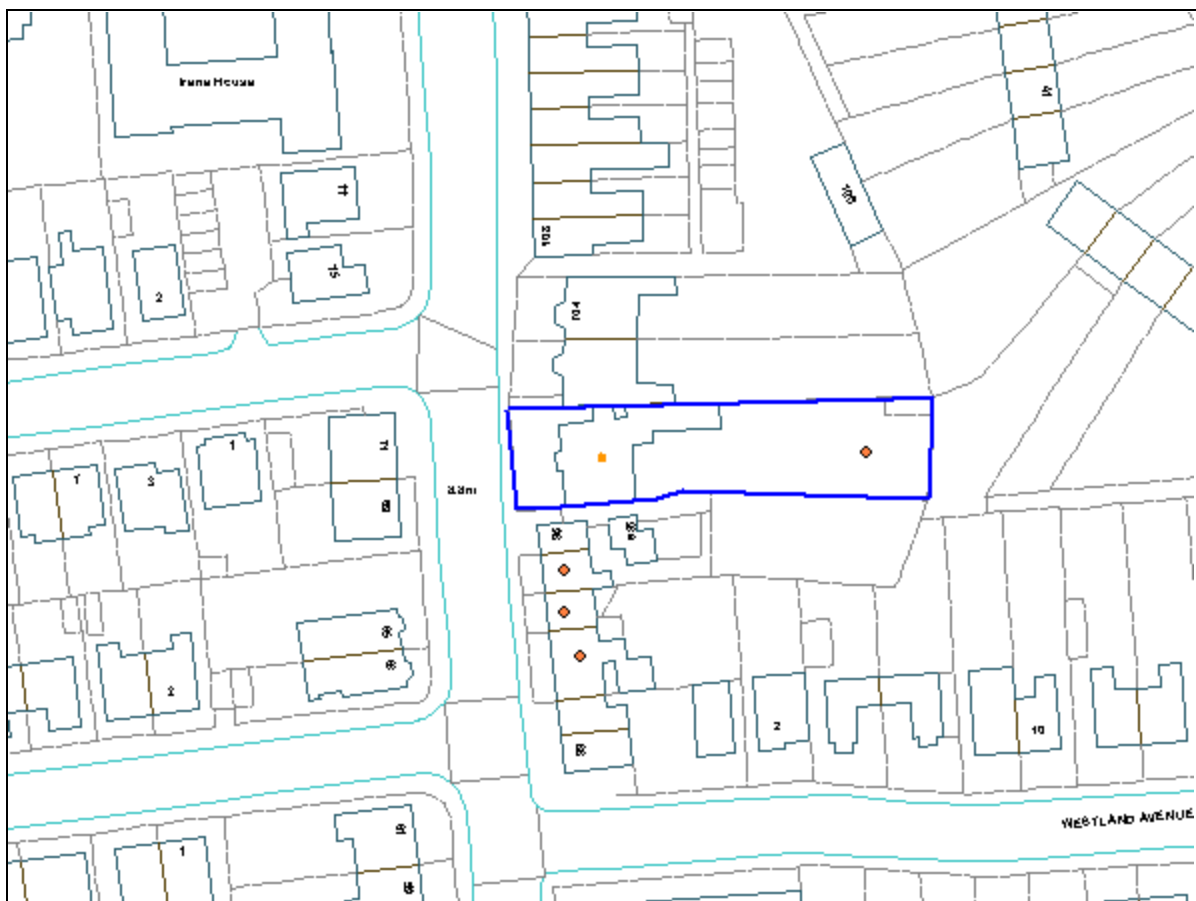


Report by the Director for the Economy

ENFORCEMENT REPORT

The Folly, rear of 100 South Street, Tarring, Worthing

**Land detrimental to the amenity of the area and request for authorisation of
expenditure for surveyors report**



Not to Scale

1. THE SITE AND THE BREACH OF PLANNING CONTROL

100 South Street, Tarring is a two storey Victorian villa, with central entrance portico and symmetrical ground floor cant bays. In 1893 it was the home of Mr W Osbourne Boyes, a solicitor, who built the 'Folly' at the end of his garden to enjoy the open views across fields to the sea.

The folly is a Grade 2 listed building which is described in the National Heritage List as: -

Folly to rear of No 100 GV II Folly. Early C19 heightened mid C19; altered later C19 and C20. Coursed cobblestone with brick dressings; roof material not visible. A single cell, square on plan, of 2 storeys with basement. Brick quoins to angles and openings, brick band between storeys, eaves cornice and embattled parapet with pitched coping. On lower floors the brick is red, with some blue bricks; on upper floor it is paled and this and the slightly differently-laid cobble indicates that the upper storey is of a different build. Entrance elevation: segmental-arched basement opening; above this, cantilevered stone steps rise to doorway which has C20 stable door below inserted soldier-brick arch window on left. Upper floor has a later, wide, 3-light window with header-brick arch and wooden casements with pointed-arched glazing bars. Rear: a pointed-arched window to ground floor with two 4-pane lights and glazing bars in head; upper storey has segmental-arched casement with pointed-arched window to lower storey; wide 3-light window above as front.

The owners of 100 South Street are reclusive and have not engaged with the Council for many years. The property is not maintained, nor any of the grounds and as such the condition of the folly appears to be deteriorating.

Officers have previously taken enforcement action both under the Town and Country Planning (Listed Buildings and Conservations Areas) Act 1990 and Section 215 of the Town and Country Planning Act. Works were carried out in 2008 in default of a Section 215 notice requiring a car to be removed, vegetation cleared and other improvements made to the front elevation. Works were also carried out at this time to remove overgrown vegetation and to secure and make weather tight the folly.

Recently Officers have received renewed complaints regarding the security and appearance of the property and also suggesting that the folly was being accessed by trespassers and was no longer secure or weather tight. West Sussex Police have carried out a welfare check and confirmed that the residents are well.

Site visits to the property gave Officers cause for concern regarding the appearance of the frontage. The owner occupiers were contacted in this regard and a response was received from a representative who appears to be a medical contact stating that after the front of the property was cleared some years ago, the owners had experienced many acts of vandalism including stone throwing and attempted break ins. Since the plants have been reinstated and grown high enough this behaviour has been thwarted leaving

the owners in much needed peace. The letter states that the male occupier has many health problems including low capacity lungs, heart problems and total kidney failure amongst other things. The letter concludes that if we feel it necessary to take action again then this will impact on his health and financial implications of repairing damage.

Photographs of the current appearance of the frontage will be available at the meeting. The folly is accessible from the rear gardens of adjoining properties which has allowed for a ground level inspection of the folly to be carried out. Officers are concerned that the interior of the structure may not be safe – the wooden floors and ceilings/roof are wet and rotting, cracks have also appeared in the brickwork and merlons have been lost from the rooftop. It may be that scaffold is required therefore to access certain parts of the building. Photographs describing the condition of the folly will also be available at the meeting.

2. COMMENTS OF THE PROPERTY OWNER

Your Officers have written to the owners several times and tried to establish communication with no success other than the response from the representative as summarised above.

All interested parties will have been made aware of the presentation of this report and given the opportunity to make representations to the Committee.

3. PLANNING ASSESSMENT

The Listed Folly

The preservation of this listed folly is considered to be important, it is the only listed folly in Worthing, its design and materials are of significant regard and it is clear that its condition is deteriorating. Your Officers are of the opinion that if this folly is to be preserved, works need to be carried out, whether by the Owners or the Council, to ensure its preservation.

In order to establish what works are necessary your Officers require a report from a qualified surveyor. Whilst Officers are clearly able to identify some of the areas of the building that require improvement, they are not qualified to structurally assess the fabric of the building. The expertise does not exist within the Planning Department to carry out a survey of this building and to make full recommendations as to what works are required and for this reason therefore Officers are seeking the agreement of the Committee to employ external specialists to undertake a survey of the folly and assist in the formulation of a schedule of works.

As with all enforcement cases, and in line with the enforcement concordat, proceedings will begin with a request that the owner carry out the required works voluntarily. Should this request not be fulfilled enforcement powers are available under Section 54 of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) to serve an Urgent Works Notice. This power enables

local authorities to execute any works which appear to them to be urgently necessary for the preservation of a listed building in their area. If the building is occupied, the works may be carried out only to those parts not in use (i.e. the folly). The owner must be given a minimum of seven days' written notice of the intention to carry out works, and the notice must describe the proposed works to be carried out (hence the need to be informed by a survey). Section 55 of the Act allows the costs of the works to be recovered from the owner by the authority who carried out the works. The owner must be served a notice requiring him to pay the expenses of the works. Within 28 days of the service of the notice, the owner may appeal to the Secretary of State by making representations, including that the works are unnecessary or that the amount specified in the notice is unreasonable.

Officers are aware that there are already financial charges, including for the previous works in default registered against this property by Worthing Borough Council and Southern Water. The council tax charge on the property currently stands in excess of £6000. Officers have requested information regarding the charges from Southern Water and any information provided will be reported in a verbal update at the meeting. It may only be possible to recoup further costs should there be sufficient equity in the property.

Alternatively Section 48 of the Act enables local authorities to serve a Repairs Notice on the owner of a listed building specifying those works it considers reasonably necessary for the proper preservation of the building.

If, after a period of not less than two months, it appears that reasonable steps are not being taken for the proper preservation of the listed building, the authority can begin compulsory acquisition proceedings under section 47. It is important to note that serving a Repairs Notice under section 48 does not commit the authority to proceed to compulsory acquisition action under section 47 and the authority can withdraw the Repairs Notice at any time. If the notice is withdrawn, the authority must give notice to the owner of the withdrawal. If compulsory acquisition took place the authority would have to pay compensation.

Access to the folly has historically been made possible from a neighbour's garden and your officers hope that this option would be available again. It has also been suggested by one of the surveyors that some clearance has been undertaken by the neighbouring property on South Street and this may provide sufficient access. It is important to note however that the ability to carry out the survey may be dependent on the goodwill of the neighbours as it is anticipated that access through the property will be refused.

Four quotes have been received to provide such a report at a cost ranging from £430 to £1700 plus VAT. These are appended to this report.

The quotes have all been reviewed by the Design and Conservation Architect who states "my recommendation would be to accept the quote from RBC Surveyors. This quote covers a building survey report, and a schedule of works for remedial works as requested. The works would be as set out in the RICS

standard terms of engagement. The cost at £599 + VAT appears to be reasonable. As we know access is limited and any survey is likely to be visual from ground level”.

Planning Service’s miscellaneous expenditure budget can cover this expenditure. Should the owners choose to do the works voluntarily, or should a notice be served which the owners comply with, it is likely that the expenses incurred in the provision of this report will not be recoverable. Should a notice be served that is not complied with and the Council ends up carrying out any works in default of such a notice this sum could be recovered.

English Heritage do offer grants to Local Authorities for up to 80% of the cost of works such as these. Whilst your officers are unaware as to the likelihood of any such application being granted, or even whether there are currently funds available, this avenue will be investigated.

The appearance of the frontage

Officers are concerned with regard to the current appearance of the frontage but are also mindful of the representation that has been received on behalf of the owner/occupiers. Powers are available under Section 215 of the Town and Country Planning Act 1990 to require the proper maintenance of land that is detrimental to the amenity of an area, indeed this power has been exercised previously at this property. However officers do not consider that the amenity of a part of their area, or of an adjoining area, is sufficiently adversely affected by the condition of this land at this time to warrant the serving of a Section 215 Notice.

4. COMMENTS OF THE DIRECTOR FOR DIGITAL AND RESOURCES

Section 88(2) Planning (Listed Building and Conservation Areas) Act 1990 (the Act) provides that a local planning authority may authorise a person, in writing, at any reasonable time enter land for the purpose of surveying it to ascertain whether any building on the land is being maintained in a proper state of repair; and in connection with a proposal by the authority to make, issue or serve a notice pursuant to Section 54 of the Act (urgent works) or Section 48 (repairs notice); and thereafter to ascertain whether the notice served has been complied with.

Should admission to the land be refused under section 88, a warrant to enter the land may be obtained from the Magistrates’ Court, pursuant to section 88A, which shall be exercised within one month from the date of issue and at a reasonable hour, unless the case is one of urgency.

Section 88B of the Act provides 24 hours’ notice must be given to the occupier of the intended right of entry under Section 88 or 88A.

Should works be carried out by the authority as empowered by the Act, and expenses recovered in accordance with the Act, then the authority shall be

entitled to recover the costs of the surveyor's fees in accordance with Section 36 Local Government Act 1974.

Section 215 Town and Country Planning Act 1990 provides that if it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section.

The Contract Standing Orders, 8.4.2 provide for contracts less than £5000, formal competitive quotations are not needed, though it is good practice to obtain at least two quotations before a formal purchase order is issued. Value for money must always be considered.

5. OTHER IMPLICATIONS

There are no significant direct race relations, equal opportunity, environmental or community safety implications arising in this report.

6. RECOMMENDATION

(i) THAT THE HEAD OF ECONOMIC GROWTH BE AUTHORISED TO SPEND IN THE REGION OF £600 PLUS VAT (FROM THE PLANNING MISCELLANEOUS EXPENDITURE BUDGET) TO OBTAIN A DETAILED REPORT ON THE CONDITION OF THE BUILDING AND WORKS REQUIRED FOR ITS REPARATION.

(ii) THAT THE CONDITION AND APPEARANCE OF THE FRONTAGE OF THE PROPERTY IS MONITORED AND THAT ACTION IS TAKEN UNDER SECTION 215 SHOULD THE AMENITY OF A PART OF THE LOCAL AUTHORITY'S AREA, OR ADJOINING AREA, BECOME ADVERSELY AFFECTED BY THE CONDITION OF THE LAND DUE TO THE FURTHER DETERIORATION OF THE LAND.

Schedule of other matters

1.0 Council Priority

1.1 To support and contribute to the health, safety and well-being of the area

2.0 Specific Action Plans

2.1 Matter considered and no issues identified.

3.0 Sustainability Issues

3.1 The location at this level in a flood zone is unsustainable.

4.0 Equality Issues

4.1 Matter considered and no issues identified.

5.0 Community Safety Issues (Section 17)

5.1 None in this context.

6.0 Human Rights Issues

6.1 Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns non-interference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those affected by proposed developments and the relevant considerations which may justify interference with human rights have been considered in the planning assessment.

7.0 Reputation

7.1 Decisions are required to be made in accordance with the Town & Country Planning Act 1990 and associated legislation and subordinate legislation taking into account Government policy and guidance (and see 6.1 above and 14.1 below).

8.0 Consultations

8.1 As referred to in the above report.

9.0 Risk Assessment

9.1 As referred to in the above report.

10.0 Health & Safety Issues

10.1 As referred to in the above report.

11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership Working

12.1 Matter considered and no issues identified.

13.0 Legal

13.1 Powers and duties contained in the Town and Country Planning Act 1990 (as amended) and associated legislation and statutory instruments.

14.0 Financial implications

14.1 Decisions made which cannot be substantiated or which are otherwise unreasonable having regard to valid planning considerations can result in an award of costs against the Council if the land owner is aggrieved and lodges an appeal. Decisions made which fail to take into account relevant planning considerations or which are partly based on irrelevant considerations can be subject to judicial review in the High Court with resultant costs implications.