**Carlisle City Council**

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| **Report to:-** | **Development Control Committee** | | | |  | |  |
| **Date of Meeting:-** | 12th November 2010 | | | **Agenda Item No:- ED 32/10** | |  | |
| Public | | Operational | Delegated: No | | | | | |
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| Accompanying Comments and Statements | | Required | Included |
| Environmental Impact Statement: | | No | No |
| Corporate Management Team Comments: | | No | No |
| Financial Comments: | | No | No |
| Legal Comments: | | No | No |
| Personnel Comments: | | No | No |
|  | |  |  |
| Title:- | **Alleged Breach of Planning Conditions at The Lowther Arms Public House, Cumwhinton, Carlisle** | | |
| Report of:- | **Assistant Director (Economic Development)** | | |
| Report reference:- | ED 32 /10 | | |

Summary:-

This report has been prepared in response to the concerns of the occupier of Ivy Cottage regarding the need for the height of the shrubbery to be reduced, the licensee to repaint/reconfigure the spaces in the car park, and provide a planting bed in accordance with the plan approved in 1997. The report also addresses the question of whether it would be expedient to take Enforcement Action.

**Recommendation:-**

It is recommended that no further action is taken in regard these matters.

Assistant Director (Economic Development)

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| **Contact Officer:** | Martin Tickner | **Ext:** | 7175 |

To the Chairman and Members of the ED 32 /10

Development Control Committee

1. **Introduction**
   1. This report relates to The Lowther Arms Public House at Cumwhinton and more specifically to planning application 97/0781 approved on 31st October 1997, although subsequent permissions have been granted in 2003, 2004 and 2009 (under application numbers 03/0747, 04/0597 and 09/0222) for the erection of a single storey extension, and a conservatory/dining area. Members may recollect that this matter, and the associated alleged effects on the living conditions of the occupier of Ivy Cottage, has previously been the subject of complaints to Ward Councillors, and letters and personal representation to the Council’s Development Control Committee. What follows is a brief resume/background information on the matter, a description of the current situation, and a conclusion.

**2.0 Background Information**

2.1 Under application 97/0781 permission was given to erect a two storey extension to the public house to provide a dining area, new kitchen, internal cellar, toilets and re-configured bar on the ground floor with additional residential accommodation for the licensee above.

2.2 At the time of processing application 97/0781 no objections were received from Wetheral Parish Council, The Environment Agency and Cumbria County Council Highway Authority. The City Council’s Environmental Services Division raised a concern over the method of extraction. One objection was received from a neighbouring resident at Ivy Cottage (Mrs Ullyart) who alleged that any intensity of use would inevitably lead to an increase in exhaust fumes entering her property at window height from vehicles being parking adjacent to the boundary fence. It was suggested that the applicant/licensee provide a screen to mitigate the impact of any intensification of use of the existing car park. This is in the context that Ivy Cottage was sold by Jennings Brewery together with “Property Rights” to the benefit and protection of Ivy Cottage from the activities of The Lowther Arms and includes protection of light and air; enjoyment; and protection from noise and pollution.

2.3 The subsequently approved site plan showed the creation of a raised planting bed to act as a buffer parallel to the north-west of the car park. The permission was subject to a number of conditions in particular conditions 2 and 4. Condition 2 states: **‘The car parking bays shall be demarcated with painted lines in accordance with the approved car parking layout on drawing no. 782/5 before the pub extension comes into use’**; and condition 4 **‘No development shall take place until details of the car park landscaping scheme have been submitted to and approved by the local planning authority’.**

To the Chairman and Members of the ED 32/10

Development Control Committee

2.4 Following the granting of permission, solicitors acting on behalf of the occupier of Ivy Cottage queried whether the permission had been approved without giving sufficient consideration of the concerns. By way of a response, it was also evident that the existence of the neighbour’s Property Rights were considered during the assessment of the planning application; planning conditions had been imposed to reasonably address any problems; the proposal did not involve an increase in the size of the car park which patrons had enjoyed utilising since 1973; and the car park would be of sufficient size to cope with any possible increase in patronage, subject to the formal demarcation of spaces with painted lines.

2.5 A landscaping scheme to the north west of the car park as required by condition 4 of the planning permission was submitted and approved on 16th March 1998.

2.6 Correspondence between Mrs Ullyart, her solicitor and the City Council continued throughout 1998 and 1999 regarding the planting species, the heights of the species and the planting bed itself. The Council’s Enforcement Officer also contacted the licensee on a number of occasions to secure completion of the planting bed and car parking area.

2.7 In November 1999 the occupier of Ivy Cottage lodged a Corporate Complaint on the basis that although the applicant had provided a planting bed, a concrete edge and bollard the planting bed was not the size as shown on the approved plan and therefore the City Council had failed to enforce a planning condition. In response to this Complaint the then Head of Planning Services explained that the permission granted did not create or extend the car park that has existed since 1973; Ivy Cottage enjoys the same amenities that have existed since 1973; and if anything Council staff, in an effort to resolve the occupiers own personal concerns (as opposed to concerns that affect the wider public interest) had endeavoured to provide Ivy Cottage with an additional buffer. This is in the context that had the licensee not provided the flower bed, it was considered that this would not have been grounds to refuse permission. It was concluded that there was no justification in the complaint.

2.8 In November 2003 Mrs Ullyart complained to the Local Government Ombudsman on the basis that the Council had failed to enforce a planning condition relating to the size of a flower bed in the car park. The Investigator, acting on behalf of the Ombudsman, concluded that the City Council had adequately investigated the problem, and its decision not to take enforcement action was not so unreasonable as to be maladministration. The Ombudsman recorded a decision of **‘No or insufficient evidence of maladministration’.**

2.9 Further complaints were received from Mrs Ullyart in August 2004, 2006 and 2009 alleging that the planted bed was not of the correct size and that noise, vibration and fumes from vehicles parking against the fence affected the neighbour’s daily life.

2.10 It appears that in October and November 2009 the occupier of Ivy Cottage contacted the licensee asking that the shrubbery alongside her property be pruned to a height of 2 metres as set out in the approved landscaping scheme.

**To the Chairman and Members of the ED. 32/10**

**Development Control Committee**

1. **Current Situation**
   1. In June 2010 Councillor Earp asked the Council’s Enforcement Officer to investigate complaints relating to The Lowther Arms PH. A meeting subsequently took place with Councillor Earp, the occupier of Ivy Cottage and the Enforcement Officer. During the aforementioned meeting it became apparent that the current concerns related to the height of the shrubbery and the neighbour’s desire for the licensee to repaint the parking spaces and provide the planting bed in accordance with the plan approved in 1997.
   2. The Council’s Enforcement Officer has discussed these matters with the licensee as a result of which all of the shrubbery and trees in the main planting bed have been reduced to a height of no more than 2 metres. The licensee has verbally confirmed his intention to also prune a second tree in a planted area at the entrance to the car park when it is no longer in flower. The licensee also explained that the changes to the car park layout arose because of the two following reasons.
2. The original layout plan submitted to accompany planning application 97/0781 shows 16 parking spaces, plus a disabled space and an area for cycles. However this layout plan had not taken into consideration the area directly in front of the restaurant area which has been paved for disabled access and is the main pedestrian route from the car park to the entrance door.
3. As a result, the required disabled person’s parking space has been re-sited but in the process led to a reduction in the number of parking spaces along that boundary from 11 to 9 including a disabled space. On the opposite boundary the number of spaces is 5 although two spaces closest to the entrance have been lost due to a much larger planting bed but one of those spaces has been regained adjacent to the planting area.
   1. The change in the number of parking spaces is also hand in hand with changes in the form of the planting bed. The approved planting bed was originally shown as an oblong shape measuring 2.8m wide x 7.2m in length. As implemented, the planting bed is the approved length but the width is reduced from 2.8m to 0.9m for a distance of 3.5m.

3.4 The licensee is not amenable to the notion of repainting the parking spaces in the car park and modifying the form of the planting bed because a total of three spaces have already been lost due to inaccuracy in the approved layout plan which showed the disabled space to be on the paved area. If the planting bed is extended to the size shown on the approved drawing, vehicles on the opposite side of the car park will have difficulty reversing safely due to restricted space and thus effectively lead to the non use of two more spaces.

**To the Chairman and Members of the ED. 32/10**

**Development Control Committee**

1. **Assessment**

4.1 Clearly there is discretion to local authorities in deciding when it is expedient to take Enforcement Action. Paragraph 5, in sub-sections (3) and (4) of PPG18 “Enforcing Planning Control” explains that in considering any enforcement action the decisive issue for a local planning authority should be whether the breach of control would unacceptably affect public amenity; and that enforcement action should be commensurate with the breach of planning control to which it relates, e.g. it would be inappropriate to take formal action against a trivial or technical breach which causes no harm to amenity in the locality of the site.

4.2 When assessing the situation it is evident that the issue concerning the height of the planted shrubbery and trees has been resolved with the licensee agreeing to also reduce the height of a tree in a separate planting bed at the entrance to the car park.

4.3 The issue concerning the size of the flower bed/configuration of the car park has already been the subject of a Corporate Complaint in 1999 and an investigation by the Ombudsman in 2003. It is considered that the circumstances have not fundamentally altered over the intervening period. Members should also be aware that under Section 171B(3) of the Planning and Compensation Act 1991no enforcement action can be taken against a breach of a planning condition after the end of the period of ten years from the date on which the breach first occurred.

**5.0 Recommendation**

5.1 The issue concerning the height of the planted shrubbery and trees has been resolved with the licensee agreeing to also reduce the height of a tree in a separate planting bed at the entrance to the car park.

5.2 It is appreciated that Mrs Ullyatt may disagree with the decision not to undertake enforcement action concerning the revised planting bed. However the Council’s decision has to be viewed in the context that the permission in 1997 did not create or extend the car park that has existed since 1973; and had the licensee not provided the flower bed, it was considered that this would not have been grounds to refuse permission. In effect, it was determined that there was no significant planning objection to the breach of control. In 2004, the Ombudsman concluded that the Council had given proper consideration to its decision not to take enforcement action. A disproportionate amount of time already appears to have been spent dealing with a relatively minor breach that does not unacceptably affect public amenity. Any attempt to revisit and seek a reversal of the previous decision now would appear to run counter to Section 171B (3) of the Planning and Compensation Act 1991.

5.3 It is recommended that no further action is taken with regard to these matters.