rear elevation.

2.3 The approved plans show the staff block being sited to the east of the modern farm building next to an existing wall. The chalet caravan has been placed in the field on the other side of the wall, but the wall has now been removed so the chalet caravan can be accessed from the yard.

2.4 The owners have not been able to recruit any suitable staff so they have taken on the day to day running of the business. They are permanently occupying the chalet caravan together with their two children.

2.5 Timber decking has also been erected on the north and east side of the chalet caravan.

3. Breach of planning control

3.1 Without planning permission the material change of use of land for the siting of a residential chalet caravan and associated decking.

4. Relevant time limit for enforcement action

4.1 The chalet caravan was sited on the land in February 2009 and it has been permanently occupied since the middle of April 2009. Unauthorised changes of use become immune from enforcement action ten years after it is substantially complete. This means that the development would become immune from action and therefore lawful in April 2019.

5. Relevant development plan policies

5.1 The site is located outside of any designated settlement boundary within the open countryside.

5.2 The relevant North West of England Plan Regional Spatial Strategy to 2021 Policies are:

- DP7 - Promote Environmental Quality
- RDF2 - Rural Areas

5.3 The relevant extended Cumbria & Lake District Joint Structure Plan 2001-2016 Policy is:

- E37 – Landscape Character

5.4 The relevant saved Lake District National Park Local Plan Policies are:
• NE1 - Development in the Open Countryside
• H5 – Housing in the Open Countryside
• H10 – Mobile Homes

6. Assessment

6.1 The chalet caravan meets the definition of a caravan. Policy H10 of the Lake District National Park Local Plan states that the siting of caravans for the use as residential accommodation will not normally be permitted.

6.2 Planning Policy Statement 7 – Sustainable Development in Rural Areas (PPS7) makes it clear that isolated new houses in the countryside require special justification for planning permission to be granted. In some cases residential development may be justified when accommodation is required to enable a full time worker to live at or close to their place of work. The most common example is an agricultural workers dwelling.

6.3 PPS7 does state that when accommodation is required on a newly created unit, it should normally, for the first three years, be provided by a caravan or similar temporary accommodation. But evidence of the functional need must be provided.

6.4 No evidence of a functional need has been provided in this case. As it has not been proved that there is an essential need for on site accommodation the residential chalet caravan is contrary to our development plan policies and national policy.

6.5 The chalet caravan has also been located in a prominent position and it is clearly visible from the A590. The decking increases the adverse impact of the chalet caravan on the area, as it increases the size of the structure and adds to the domestic character. If evidence of an essential need for accommodation was proved then it is my opinion that this location would be unacceptable.

7. Recommendation

7.1 Due to the failure to comply with PPS7 and the adverse affect on the character and appearance of the area I recommend that enforcement action is taken to secure the removal of the unauthorised residential chalet caravan and associated decking at Lane End Farm, Lowick.
Land at Lane End Farm, Lowick