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REGENERATION, CULTURE AND ENVIRONMENT OVERVIEW AND SCRUTINY COMMITTEE

17 AUGUST 2017

MEMBER'S ITEM: UPPER LUTON ROAD RETAINING WALL

Report from: Richard Hicks, Director of Regeneration, Culture Environment and Transformation

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Summary

This report sets out a response to an issue, raised by Councillor Osborne, concerning the condition of a retaining wall in Upper Luton Road, Chatham.

1. Budget and Policy Framework

1.1 Under Medway Constitution Overview and Scrutiny rules (Chapter 4, Part 5, Paragraph 9.1) Councillor Osborne has requested that an item on this matter is included on the agenda for this meeting.

2. The Issue

2.1. Councillor Osborne has requested that an item be placed on the agenda and the reasons are set out as follows:

Upper Luton Road Retaining Wall.

The Council has recently been in communication with local residents on Upper Luton Road claiming that a retaining wall used by properties to the North of this road is not the responsibility of the Council.

The wall itself is in a state of disrepair and is a major Health & Safety Risk. It is however needed to gain access to properties above the site.

Can the Council confirm:

- i) The ownership of said retaining wall
- ii) The legal liability should individuals be injured or the wall collapses onto Upper Luton Road
- iii) Whether the Council would consider any funding to ensure the wall is maintained given its current state of disrepair.

Councillor Osborne has advised that with the permission of the Committee, a member of the public would like to speak on this item.

Councillor Osborne is very concerned that the wall is close to collapse and wants to put on record his concern about its maintenance and the potential damage it may cause to vehicles and access along Upper Luton Road.

3 Director's comments

- 3.1 There are two pieces of legislation which are available to deal with these types of structures, The Building Act 1984 and The Highways Act 1980. The Building Act deals with privately owned buildings or structures which are in a dangerous condition. Under section 77 of the Building Act 1984, the local authority may apply to the Magistrates Court for an order requiring the owner to carry out remedial works or to demolish the building and remove the resultant rubbish. Where the damage is due to overloading, the Court may restrict the use of the building. In the event of non-compliance with an order within the time specified, the local authority may execute the order and the owner is liable to a fine. There are also provisions to take emergency measures under section 78 where the danger requires immediate action. However, the Council is required to contact the owner or occupier, if reasonably practical to do so, and inform them of their intentions. Section 77 is reliant on the Council having an owner of the property on which the Magistrates can serve the notice.
- 3.2 Under section 167 of The Highways Act 1980, there are powers relating specifically to retaining walls near streets. They apply to any length of retaining wall which is wholly or partly within 4 yards of a street and which is at any point of a greater height than 4 feet 6 inches above the level of the ground at the boundary of the street nearest that point. If a length of retaining wall to which section 167 applies is in such a condition (whether for want of repair or some other reason) as to be liable to endanger persons using the street, the Local Authority may by notice served on the owner or occupier of the land on which that length of wall is, require him to execute such works as will obviate the danger.
- 3.3 Included in this section of the Act is a definition of a retaining wall which states 'retaining wall' means a wall, not forming part of a permanent building which serves or is intended to serve, as support for earth or other material on one

side only. A General Note goes on to explain that this section 'does not apply to a retaining wall for the maintenance of which a highway authority is responsible. The test as to responsibility seems to be this, if the wall is built to protect the highway then it is part of the highway and responsibility for it falls to the highway authority. One practical test is who would suffer if the wall decayed?'

- 3.4 Both these pieces of legislation are reliant on identifying ownership of the wall in question in order that action can be taken through the courts. In this instance searches through HM Land Registry have revealed that the wall and land which gives access to the properties in Upper Luton Road is unregistered. It has been established that this private access way, which is guarded by iron railings on one side, is not owned by Medway Council and is not the responsibility of the Highways department. The law relating to retaining walls and the responsibility for its maintenance and repair where ownership is disputed or unknown is not clear cut and often it would take the courts to determine in any given circumstance where responsibility should lie. The legal presumption is that repairing responsibility would normally fall to those that derive the greatest benefit from the retaining wall.
- 3.5 Some independent sections have been monitored through building control and whilst the overall condition of these has remained the same over the last five years there is a growing concern over the condition of the railings which act as a protection against falling. Some areas of the railings have had attempts of repair carried out but these appear to be through bolted connections which would lend itself to rotational movement as the joints become weathered.
- 3.6 The railings will continue to be monitored by building control and appropriate action taken where necessary in line with the Council's legal responsibilities pursuant to section 78 of the Building Act 1984.

4 Risk Management

- 4.1 The issue requires monitoring as the Council may later become liable under its statutory duties to maintain the wall.

5 Financial and Legal Implications

- 5.1 The ownership of the wall: The legal team have undertaken a Land Registry review, the land is unregistered. It does not form part of the public highway, nor does it form part of the properties to the rear of the wall. It is presumed that the land is owned by the developer however as the land is unregistered, the prospects of tracing the developer are remote.
- 5.2 Legal liability should the wall collapse: The Council would not currently be liable so long as it has complied with its statutory duties. The Council may be found to be liable if it is found that the Council has not complied with its statutory duties or was aware that the wall had become a dangerous structure within the meaning of the legislation and the appropriate action had not been taken.

5.3 With regard to the wall it be noted that where such repairs are considered necessary such works would need to be funded from within existing budgets.

6 Recommendations

6.1 It be noted that Officers will be continuing to regularly monitor the condition of the retaining wall in Upper Luton Road.

6.2 It be noted that works will be undertaken to repair the railings located on the top of the retaining wall in Upper Luton Wall, where such repairs are considered necessary, with such works being funded from within existing budgets.

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Appendices

None

Background Papers

None