

BABERGH DISTRICT COUNCIL

FROM: Head of Natural and Built Environment

REPORT NUMBER: **J87**

TO: STRATEGY COMMITTEE

DATE OF MEETING: 17 September 2009

CONDITION OF THE CEREMONIAL MAST, HMS GANGES, SHOTLEY GATE, SHOTLEY

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to update Members on the options and issues relating to the ceremonial mast at the former Royal Naval Training Base, HMS Ganges, and to seek agreement if necessary, to commission a condition survey should the Council resort to formal action.
- 1.2 The report also outlines the powers available to secure the repair of a listed structure. Guidance is clear that the responsibility and “stewardship” lies with the site owner, and only where a co-operative approach has failed should a Council resort to formal proceedings. In so doing the Council may have to accept certain responsibilities and liabilities and it needs to balance this against the impact on the Council Tax payer.

2. RECOMMENDATIONS

- 2.1 That Strategy Committee notes the options available under the provisions of the Planning (Listed Buildings and Conservation Areas) Act, 1990, and the potential financial implications of pursuing formal action, and supports resolution of this matter in cooperation with the landowner.
- 2.2 That Strategy Committee authorises the Head of Natural and Built Environment, if necessary, to commission a condition survey of the mast prior to consideration of further action.

The Strategy Committee is able to resolve this matter.

3. FINANCIAL IMPLICATIONS

- 3.1 In the event that the current site owners fail to co-operate, agreement is being sought to commission a building condition survey. The estimated cost of this work may be in the region of £5,000 for which no budgetary provision has been made. Costs would be met from re-allocation of existing budget or met from potential savings.
- 3.2 The use of powers conferred under the Planning (Listed Buildings and Conservation Areas) Act, 1990, could expose the District Council to potentially considerable costs and the matter would need to be the subject of further detailed consideration before any action is contemplated.

4. **RISK MANAGEMENT**

- 4.1 This report is linked with the District Council's Significant Business Risks 5 (capacity), 7 (finance) and 8 (savings and efficiency). Other key risks are set out below:

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
Poor public perception arising from perceived inaction by the District Council resulting in adverse publicity.	High	Marginal	Secure early resolution of the alleged breach of listed building controls.
The Council take a disproportionate stance on the issue resulting in acceptance of liability and financial commitment	Low	Critical	Council to ensure a cooperative and compliant approach from landowner to achieve necessary restoration

5. **KEY INFORMATION**

Background

- 5.1 The Ceremonial Mast at the former HMS Ganges, Royal Naval Training Establishment was entered on the List of Buildings of Special Architectural or Historic Interest in February 1989 (Grade II).
- 5.2 It is understood that the mast was assembled in 1908. The 1989 list entry describes the structure as being of nineteenth century and twentieth century date, and as 'consisting partly of the foremast of HMS Cordelia and partly of the topmast of the sailing battleship Agincourt'. It adds that 'the top gallant and all yards were renewed in 1955, and the gaff was renewed in 1961'.

Alleged breach of control

- 5.3 In October 2008 the District Council received a complaint that the condition of the mast was 'deteriorating rapidly' and that 'immediate action' was required under the provisions of the Planning (Listed Buildings and Conservation Areas) Act, 1990.

Investigation

- 5.4 Subsequent to the receipt of the complaint contact was made with the site owners and officers were provided sight of a 'condition survey report' of the mast dated February 2008. An analysis of the report suggests that the decay that has occurred may be confined to the late twentieth century components of the structure. Given the passage of time since the survey was undertaken, however, officers have requested the provision of an updated version of the report, together with the submission of further information to precisely identify the extent of repairs required. A deadline of 10 September 2009 was given and informal discussions with the site owners suggest that they intend to co-operate fully with the District Council. A verbal update will be given by the Head of Natural and Built Environment in respect of further information received.
- 5.5 The early indications are that it will not be feasible for the mast to be repaired either in an upright position or on the site. At this stage the site owners are therefore intending to submit a listed building application for the removal of the mast to facilitate repairs off-site. Such an application would require the District Council to consult with English Heritage, the National Amenity Societies and ultimately the Secretary of State.
- 5.6 As a consequence the owners will need to fully justify the need to remove the mast from site albeit on a temporary basis to facilitate the repairs. It will therefore be very important for the District Council and owner agree to the extent of works required, the means of undertaking the work and a timetable for implementation.

Proposed Action

- 5.7 In the event that the site owners do not submit the necessary information the District Council needs to have a contingency plan in place. Authority is therefore sought to commission a condition survey if the site owners fail to co-operate. The survey would have to be undertaken by an independent specialist employed by the District Council but the findings would be used to inform any further action the District Council may wish to take under the provisions of existing legislation.
- 5.8 There is likely to be significant cost associated with the work, estimated to be several thousand pounds. However, to ensure the success of any enforcement action, and in order that the Council can properly specify the extent of works required, such an independent survey is essential.

Legislative provisions

- 5.9 Advice on the enforcement of listed building controls is contained within national Planning Policy Guidance (PPG15). While it states that the timely use of urgent works and repairs notice powers should always be considered, the provision of advice and encouragement to owners, reminding them of their responsibility to stewardship of the historic environment, should be fully explored.

- 5.10 There is no specific duty on listed building owners to keep their buildings in a good state of repair, but local authorities have powers to take action where an historic building has deteriorated to the extent that its preservation may be at risk. These limited powers take two forms.
- 5.11 Section 54 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* enables a local authority to carry out works urgently necessary for the preservation of listed buildings, after giving notice to the owner. These powers can be used only in respect of an unoccupied building, or the unused part of a partly occupied building.
- 5.12 It should be noted that these powers are confined to urgent works and that, in the Secretary of State's view, their use should be restricted to emergency repairs, e.g. works to keep a building wind and weather-proof and safe from collapse. The steps taken should be the minimum consistent with achieving this objective, and should not involve an owner in great expense. It is specifically provided that the works may consist of or include temporary support for the building.
- 5.13 Local authorities may recover from owners the cost of urgent works carried out under these provisions, subject to the owner's right to make representations to the Secretary of State. The Secretary of State will be particularly concerned to establish whether the works carried out were the minimum required to secure the building's preservation and prevent further deterioration.
- 5.14 Alternatively, if a local authority considers that a listed building is not being properly preserved, it may commence procedures leading to compulsory purchase. The first step in the procedure is to serve a repairs notice on the owner under section 48 of the 1990 Act. This notice must specify the works which the authority considers reasonably necessary for the proper preservation of the building. These powers are not confined to urgent works or to unoccupied buildings, and authorities should consider their use in cases where protracted failure by an owner to keep a listed building in reasonable repair places the building at risk.
- 5.15 The word 'preservation' imposes an objective limitation which must be applied in considering the scope of works to be specified in a notice. A notice can include works for the preservation of a building having regard to its condition at the date when it was listed; in other words where a building has suffered damage or disrepair since being listed, the repairs notice procedure can be used to secure the building's preservation as at the date of listing.
- 5.16 If at least two months have elapsed following the service of a repairs notice, and it appears to the local authority who served the notice that reasonable steps are not being taken for the proper preservation of the building, the local authority may begin compulsory purchase of the building.
- 5.17 Compulsory purchase orders made by a local authority under section 47 of the 1990 Act require the Secretary of State's confirmation and, in confirming an order, the Secretary of State must be satisfied that it is expedient to make provision for the preservation of the building and to authorise its compulsory purchase for that purpose.

5.18 Ultimately the authority may have to actually acquire the building if it is to achieve anything. The local authority also needs to be aware of the provisions as to compensation being payable. The costs of repair of the mast would then fall upon the Council Tax payer. Whilst the Council can seek to recover those costs from the current owner there is no guarantee of success.

5.19 Once a building is in public ownership, the acquiring authority then has a number of options. In principle, it can make such arrangements for its management, use or disposal as it considers appropriate to ensure its preservation.

Conclusion

5.20 In view of the advice contained within PPG15 and as a matter of good practice the District Council should seek to achieve a practical solution with the co-operation of the site owners and secure the repair and restoration of the ceremonial mast. In the event that this co-operation is not forthcoming the District Council will need to be in a position to respond but the legislative options available should only be contemplated once all other avenues have been exhausted, as ultimately, these options could place not only the responsibility, but also the financial liability upon the Council.

5.21 The Council must strike a balance between its conservation responsibilities and the impact upon the public purse. Whilst the Council would wish to do all it properly can to see the mast preserved, the responsibility and liability for the mast should properly remain with the site owner.

6. **APPENDICES**

None

7. **BACKGROUND PAPERS REFERRED TO**

None

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