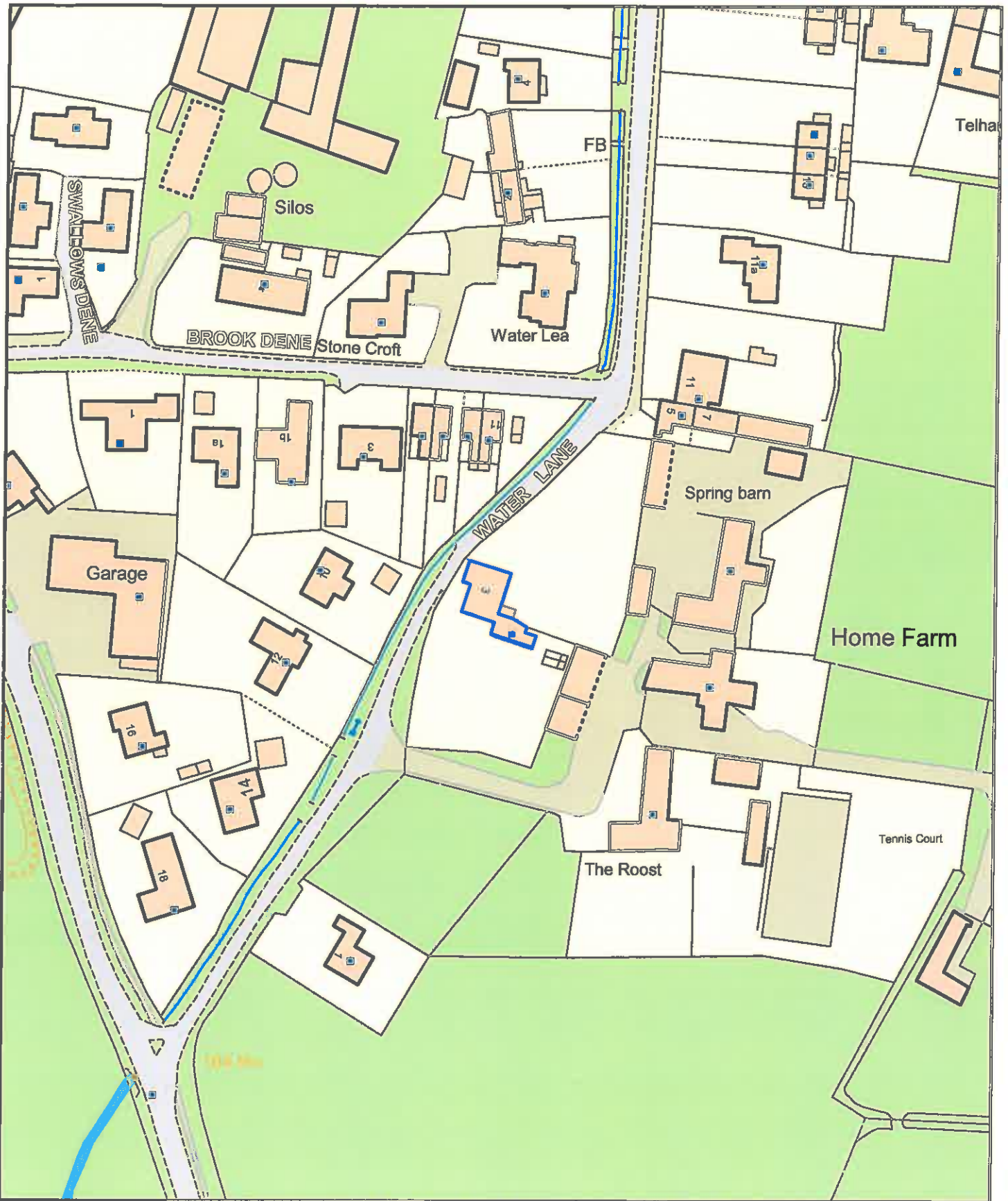


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Rutland County Council

Catmose,
Oakham,
Rutland
LE15 6HP

DEVELOPMENT CONTROL AND LICENSING COMMITTEE

16th June 2015

ENFORCEMENT REPORT

Home Farm, 3 Water Lane, Ashwell, Rutland

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

STRATEGIC AIM:	CREATING A SUSTAINED ENVIRONMENT
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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 surfaces of 3 stone mullions on the north elevation of the property without listed building consent.

2. RECOMMENDATIONS

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

3. DETAILS OF THE REPORT

- 3.1 The property which is within the Ashwell Conservation Area was originally listed in February 1984 with an updated listing completed in October 1996.
- 3.2 Photographs taken in 1983 appear to show that the stone mullions on the north elevation were painted at the time of the original listing. It is alleged that the paint was removed from the all the stone mullions internal and external finishes sometime between 1987 and 1994 as part of listed building consent for the renovation and alterations to the dwelling under reference no 87/0356/9. However, there are no photographs showing the external finishes of the north elevation mullions having been cleaned of paint and the listed building consent does not include in the description of works the removal of paint from the external mullions of the north elevation.
- 3.3 Following a complaint received on 26/2/15, a site visit carried out on 6/3/15 confirmed that the only stone mullion surfaces painted were the external surfaces of the 3 on the north elevation. The current owners confirmed that they had repainted the stone mullions in 2014 from white to the pale green colour that matched the external finish on the timber window frames of the property.
- 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 the works affect its character. It would appear that at the time of listing the mullions were painted but we cannot be certain. If the mullions had been cleaned of paint then consent would have been required for the removal of the paint. We have no record of such consent as the 1987 consent is unclear on this point. The

subsequent painting of these mullions may have needed consent but we cannot be sure as it is now unclear, especially in view of the elapse of time. We cannot be sure if there was a breach and if so who is responsible for it.

- 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 and who was responsible. The only evidence we have of a possible offence is a statement that the stone mullions were cleaned of paint and then painted, it is not clear if and when the mullions were painted and who carried out the work as the current owners have advised that the mullions were already painted when they purchased the property in 2007 and photographs taken at the time indicate that this was the case.
- 3.6 It is therefore one person's word against another and given the lack of evidence the serving of a Listed Building Enforcement Notice to require the current owners to remove the paint from the mullions on the north elevation, 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. It is unfortunate that if the alleged works took place that the complainant did not contact the Council at the time. The elapse of time has added to the uncertainty.
- 3.7 The removal of the paint could damage the stonework unless carefully undertaken. It is not clear if the mullions were cleaned of paint and who repainted them and when.
- 3.8 Members will be aware that taking enforcement action is discretionary and not mandatory. There are powers available to serve a listed building enforcement notice or to initiate a prosecution. 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.

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
Finance	High	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.
Profile	Medium	There is one complainant and the Council is not aware of concern from others. The case may however generate interest in the local press.
Equality and Diversity	Low	EIA is not required.

Background Papers

Background File Ref: 2015/0013/CMP

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