

Report to the Cabinet

Report reference: C/133/2006-7.

Date of meeting: 16 April 2007.



**Epping Forest
District Council**

Portfolio: Finance Performance Management and Corporate Support Services.

Subject: Boundary wall with Numbers 4,6 and 8 Buttercross Lane Epping.

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Democratic Services Officer: Gary Woodhall (01992 – 564470).

Recommendations:

(1) That, in order to enable remedial works to be carried out to the boundary wall between the Council's land and numbers 4 and 6 Buttercross Lane Epping, a revenue District Development Fund supplementary estimate in the sum of £15,000 be recommended to the Council for approval;

(2) That, if necessary, the Head of Legal, Administration and Estates be authorised to serve appropriate notices under The Party Wall Act 1996 to the residents of numbers 4 and 6 Buttercross Lane Epping; and

Decision Required:

(1) To decide whether to reclaim proportionate costs of the remedial works, estimated to be in the region of £5,400, from the residents of numbers 4 and 6 Buttercross Lane or whether to recommend to Council that it be responsible for the total cost of the remedial works.

Background:

1. There is a boundary wall, approximately 55 metres in length, between the Newt Pond and car park of the Civic Offices Site and the rear gardens of numbers 4, 6 and 8 Buttercross Lane Epping.

2. The wall is of 9" solid brick construction. The section of wall separating the rear gardens of numbers 4 and 6 Buttercross Lane is estimated to be approximately 100 years old. The section behind number 8 Buttercross lane was built in the middle to late 1980's when the Civic Offices car park was constructed.

3. The older section of wall has at some point been buttressed at several points along its length to provide extra support. It is not clear when this was done.

4. The ground level along the boundary averages about 0.5 metre lower on the Council side so the wall also acts as a retaining wall for the rear gardens of the properties in question.

5. During the gale force winds in January 2007 a section of the wall behind number 4 Buttercross lane collapsed into the Newt Pond area. The immediate areas of the wall at each side of the breach are dangerously unstable and could collapse at any time.

6. A thorough as possible survey by technical officers of the Council of the entire length of the older section of wall has established that remedial works are required to stabilize it, strengthen it and make it safe.

7. For ease of description a plan is attached showing the wall divided into sections

Proposed Works:

8. Section A-B (15 metres in length)

This section of the wall is relatively sound with a little movement when pressure is applied. Three brick buttresses constructed at equidistant intervals along the Council's side of the wall would add greater stability to this section.

9. Section B-C (7metres in length)

This section of wall is dangerously unstable and requires demolishing and rebuilding. It is proposed to utilise as many of the existing bricks as possible together other reclaimed bricks chosen to give the best possible match.

10. Section C-D (12 metres in length)

This section of wall although leaning in places could be stabilized by constructing 3 additional brick buttresses along its length.

11. An alternative to the proposals in 9 and 10 above is to demolish the longer section B-D and completely rebuild, again utilising as many of the existing bricks as possible together other reclaimed bricks chosen to give the best possible match.

12. Whichever option is chosen there will also be a need to clear all the existing foliage from the wall and create a working space of approximately 1 metre wide before any remedial works can be carried out. This clearance work would be carried out under the supervision of the Country side Manager either by his staff or the Parks section.

Cost of Works:

13 Option 1

To carry out the work described in paragraphs 8 (Section A-B), 9 (Sections B-C) and 10 (sections C-D) are estimated at £15,000. This figure includes the site clearance costs and a contingency against any unforeseen problems once works start.

14 Option 2

To carry out the work described in paragraphs 8 (Section A-B) and 11 (Section B-D) are estimated £26,000 again including site clearance costs and a contingency sum.

15. Although option 1 is the preferred course of action both in terms of cost and the least disruption to residents a cautionary note must be made that there is a possibility that the buttressing works, which will involve digging out foundations for the new buttresses, could cause further collapses to occur. If this happens additional costs would be incurred and in a worst case scenario there may not be a choice other than to implement option (2) above.

16. All the figures quoted are estimated costs for budgetary purposes. Competitive quotations for the remedial work would be sought and the Country Care section or Parks section would undertake the site clearance works.

17. There is no budget provision for the cost of these remedial works and therefore Cabinet is asked to recommend approval of supplementary District Development Fund expenditure in the amount of £15,000.

Legal Position:

18. The Council's deeds and those of the owners are silent as to responsibility for

maintenance and there is no indication on the land as to ownership of the wall. In these circumstances it could be considered to be a party wall.

19. If the Council cannot reach mutual agreement with the residents of the affected properties about the extent of works to be carried out or the costs involved and how they are to be apportioned, the provisions of The Party Wall etc Act 1996 would apply.

20. The Act allows the Council to make good, repair, or demolish and rebuild, a party fence or wall in a case where such work is necessary on account of defect or want or repair of the structure or wall.

21. Before the Council can undertake any work it will be necessary to serve a notice on the owners of the properties concerned under the Act. The owners have the right to object or apply for a surveyor to be instructed and agreement reached as to the works to be carried out.

22. Where work is carried out and the Council has complied with the Act, in this type of circumstance the expenses shall be defrayed by both the Council and the adjoining owners in such proportion as has regard to:

(a) the use which the owners respectively make or may make of the structure or wall concerned; and

(b) responsibility for the defect or want of repair concerned, if more than one owner makes use of the structure or wall concerned.

23. As the Council would make use of the whole stretch of the wall and the other parties only have responsibility for a proportion, the Council is likely to be responsible for half the cost of the work.

24. Proportionate costs could be reclaimed in one of several ways:

- a sundry debtor account issued to each of the affected residents for the full amount due on completion of the works;
- reach an agreement with the affected residents for the amounts involved to be paid in instalments over a period of time; or
- register the amounts due to the Council as a charge on the affected land to be discharged at a future point in time when the property ownership changes.

25. If an independent surveyor has to be instructed then there will be additional costs, which have not been identified at this time.

26. Cabinet is asked to consider whether it would wish to seek to reclaim proportionate costs of the remedial works from the residents affected and if so by which option or decide that the Council should be responsible for the total cost of the works.

Consultation with the affected residents:

27. The residents at all three addresses have been consulted about this problem and have granted the Council access to survey the wall from both sides. The survey revealed that the residents at No. 8 were not affected, as their boundary wall is part of the newer and sound section.

28. Whilst recognising that remedial works need to be carried out all would prefer to see the character of the existing wall preserved and as much of the existing wall retained as possible. Where it is necessary to demolish and rebuild the residents would like to see the existing bricks re used as far as possible.

29. The resident of number 6 Buttercross Lane is particularly concerned about the amount of damage and disruption that would be caused to her rear garden if the whole wall

had to be demolished and rebuilt.

30 On the question of costs, the residents of nos. 4 and 6 Buttercross lane have been given an informal estimate of their likely proportion of costs, should the Council decide to reclaim a proportion of the overall costs.

31. The resident at no 4 particularly has expressed concern at the amount involved as his would be the largest proportion. Both residents have however indicated informally that if at all possible they would hope a mutual agreement could be reached.

Insurance:

32. It may be possible for the Council to reclaim some of its costs involved through insurance. This will depend on the views of a loss adjuster as to whether any of the damage can be attributed to anything other than normal wear and tear.

33. Similarly the affected residents may be able to claim costs back from their buildings insurance, subject to the insurance companies accepting liability.

Other Issues:

34. The Newt Pond area is the habitat of a colony of Great Crested Newts which is a protected species under The Wildlife and Countryside Act 1981 (Amended) and the European Union's Habitats and Species Directive. The Council must therefore have regard to this when planning and carrying out the remedial works. The Countryside Manager, who manages this area, for the Council will be involved at all stages of planning and carrying out the work.

Statement in Support of Recommended Action:

35. The proposed remedial works represent the best option in terms of cost, preservation and the aesthetic appearance of the boundary wall from both sides whilst minimising disruption to the affected residents rear gardens and the Council's land.

Other Options for Action:

36. From a Health and Safety perspective to do nothing is not an option. Completely demolishing and rebuilding the section B-D of the wall would be a more costly option and result in more disturbance to residents rear gardens and the Council's land.

Consultation Undertaken:

37. Residents of numbers 4,6 and 8 Buttercross Lane Epping

Resource implications:

Budget provision: £15,000 supplementary District Development Funding required in 2007/08.

Personnel: Nil.

Land: Remedial works to approximately 34 metres of boundary wall.

Community Plan/BVPP Reference: No specific reference.

Relevant Statutory Powers: None.

Background papers: None.

Environmental/Human Rights Act/Crime and Disorder Act Implications: As set out in paragraph 35.

Key Decision reference (if required): Will advise when key decisions have ref nos.