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**Rutland County Council**

Catmose,  
Oakham,  
Rutland  
LE15 6HP

# DEVELOPMENT CONTROL AND LICENSING COMMITTEE

16<sup>th</sup> June 2015

## ENFORCEMENT REPORT

**Stoup Cottage, 11 Ashwell Road, Whissendine, Rutland**

**REPORT OF THE DIRECTOR FOR PLACES (ENVIRONMENT, PLANNING AND  
TRANSPORT)**

STRATEGIC AIM:	<b>CREATING A SUSTAINED ENVIRONMENT</b>
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### 1. PURPOSE OF THE REPORT

- 1.1 For members to decide what action should be taken in relation to alleged unauthorised works to a Grade II listed building involving the painting of the external surface of a stone mullion without listed building consent.

### 2. RECOMMENDATIONS

- 2.1 **That members take NO ACTION.**

### 3. DETAILS OF THE REPORT

- 3.1 The stone mullion is located on the north elevation of the property facing onto Ashwell Road. It is a Grade II listed building which was listed in February 1984.
- 3.2 It has been alleged that the stone mullion was painted with limewash but has now been painted with an inappropriate type of modern paint. Limewash is a simple type of matt paint made from lime and water which is considerably more breathable than most modern paints. It provides a soft non uniform finish and is particularly suitable for stonework. A black and white photograph taken in 1983 appears to show that the stone mullion was painted at the time of the original listing as the finish looks to be bright and uniform but it is not certain what type of finish it was. Another photograph taken in 2005 shows the mullions painted in a bright white finish matching the wooden window frames and indeed street view records show that from 2009 the mullion was painted with a bright uniform finish rather than a limewashed finish.
- 3.3 A site visit was carried out on 18/3/15 when the current owners advised that the stone mullion was not limewashed but was painted at the time they purchased the property. They had repainted the exterior of the property including the windows and the stone mullion several months prior to our visit as part of their cyclical maintenance. They have owned the property for at least 17 years and this was the third occasion the exterior had been repainted although previously they had kept to the original white and on this latest occasion they had changed the colour of the window frames to a pale grey. The type of paint used was a modern microporous flexible gloss.
- 3.4 Listed building consent is not necessarily required for repainting an existing painted surface; it depends on the precise circumstances. There are no hard and fast rules with listed buildings and each case has to be assessed individually as to whether g

the works affect its character. The Conservation Officer is satisfied that the change of colour does not materially affect the external appearance of the building and therefore listed building consent would not have been required if the mullion had already been painted. However, if the mullion had been limewashed at the time of the listing then this type of modern paint would not have been an acceptable finish.

- 3.5 It is a criminal offence under Section 9 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended) to carry out works to a listed building without consent. In order to bring about a successful prosecution it must be proven 'beyond reasonable doubt' that an offence has occurred, when it has occurred and who was responsible. The only evidence we have of a possible offence is a statement that the stone mullion was until recently limewashed and is now painted with an unsuitable finish. The current owners have advised that the mullion was already painted when they purchased the property in 1998, it is therefore unclear when the surface was originally painted and by whom. It is one person's word against another and given the lack of evidence the Council's legal advisors have advised that there is not sufficient evidence to provide a realistic prospect of conviction.
- 3.6 As an alternative to prosecution the council could serve a Listed Building Enforcement Notice requiring the current owners to remove the paint from the mullions on the north elevation. Service of a valid notice will require proof that on the balance of probabilities unauthorised works have taken place. This course of action could lead to a successful appeal due to the lack of evidence and the removal of the paint could damage the stonework unless carefully undertaken. It is unfortunate that the complainant did not contact the Council at the time the works were being undertaken as the existing finish could have been assessed.
- 3.7 Members will be aware that taking enforcement action is discretionary and not mandatory. Due to the considerable uncertainty that surrounds this case as set out in the report it is not recommended that action is taken. Advice has been taken from the Council's legal advisors and they concur that further action would not be advisable due to lack of evidence.

#### 4. LEGAL IMPLICATIONS

- 4.1 Under Section 38 of The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), the Council may serve a Listed Building Enforcement Notice if Members are satisfied that:
- (a) There has been a breach of Listed Building Control, and
  - (b) It is expedient to issue the Notice having regard to the effect of the works on the character of the building as one of special archaeological or historic interest.
- 4.2 Failure to comply with a Notice if served would result in the Council having the option to prosecute the landowner in the Magistrates Court. However, the interested parties may appeal to the Secretary of State for Communities and Local Government against the issue of the Enforcement Notice if they so wish.

#### 5. RISK MANAGEMENT

RISK	IMPACT	COMMENTS
Time	Low	There is no time limit for taking action against a breach of listed building control.
Viability	Low	There are no viability issues

<b>Finance</b>	<b>High</b>	It is not possible to quantify the costs. There are potential costs from any enforcement appeal and the costs of legal advice on any prosecution.
<b>Profile</b>	<b>Medium</b>	There is one complainant and the Council is not aware of concern from others. The case may however generate interest in the local press.
<b>Equality and Diversity</b>	<b>Low</b>	EIA is not required.

**Background Papers**

Background File Ref: 2015/0015/CMP

**Report Author**

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