

**AGENDA ITEM NO. 18**
**PLANNING COMMITTEE**

<b>Date</b>	<b>13 November 2013</b>
<b>Title</b>	<b>Constantine House, 1 Nene Quay, Wisbech</b>

**1. PURPOSE/SUMMARY**

The purpose of this report is to advise members of the current situation regarding the above site and to seek authority to issue a notice under Section 215 of the Town and Country Planning Act 1990

**2. KEY ISSUES**

- To consider the detrimental impact that this dilapidated and fire damaged premises has in respect of the visual amenity of both the conservation area and the town centre
- To consider options open to the Local Planning Authority to address the continued inactivity regarding works to reinstate 1 Nene Quay Wisbech
- To gain authority to serve a Section 215 Notice with regard to the aforementioned premises with a view to securing an appropriate programme of external enhancement thereby addressing the visual amenity issues of the same.
- To consider the recent response from the property owner.

**3. RECOMMENDATION(S)**

That Members approve the scope and content of the Section 215 Notice and authorise that it be served on the owners and any interested parties in accordance with Section 215 of the Town and Country Planning Act 1990.

<b>Wards Affected</b>	Medworth Wisbech South
<b>Forward Plan Reference No.</b> (if applicable)	N/A
<b>Portfolio Holder(s)</b>	Cllr Simon King – Conservation and Renaissance
<b>Report Originator</b>	Alison Callaby – Planning Performance Manager Rory McKenna – Senior Solicitor Nicola Duncan-Finn – Conservation Officer
<b>Contact Officer(s)</b>	Alison Callaby – Planning Performance Manager Graham Nourse – Head of Planning Gary Garford – Corporate Director
<b>Background Paper(s)</b>	Planning Permission Reference F/YR04/3005/F

## 1.0 Background: Overview of premises and relevant history

- 1.1 1 Nene Quay, Wisbech has been identified as both a Building of Local Interest and a Building at Risk. It comprises a Mid-Late 19thC three storey building, constructed of gault brick with a slate roof. It occupies a prominent corner position in the town centre at one of its key gateways and does much to contribute to the sense of place of the town. The following photograph, taken from the Buildings at Risk Register shows the building prior to the fire during 2010 and clearly evidences the contribution that the premises made to the streetscape of the town.



- 1.2 Following the fire which engulfed the property in March 2010 FDC carried out works to make the property safe pursuant to its statutory Building Act obligations totalling £25,000. In addition a S215 Notice was threatened, although not served, in relation to ground floor hoarding and 1<sup>st</sup> floor windows at the property. Which were subsequently painted and boarded without formal Enforcement intervention.
- 1.3 Contact with the owner prior to Christmas 2012 indicated that he intended to submit proposals to FDC planning/conservation to reinstate the property whilst also acknowledging monies owed to FDC. Unfortunately serious illness delayed the owner's ability to progress reinstatement works.
- 1.4 The owner attended a further meeting during March 2013 with Officers and put FDC in contact with his architects/builder who he has indicated have been instructed to progress reinstatement works as a matter of urgency. Every assistance has been offered/afforded to the owner in respect of the necessary planning process. In addition the owner agreed to keep FDC advised on progress/anticipated timelines for reinstatement works. However, following on from these discussions further contact from the owner was not forthcoming.
- 1.5 Officers met with a developer, who is unconnected with the site, and their agent to discuss their interest and proposals for its redevelopment. The developer has a local track record of refurbishment and redevelopment projects and is keen to become involved with the restoration of this prominent Wisbech building. Officers have recommended that the developer makes direct contact with the owner to discuss their proposals. FDC will of course provide all necessary Officer support to aid any subsequent redevelopment proposal.

- 1.6 As explained under section 4.1 there are two long term leaseholders connected to the property. Officers are aware that a Consent Order has been endorsed by the High Court which obliges the owner to reinstate the property by January 2014 or face further action by the leaseholders with the threat of a financial settlement. Until that work is complete monthly compensatory payments are being made to those leaseholders. In addition it is understood that the owner has paid compensation for the period from March 2010 to the date of the endorsement in October 2012. Whilst the owner has indicated previously to Officers that he is seeking to reinstate the property pursuant to his obligations to these leaseholders as required by the High Court Consent Order [noting that he continues to make substantial payments to compensate existing leaseholders at the property]. The deadline for these works to be effected is fast approaching with the on the ground situation continuing to deteriorate.
- 1.7 Detailed reports were taken to Cabinet during July and August 2013 which resulted in a recommendation that Planning Committee should proceed to consider serving a Section 215 Notice. This report is the mechanism with which to achieve such authority.
- 1.8 In accordance with guidance contained within both the ODPM Good Practice Guidance document 2005 and the English Heritage Stopping the Rot 2011 document, letters have been sent to the owners of the property advising them of the Councils intention to formally consider action under Section 215 should they not take steps to resolve the amenity issues at the property. Copies of these letters are attached as Appendix 2.
- 1.9 The most recent of these letters has prompted email contact from the owner (attached as Appendix 3) which was received on 4 November 2013, during the final drafting of this report..
- 1.10 In summary the Owner has identified a start date of 1<sup>st</sup> March 2014, subject to necessary planning permissions; with completion currently planned for 30<sup>th</sup> September 2014. These timings largely reflect officers own assessment of the likely work programme. Notwithstanding the positive nature of this contact, Officers are mindful of the need to protect the position of the Council and ensure that works do indeed commence without further delay to secure the amenity of the area. Therefore Planning Committee is requested to confirm its authority to continue with the notice.

## **2.0 Visual impact and the need to take action:**

- 2.1 English Heritage in their publication Stopping the Rot clearly note that just one stubbornly derelict boarded-up property can be an eyesore as well as a major source of economic blight and a disincentive to much-needed investment. Whilst they recognise in most cases, dialogue between the owner and the local authority can unlock a solution to develop a viable use for a building or development to provide an economic future for a site that retains its historic character but sometimes positive support is simply not enough.
- 2.2 In these exceptional circumstances Officers have no option than to draw upon a range of statutory enforcement measures. Timely enforcement can prevent buildings deteriorating and the costs escalating beyond the point where they are economic to repair. These powers, used in an incremental and proportional way, can play an invaluable role in bringing neglected historic buildings back to useful life.
- 2.3 As recognised in Para. 1.1 above 1 Nene Quay, albeit unlisted, occupies a prominent location at the entrance to the retail centre of the town. The following photographs serve to illustrate the detrimental impact that the premises currently have on the locality and clearly evidence the appropriateness in taking steps to address the same through the Section 215 process.

Photograph of premises taken 31<sup>st</sup> October 2013 – viewpoint Bridge Street



Photograph of premises taken 31<sup>st</sup> October 2013 – viewpoint Clarkson Memorial



Photograph taken 31<sup>st</sup> October 2013 taken from Exchange Tower (high level)



### **3.0 Enforcement Powers Available**

- 3.1 Section 215 is a relatively straightforward power that can achieve imaginative and effective improvements to the quality of the historic environment as an alternative or complementary action to Urgent Works Notices or Repairs Notices. Section 215 of the Town and Country Planning Act 1990 ('the Planning Act 1990') enables local planning authorities to take action by serving a notice on an owner or occupier if the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area.
- 3.2 Published in January 2005 The Town and Country Planning Act 1990 Section 215 Best Practice Guidance notes that 'Amenity' is a broad concept and not formally defined in the legislation or procedural guidance, i.e. it is a matter of fact and degree and, certainly common sense. Each case will be different and what would not be considered amenity in one part of an LPA's area might well be considered so in another. LPAs will therefore need to consider the condition of the site, the impact on the surrounding area and the scope of their powers in tackling the problem before they decide to issue a notice.
- 3.3 As a non listed building within the conservation area Section 215 is deemed the most appropriate enforcement mechanism given that the Repairs Notice procedure is not open to us as an option, as this relates to listed buildings only. Whilst Urgent Works Notices may be utilised to secure immediate works to unlisted buildings within the conservation area this would require the authority of the Secretary of State, see table attached at Appendix 1. Whilst ultimately such authority could be sought Officers are mindful of any further delay.
- 3.4 A Notice served under Section 215, which will take effect at the end of the period specified in it, which should not be less than 28 days after service of the notice needs to specify each of the steps required to remedy the condition of the property. It should be clear enough to allow the owner to carry out the works. The only way this can be achieved is by way of a detailed inspection (potentially inside and outside) with the production of a schedule of works. The S215 Notice must also stipulate the period i.e. milestones, to carry out each of these steps.
- 3.5 The steps set out by the S215 must focus on restoring amenity to the neighbourhood and must be external/aesthetic. Internal works can not be required (unless they are an integral part of the external work e.g. provision of a floor to stitch the outside walls together) or that the premises are completed for occupation purpose. Local Authorities should avoid carrying out work which is an alteration unless absolutely necessary and should always ensure that any permanent work is to an appropriate standard.
- 3.6 It is possible that some of the work required may require consent, particularly where they involve substantial reinstatement or reconstruction of missing elements, or other works of a specialist nature. If the local authority, using the normal statutory provisions, considers that consent is required for specific items, this should be stated in the Notice.
- 3.7 Section 216 of the Planning Act 1990 specifies the penalties for non-compliance with a Section 215 Notice, including that if a person fails to take steps required by a notice within the specified period it is an offence punishable (on summary conviction) by fine. Section 217 lays out the process of appeal in the magistrates' court. This in essence, allows a person on whom a notice is served at any time before the notice takes effect, appeal on any of the four grounds specified in section 217.
- 3.8 It is also possible, although there is no element of compulsion, for FDC to step in and carry out the works in default, under S219, if the owner does not comply with the 215. This would not require an application to the Court but, depending on the scope of

member/officer decision to approve the issue of a S215 Notice, would require further authority from an FDC perspective prior to incurring any expenditure and Cabinet approval would be sought should this be required at a later date. Government guidance suggests it is good practice to serve a further letter on the owners warning of direct action and also display a suitable notice at the site specifying the nature of that action.

#### **4.0 Specific Considerations with regard to 1 Nene Quay, Wisbech**

##### **4.1 Ownership**

4.1.1 According to the Land Registry's official copy of the register of title issued on 25 April 2013, Chrysostomos Elias Chrysostomou and Niki Elia Chrysostomou were registered as proprietor of 1 Nene Quay, Wisbech, Cambridgeshire PE13 1AQ. Recorded on the title, in the Charges Register, is a schedule of notices of leases of which parts of the land are subject to. According to the Land Registry Official copies of register of title issued on 25 April 2013 there are two lease holders who each hold a 99 year lease (dated February 2004) for two flats (4 flats in total). Up to date land ownership searches against the land will be carried out prior to the service of any statutory notice.

4.1.2 Further, Officers of the council are aware of the details of the High Court Consent order between the leaseholders and the property owners. The relevant terms of the order for the purposes of this report can be summarised as following;

- 1 The Defendants were to reconstruct 1 Nene Quay no later than the 31<sup>st</sup> December 2013.
- 2 If they don't do this then the Claimants can apply for a determination of the value of the permanent loss of their respective leasehold interests.

4.1.3 It is Officers opinion that the defendants are very unlikely to be able reconstruct 1 Nene Quay in less than the 8 weeks remaining up to the end of the order. Accordingly the action we are proposing in the form of service of a Notice under Section 215 is both timely and reasonable, especially given the likely lead in period for the Notice to come into effect.

4.1.4 Officers will continue to liaise with the leaseholders. They are also to be served (should Planning Committee determine it is appropriate to issue a 215 Notice) with the 215 Notice and will be contacted in advance of Planning Committee to allow them to participate should they to chose to do so.

##### **4.2 Planning Permission:**

4.2.1 Planning permission was granted prior to the fire under Planning Reference F/YR04/3005/F for the change of use of first and second floors from retail to 2 x 2-bed flats together with the installation of new shopfront to front elevation on 8<sup>th</sup> July 2004 detailed plans were submitted and these are included at Appendix 3.

4.2.2 Officers have considered the earlier planning history of the site and having ascertained that the original scheme proposals were implemented in part, as evidenced in the planning file, consider that sufficient works were executed pre-damage to render the consent extant.

4.2.3 From a Building Regulations perspective, there is a current Building Regulations application that covered the building work that was taking place prior to the fire. Assuming that the building is to be ultimately completed in accordance with this application, then any further/additional work - such as rebuilding of the existing leased flats could be dealt with as an amendment to this application.

### **4.3 Scope of Works**

- 4.3.1 Civil and Structural engineers who specialise in Historic Buildings have been commissioned to undertake an inspection of the building and provide a detailed schedule of works to inform onward consideration of this matter; a copy of their report is included at Appendix 4. It should be noted that the works specified are the minimum necessary to make the building structurally sound, wind and weather tight for the short to medium term so that ongoing deterioration is minimised. These works will therefore restore the visual amenity afforded by this building to the streetscape of Wisbech in compliance with Section 215.
- 4.3.2 Looking at the general principles of the interventions required the external walls need to first be stabilised by erecting external perimeter scaffold to both the front and rear of the premises. Once this is complete some work from cherry pickers or similar will be needed to allow vulnerable elements to be removed or dropped down to the ground floor to stop them falling. The building will then be progressively worked through from safe access points to remove debris and generally clear the building, possibly with further temporary works to internal parts of the walls.
- 4.3.3 On completion there are then two options to provide stability to then remove the external scaffold (after repairs etc.) and improve the public amenity of the site. These are either to erect a birdcage scaffold internally or to reinstate floors (joists only and not boarding). Both options would provide sufficient structural integrity to enable the roof to be reinstated.
- 4.3.4 To inform the S215 Notice Officers have given due consideration to the history of the site, the likely cost implications of the works, the earlier aspirations of the owner and the need to protect the Council from challenge by the Owner in respect of any interventions it may have to take should the Notice not be complied.
- 4.3.5 Given the existence of the extant planning permission we do have insight into the building owner's intentions towards the premises prior to the intervening fire. As such it would be prudent to ensure that any notice takes into consideration the onward use of the building as specified in this consent.
- 4.3.6 The options provided cover both permanent and temporary approaches however the budget costings are such that a more permanent reinstatement is in this instance most cost effective. It is therefore recommended that the reinstatement adheres to the extant planning permission, albeit restricted to works that are structurally necessary.
- 4.3.7 The only issue to resolve if adopting this approach is that of the roof structure. In that if we again consider the future intentions of the owner and the approved plans referred to at para. 4.2.1 it is apparent that some of the roof space was intended as accommodation. Thus the probably most economic option of gang nailed trusses may not provide the accommodation indicated in the roof. That said the works would return the original roof covering and would be proportionate in terms of expenditure.

### **5.0 Schedule of works**

- 5.1 The following schedule has been prepared, based on the consultants report, these details will form part of the Section 215 Notice, albeit the birdcage element of the schedule will be deleted as this is presented in the schedule for information purposes only as it clearly represents poor value for money in the overall context of the scheme (this item is shown shaded grey).

			Cumulative timescales for each option	
Item	Action	Timescales	Birdcage	Floor
1	Achieve necessary scaffolding permits and temporary road closure permits	Up to 12 weeks	12	12
2	Make safe building envelope Erect a scaffolding to support front and rear elevations	2 weeks	14	14
3	Clear interior of building including removal of floor structure; utilising cherry picker or similar	Up to 4 weeks	18	18
4	Inspect unrestrained internal and party walls, and partially take down if required.	Concurrently with Item 3	-	-
5 a	<b>Either</b> erect an internal birdcage scaffold to support and restrain the walls with resin anchors, <b>or</b>	4 weeks	22	-
5b	Install flooring.	6 weeks	-	24
6	Alter external scaffold to an access only scaffold so that works to the external brickwork, windows and roof construction may be commenced.	2 weeks	24	26
7	Brickwork repairs and reconstruction may then commence, including rebuilding of chimneys,	2 weeks	26	28
8	Reinstate roof	4 weeks	30	32
9	Reproduce Eaves details and install rainwater goods and redecorate elevations completed.	2 weeks	32	34
10	Remove all scaffold and secure the building.	1 week	33	35
<b>Budget costs</b>			<b>£224,075</b>	<b>£203,925</b>

**Footnote regarding 5a & 5b above**

*Installation of the floors is the cheaper option, see below, but a design decision will need to be made as to joist layout.*

*Relative costs are:*

*Birdcage scaffold: £59,300 (with a further requirements for weekly inspections costing £150 per week) Whilst this would have a resale value once the building had been repaired fully by installation of floors this value would be fairly small.*

*Timber floors: £39,150*



## **6.0 Conclusion**

- 6.1 It is considered that action under Section 215 of the Town and Country Planning Act 1990 is clearly warranted and that the works proposed, informed by a robust survey, are both necessary and proportionate to facilitate the restoration of the visual amenity previously afforded by this building to the streetscape of Wisbech. A copy of the proposed S215 Notice for members approval is attached as Appendix 5.
- 6.2 It should be noted that it is intended for the Notice to take effect from 1<sup>st</sup> January 2014. This respects the High Court Consent order between the leaseholders and the property owners which required the owners to reconstruct 1 Nene Quay no later than the 31<sup>st</sup> December 2013. Furthermore it should be noted that a minimum of 28 days must be given to enable the owner to appeal against the Notice (see 3.4 above). It is proposed to serve the notice immediately post committee (14/15<sup>th</sup> November) which would result in the Notice coming into effect on the 12/13<sup>th</sup> December 2014. However as indicated above this would be in advance of the High Court Consent Order deadline. In addition the 1<sup>st</sup> January 2014 date would as indicated previously dovetail with the proposals expressed by the Owner in terms of bringing forward the redevelopment of the site. Accordingly it would demonstrate the reasonableness of the Council with regard to this matter for the Notice effect date to align.

**Appendix 1:** Extract from Stopping the Rot: A guide to enforcement action to save historic building published 19/10/2011 by English Heritage

**HOW DO SECTION 215 NOTICES, URGENT WORKS NOTICES AND REPAIRS NOTICES DIFFER?**

Section 215 Notices	Urgent Works Notice	Repairs Notice
To secure improvements to external visible appearance of land or a building	To secure immediate works to arrest deterioration	To specify repairs for the long-term preservation of the building
A statement of the local authority's requirement for the owner or occupier to remedy the condition of their land or building	A statement of the local authority's intent to carry out works itself (and to reclaim the costs from the owner)	A statement requiring the owner to carry out full repair of the building and preliminary to compulsory purchase
Local authority can carry out works itself	Local authority can carry out works itself	Local authority cannot itself carry out the works specified in a Repairs Notice
Can be served on any land or building whether designated or not	Can be served on any listed building and on unlisted buildings in conservation areas with the Secretary of State's permission	Can be served on any listed building but cannot be served in relation to unlisted buildings in conservation areas
Can be served on any land or buildings whether occupied or vacant	Can only be served on unoccupied buildings or parts of buildings not in use	Can be served in relation to occupied or vacant buildings

**Appendix 2:** Letters sent to owners

**Appendix 3:** Email received from Owner 4<sup>th</sup> November 2013

**Appendix 4:** Plans relating to F/YR04/3005/F

**Appendix 5:** Morton Partnership Schedule of Works

**Appendix 6:** Draft Section 215 Notice