

REPORT TO: CITY DEVELOPMENT COMMITTEE – 22 JUNE 2015

REPORT ON: 28 ROSEANGLE, DUNDEE - COMPULSORY ACQUISITION OF LISTED BUILDING IN NEED OF REPAIR

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 173-2015

1 PURPOSE OF REPORT

1.1 The purpose of this report is to seek authority to promote a Compulsory Purchase Order under Section 42 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in respect of the property at 28 Roseangle, Dundee, DD1 4LY, as reasonable steps have not been taken to properly preserve the Listed Building..

2 RECOMMENDATION

2.1 It is recommended that the Committee remit the Director of Corporate Services to:

- a promote a Compulsory Purchase Order in respect of the property at 28 Roseangle, Dundee, DD1 4LY; and
- b make a "Direction for Minimum Compensation", under section 45 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act.

3 FINANCIAL IMPLICATIONS

3.1 The administration costs of promoting the CPO can be met by the City Development Department Revenue Budget 2015/2016.

4 BACKGROUND

4.1 Reference is made to Article V of the Minute of Meeting of the City Development Committee of 24 November 2014 (Report 413-2014), which approved serving a Repairs Notice on the owner of the property at 28 Roseangle under Section 43 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Notice was served on the 1 December 2014.

4.2 The property is a Category C Listed Building and is located in a prominent location within the West End Lanes Conservation Area. Historic Scotland included the property on the list of protected buildings on the 30 June 1989 and described it as being a 2-storey with basement, 3-bay sandstone villa, ashlar fronted with rubble-built sides and rear, circa 1830s.

4.3 Section 64 - General Duty as Respects Conservation Areas in Exercise of Planning Functions of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states:

- "(1) In the exercise, with respect to any buildings or other land in a Conservation Area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

4.4 The property was last used as a guest house and received Planning Permission for the change of use in 1984. The property was subject to a fire around 1998 and an exemption from non domestic rates was granted on the 30 April 1998. The property has remained derelict since this time.

- 4.5 A pre-application proposal was submitted to redevelop the site for a residential scheme in 2007. This included substantial demolition/façade retention and significant alterations to the property. The owner of the property wrote to the City Council on 21 August 2007 advising of his intention to formally apply for permission to demolish the building and replace it with a modern building. The owner had indicated that the site had attracted little interest and this was a justification for the demolition of the property.
- 4.6 The pre-application response given by Dundee City Council detailed the relevant guidance from Historic Scotland. It also commented that the short time period for marketing (namely 9 weeks) was not appropriate justification and advised that the condition of the building should be reflected in the price of the property. A formal application was not then submitted for this proposal.
- 4.7 A formal application for both Planning Permission and Listed Building Consent was submitted in December 2014 for a change of use to a 21-bedroom hotel, with 2-storey rear extension. Both applications were refused on the 6 March 2015.
- 4.8 The Listed Building Consent (Reference Number 14/00856/LBC) was refused for the following reason:
- the proposed development fails to preserve or enhance the character and appearance of the Category C Listed Building and the proposals would result in a significant impact of the setting of the Listed Building and character of the West End Lanes Conservation Area. The proposals therefore fail to satisfy the requirements of Sections 14 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (as amended) as well as the requirements of Policy 48 'Listed Buildings' and Policy 50 "Development in Conservation Areas" of the Dundee Local Development Plan 2014.
- 4.9 The Planning Permission (Reference Number 14/00854/FULL) was refused as the proposal was contrary to a number of Policies within the Local Development Plan. The application was refused for the following reasons:
- Policy 6 'Visitor Accommodation' of the Dundee Local Development Plan as the site is located outwith the City Centre. There are no material considerations that would justify laying aside the provision of the Development Plan to grant planning permission.
 - Policy 7 "High Quality Design" of the Dundee Local Development Plan because the scale and design of the proposed rear extension would result in an unacceptable visual impact on the character and amenity of the existing listed building and surrounding conservation area. There are no material considerations that would justify laying aside the provision of the Development Plan to grant planning permission.
 - Policy 48 "Listed Building" of the Dundee Local Development Plan as the scale and design of the proposed rear extension would have a significant adverse impact on the character of the listed building. The applicant has also failed to demonstrate that no other more suitable uses could be found that would have a lesser impact on the Listed Building. There are no material considerations that would justify laying aside the provision of the Development Plan to grant planning permission.
 - Policy 50 'Development in Conservation Areas' of the Dundee Local Development Plan as the scale and design of the proposed rear extension would have a significant adverse impact on the character of the West End Lanes Conservation Area. There are no material considerations that would justify laying aside the provision of the Development Plan to grant planning permission.
- 4.10 The fire damage is still evident today and it would appear no substantial repair works have been undertaken to remediate this damage or the affects of extinguishing the fire.

- 4.11 The notice served under Section 43 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that, after a period of not less than 2 months, if it appears that reasonable steps are not being taken for the proper preservation of the Listed Building, the local authority can begin Compulsory Purchase proceedings under Section 42 of the Act.
- 4.12 Since the Repairs Notice was served on 1 December 2014, the owner has not undertaken the necessary repairs to properly preserve the Listed Building and its condition continues to deteriorate as a result of being open to the elements.
- 4.13 The initial fire occurred around 1998 (approximately 17 years ago), the necessary repairs were not undertaken to preserve the property or mitigate the damage caused by the fire at an early stage. No temporary measures have been implemented to stop the deterioration of the property. If it was the owner's intention to restore the Listed Building, measures to prevent further deterioration and remedial works to rectify the fire damage would have been a priority. No measures have been undertaken to preserve the property or make good the damage since it occurred.
- 4.14 It is considered that the length of time the property has been left in an extremely poor condition and open to the elements has meant that the repair costs have substantially increased. The lack of repairs to the property in the view of Dundee City Council is a deliberate attempt to allow the building to fall into disrepair, in order to justify its demolition. The proposals set out in planning application 14/00854/FULL involved a level of enabling development that would not have preserved or enhanced the character or appearance of the listed building.
- 4.15 Due to the lack of works undertaken, it is considered that the promotion of a Compulsory Purchase Order is necessary in order to prevent the Listed Building from further deterioration.
- 4.16 Section 42 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that:
- “(4) Any person having an interest in a building which it is proposed to acquire compulsorily under this section may, within 28 days after the service of the notice required to be served under paragraph 3(b) of Schedule 1 to that Act of 1947, apply to the Sheriff for an order prohibiting further proceedings on the compulsory purchase order.
- (5) If on an application under subsection (4) the Sheriff is satisfied that reasonable steps have been taken for properly preserving the building, he shall make an order accordingly.
- (6) Any person aggrieved by the decision of the Sheriff on an application under subsection (4) may appeal against the decision to the Court of Session, but only on a question of law.”
- 4.17 Under Section 45 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, this allows the Local Authority to make a “Direction for Minimum Compensation”, if the listed building has been deliberately allowed to fall into disrepair. This direction means that all development value is excluded. It would be intended that the promotion of a Compulsory Purchase Order would be made using Section 45 of the above mentioned Act. Section 45 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, states that:
- “(6) Where a planning authority make a direction for minimum compensation, or the Secretary of State includes such a direction in a draft compulsory purchase order prepared by him, any person having an interest in the building may, within 28 days after the service of the notice mentioned in subsection (3), apply to the sheriff for an order that the planning authority's direction for minimum compensation be reversed or, as the case may be, that such a direction be not included in the compulsory purchase order as made by the Secretary of State.
- (7) If the Sheriff is satisfied that the building has not been deliberately allowed to fall into disrepair for the purpose mentioned in subsection (1), he shall make the order applied for.

(8) A person aggrieved by the decision of the sheriff on an application under subsection (6) may appeal against the decision to the Court of Session, but only on a question of law.”

- 4.18 The Compulsory Purchase Order will require to be made and enacted by the full City Council prior to the service of statutory notices.
- 4.19 Section 48 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, states "where a planning authority acquire any building or other land under section 42(1) or 47(1)(a) or (b), they may make such arrangements as to its management, use or disposal as they consider appropriate for the purpose of its preservation."

5 POLICY IMPLICATIONS

- 5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6 CONSULTATIONS

- 6.1 The Chief Executive, the Director of Corporate Services and Head of Democratic and Legal Services have been consulted and are in agreement with the contents of this report.

7 BACKGROUND PAPERS

- 7.1 There are no background papers of relevance to this report.

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