

CARLISLE CITY COUNCIL

Report to:-

Members of the Development Control Committee

Date of Meeting:-

21 April 2006

Agenda Item No:-

Public	Operational	Delegated: Yes
Accompanying Comments and Statements		
Environmental Impact Statement:	No	No
Corporate Management Team Comments:	No	No
Financial Comments:	No	No
Legal Comments:	No	No
Personnel Comments:	No	No
Impact on Customers:	No	No

Title:-

**UNAUTHORISED DEVELOPMENT AT HOPE COTTAGE,
HAYTON**

Report of:-

Director of Development Services

Report reference:-

DS.17/06

Summary:-

The report refers to the current planning situation at Hope Cottage, Hayton. Members are asked to note the unauthorised development that has taken place and to form a view as to whether it is expedient to pursue formal enforcement action.

Recommendation:-

That Members note the contents of this report and resolve that it is not expedient to pursue any formal enforcement action.

Catherine Elliot

Director of Development Services

Contact Officer:

Richard Maunsell

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Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: Planning Policy Guidance Note 18 and Circular 10/97.

1.0 Introduction

- 1.1 Hope Cottage is a single storey dwellinghouse situated within the centre of Hayton. Planning permission was granted for the demolition of the existing dwelling and construction of a replacement dwelling on 30 October 2001 under the Council's Scheme of Delegation.
- 1.2 A complaint was received by the Council in June 2005 from the occupier of the adjacent property, Millbrook that referred to surface water running from Hope Cottage onto the complainant's property and causing damage to a newly erected fence.
- 1.3 Upon visiting the site on 8 June 2005 to investigate this complaint, it was noted that extensive works had been undertaken to the rear curtilage of the property to form terraced areas (illustrated by the attached photographs-Appendix 1). However, it not appear that there was significant surface water on the complainant's property and notwithstanding this, this issue is considered to be a civil matters between the two parties involved.
- 1.4 The occupier of Hope Cottage was contacted and advised that planning permission was required for the works. The terracing did not form part of the original planning application and in itself, constitutes an engineering operation.
- 1.5 Following intervention by the Council's Enforcement Officers, an application was received on 20 October 2005. However, this application was invalid and the applicant was requested to submit required additional information to enable it to be considered.
- 1.6 The applicant was advised that if the necessary information to validate the application was not received, the matter would be referred to Members of the Development Control Committee. The applicant responded by claiming that the details had been submitted in the post some time ago; however, there is no record of receipt.

2.0 Current Situation

- 2.1 Procedurally, the Council has entered into negotiations with the applicant and invited the submission of a retrospective planning application. Despite several requests and a reasonable time period to comply, the planning application that was submitted in October 2005 remains invalid. The next stage is to consider whether enforcement action is appropriate
- 2.2 Formal advice is provided to Local Planning Authorities (LPAs) by Central Government in the form of Planning Policy Guidance Note 18 (Enforcing Planning Control). Local Planning Authorities have a general discretion to take enforcement action, where they regard it as expedient. In particular, paragraph 5 (3) states that:
- "in considering any enforcement action, the decisive issue for the LPA should be whether the breach of planning control would unacceptably affect public amenity or the existing use of the land and buildings meriting protection in the public interest."*
- 2.3 Furthermore, paragraph 2.2 of Circular 10/97 (Enforcing Planning Control) states that:
- "an enforcement notice should only be issued where the Local Planning Authority are satisfied that there has been a breach of planning control and it is expedient to issue a notice, having regard to the provisions of the development plan and to any other material considerations."*
- 2.4 The property is located adjacent to other residential properties and is within the village. The rear curtilage extends to the north where it slopes steeply down to a beck at the bottom. The land then rises on the opposite side of the beck to more residential properties (illustrated by the attached site location plan- Appendix 2).
- 2.5 A timber fence, approximately 1.8 metres in height, on the east elevation and a hedge on the west elevation serve to screen the property. There is a public highway approximately 45 metres to the west of the property. In terms of the public vantage points from where the development is visible, these are strictly limited, although the terracing is apparent from other residential properties.

- 2.6 LPAs have a general discretion to take enforcement action when they regard it as expedient. Furthermore, paragraph 6 of PPG18 states:

"In assessing the need for enforcement action, LPAs should bear in mind that it is not an offence to carry out development without first obtaining planning permission."

- 2.7 The advice continues in paragraph 7 by stating:

"While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to regularise development which is acceptable on its planning merits, but for which permission has not been sought."

- 2.8 LPAs are also reminded in paragraph 7 that:

"...it will generally be regarded as "unreasonable" for the LPA to issue an enforcement notice, solely to remedy the absence of a valid planning permission, if it is concluded, as an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of control alleged in the enforcement notice. Accordingly, LPAs who issue a notice in these circumstances will remain at risk of an award against them of the appellant's costs in the enforcement appeal."

3.0 Conclusion

- 3.1 A single complaint has been received from the occupier of the neighbouring property that referred to drainage issues. Members should note that no other complaints have been received, including the Parish Council.
- 3.2 The applicant was contacted and advised that planning permission was required for the works. A retrospective application was invited and in part, was received. However, despite numerous attempts to remedy the situation, the application remains invalid.
- 3.3 Visibility of the site is relatively limited, with the exception of those properties that are immediately adjacent to the site.

- 3.4 However, taking into account the planning advice issued by Government with regard to enforcement action, it is not considered that the development adversely affects public amenity to such a degree as to warrant the Council pursuing regulatory action. Furthermore, enforcement procedures should not be instigated to simply "regularise" a planning situation and in this instance, it is not expedient for the Local Planning Authority to pursue any formal enforcement action in relation to the unauthorised works.
- 3.5 It is recognised that planning applications are subject to statutory consultation and notification to the occupiers of any adjacent properties. This would also be the case should the application become valid in this instance.
- 3.6 It is the view of Officers, however, that based upon its planning merits and in consideration against the relevant current planning policies, the development does not result in a sufficient degree of harm to the character or appearance of the area and does not adversely affect the amenity of the occupiers of any neighbouring properties as to warrant a refusal of any such application. It is therefore considered that any planning application would be recommended for approval.
- 4.0 Recommendation**
- 4.1 That Members note the contents of this report and resolve that it is not expedient to pursue any formal enforcement action.

Catherine Elliot
Director of Development Services

Contact Officer: Richard Maunsell

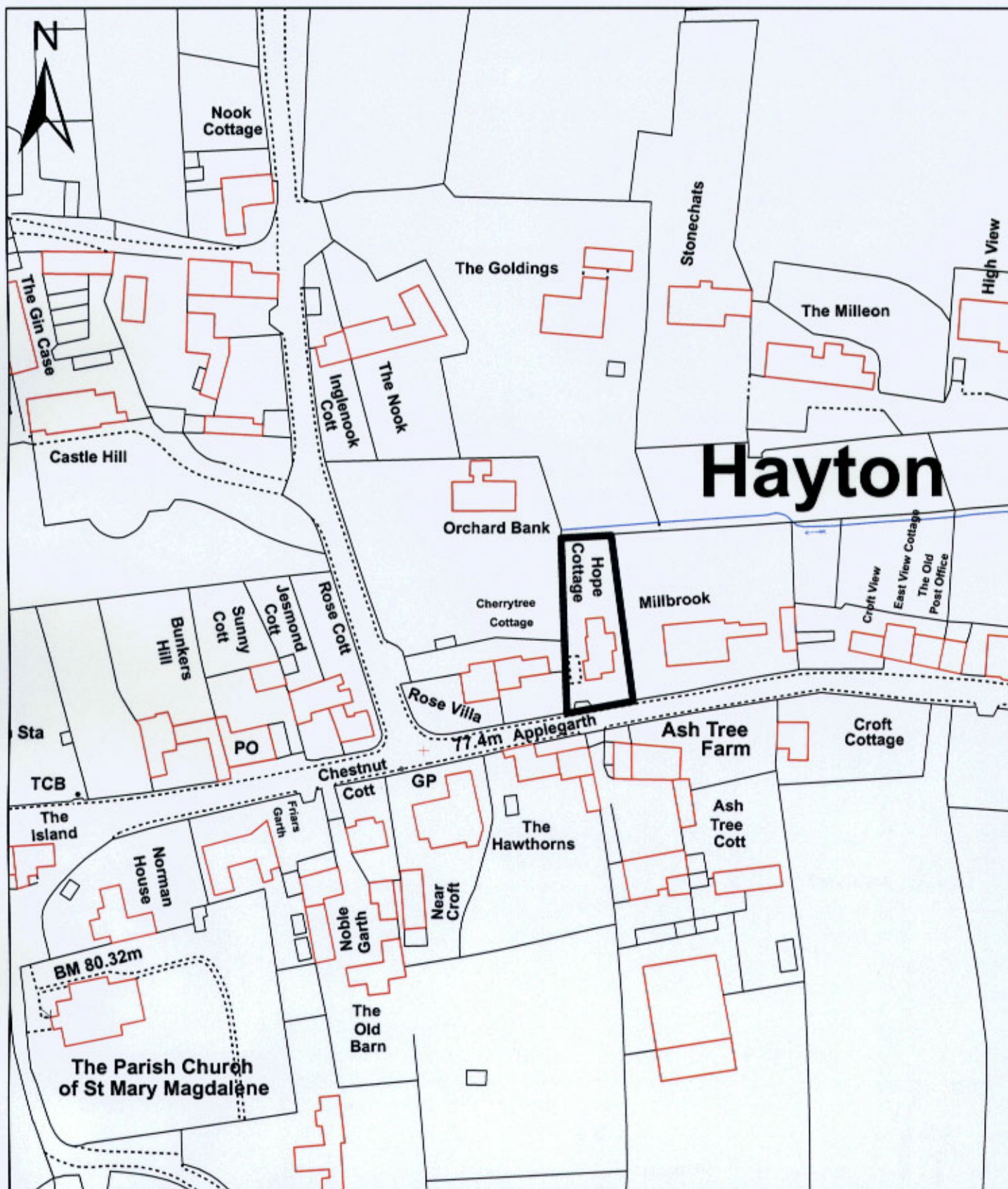
Ext: 7174

Photographs





Site Location Plan



Hope Cottage, Hayton

Scale: 1:1,250 Date: 27/02/2006

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