

## **REGENERATION, COMMUNITY AND CULTURE OVERVIEW AND SCRUTINY COMMITTEE**

**3 APRIL 2012**

### **MEMBER'S ITEM: OWNERSHIP AND MAINTENANCE OF RETAINING WALLS**

Report from: Neil Davies, Chief Executive

Author: Caroline Salisbury, Democratic Services Officer

#### **Summary**

This report sets out a response to an issue, raised by Councillor Stamp, regarding the legal ownership and maintenance of retaining walls.

#### **1. Budget and Policy Framework**

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

#### **2. The Issue**

- 2.1. Councillor Stamp has requested that an item was placed on the agenda and the reasons are set out in the following paragraphs:

“Retaining walls at Pier Road and Lower Woodlands Road now require maintenance which could incur significant costs. There are also several other retaining walls around Medway, most notably on Chatham Hill.

These retaining walls are often the subject of ownership disputes. This situation appears to have been complicated further by the switchover from Kent County Council Structures to Medway Council upon its formation.

The age of these walls is such that many of them could be reaching the stage where they need regular and/or costly repairs and maintenance. Section 106 funds cannot be allocated to pay for these repairs and maintenance.

Where there is an ownership dispute, the Council's Legal Section can attempt to apportion costs to avoid costly legal battles through the courts. All the while, the residents living adjacent to /benefiting from the retaining walls are left with the uncertainty over the responsibility for and safety of these walls.

I think it is important that Medway Council investigates these issues in more detail and more strategically from a Medway-wide perspective. If the issue of retaining walls can be investigated more fully, hopefully the Council can approach it with more clarity and consistency, and look at finding sources of funding to provide much needed repairs and regular maintenance.”

### **3. Director's comments**

- 3.1 A retaining wall is a wall, not forming part of a permanent building, which serves or is intended to serve as support for earth or material on one side only (Highways Act 1980 section 167(9)).
- 3.2 Whether a retaining wall is included in the highway and maintainable by the local authority as a highway is a matter of fact in each case. Retaining walls within the highway boundaries generally fall under two classifications.
- 3.3 Walls which support the highway or support an embankment carrying the highway are “highway retaining walls”.
- 3.4 Walls that support land and/or property which are alongside and above the level of the highway are referred to as “property retaining walls” and are generally private.
- 3.5 There are exceptions, for example, if properties are alongside and below the level of the highway there can be walls of varying heights, which retain the highway and were built by developers to facilitate dwellings or buildings on sloping sites. Medway has many miles of these walls which are private unless on a new development where certain walls are adopted as a highway structure and maintained by the Authority.
- 3.6 Under Section 167 of the Highways Act 1980 any structural retaining wall within 3.66 metres with a retained height in excess of 1.37 metres requires planning consent and go through a formal Approval In Principle (A.I.P) process. Calculations and drawings are checked to ensure the retaining structure is fit for purpose to support the highway loadings. Many Highway Authorities use 1.5 metres before it is considered a highway structure. Medway Council Structures now stringently enforces this process before formally adopting structures benefitting from commuted sums for future maintenance. In some cases a retaining structure will go through the A.I.P. process but revert to another Council department e.g. Walderslade Primary School adjacent to the highway which will be owned by Education. There are other privately owned walls, for example Network Rail and the Environment Agency.

- 3.7 Highway retaining walls, which are within the highway boundaries, are generally assumed to be Medway responsibility without the need to resort to detailed searches through archives.
- 3.8 For all other walls, If searches do not reveal any relevant evidence in the form of formal adoption or accommodation works (usually accommodation works to facilitate road widening or highway schemes structures revert back to private owners to maintain) then the responsibility for maintenance shall be determined on the likely purposes for which the wall was built and who benefits. Where a retaining wall is of similar construction and vintage as the property it supports, it is reasonable to assume in the absence of any conflicting evidence that the wall was constructed to support the property and hence the property owners responsibility.
- 3.9 Medway has around 150 highway retaining walls, which it maintains and carries out general inspections on every two years. It also carries out "Special Inspections" as and when on significant retaining walls alongside the highway which it feels may have an adverse effect on the travelling public. "Special Inspections" may also be carried out as a result of Member or public enquiries where concern is shown over the condition of a privately owned wall.
- 3.10 In February 2009 a retaining wall collapsed onto a graveyard at Church Terrace, Luton, taking with it half the carriageway. Highways were not aware of this wall and it did not appear on Medway's database or the historical one, which came across from Kent County Council (KCC), so it had not been inspected. It had been assumed that it may be the responsibility of the Church. After hours of research through the archives, evidence came to light that the Council's statutory predecessor had made up the road, provided lighting, drainage, and built the retaining wall for which all residents contributed a sum of money per linear foot of frontage. This was a very rare occurrence to find such well documented records from the late 1800's into the very early 1900's. Rebuilding costs were in the region of £750,000.
- 3.11 As a result of this the Director requested officers to try and trace as many retaining walls in Medway as possible and report their condition, due to the financial implications of a further collapse. In general the additional walls that have been collated on the database are all privately owned and are documented as and when they become apparent. There are hundreds around Luton and Princes Park area alone that the council is not aware of and would be almost impossible to document.
- 3.12 There are many walls that Medway Council (not Highways) are liable to maintain as a result of the transfer of the housing stock by one of its predecessor councils. It appears that properties were transferred but maintenance responsibility for many walls was never passed across with the housing stock leaving a Medway maintenance liability.

3.13 In October 2010 the Structures team prioritised a list of 21 worst walls (although there are 2 at Pembroke adjacent to each other meaning actually 22 walls). Works that have been completed in the last year are: -

1. Church Hill steps and wall £20,055
2. Fairmile Wharf £2,139
3. Richmond Road £7,053
4. Chatham Hill £1,700
5. Works are ongoing to 2 Pembroke Interchange walls which can only be worked on during the tunnel closure £16,000 to date
6. 1 wall passed to Education for action
7. 2 walls passed to Green Spaces for action
8. 7 private walls passed to Building Control to action
9. 2 walls in dispute – Pier Road and Fort Pitt Street. To date £30,000 has been spent on Pier Road and possibly will require a further £100,000 to be invested dependent upon ownership issues.
10. 4 highway walls outstanding – Beacon Road, Baker Street, Dockyard wall and Corporation Road.

3.14 There are other potentially dangerous walls. Where buildings have been demolished, walls have been left retaining or freestanding that were never intended for that purpose, for example the Sir John Hawkins Lower Car Park wall is currently partially closed off as this car park has a dangerous wall.

3.15 Ownership of Pier Road and Lower Woodlands Road have been contentious for a number of years. Prior to Medway Council, KCC Structures maintained and inspected all the highway retaining walls throughout Kent. Both these walls have many records of ownership dispute and KCC always maintained that both walls were private. The walls benefit the householders and landowners above the road; they do not generally support the highway. Lower Woodlands Road wall supports a private access walkway and Pier Road supports private garages. A small section of the Pier Road wall supports a public alley and some work was carried out by KCC in the form of ground anchors prior to the construction of the dual carriageway. Lower Woodlands Road wall was monitored by KCC throughout the construction of the Gillingham Northern Link, as was other property along the route for movement. Again at the time residents questioned ownership with the view that KCC should carry out repairs. KCC concluded it was private. KCC was the Highway Authority at that time.

- 3.16 Strategically the structures team continue with general inspections of all highway retaining walls and will carry out maintenance that results from inspection data. Walls are inspected as per the “Management Of Highway Structures” a Code of Practice (COP) 2005, which generates a Bridge Condition Index (BCI) and assists in the prioritising of individual works and overall prioritising of the wall stock. The database of retaining walls, highway and private, remains a live document which is constantly updated. Other Local Authorities have similar problems and admit to not knowing the extent of retaining wall problems or where they are.
- 3.17 It is often difficult for a Highway Authority to expect individual householders who may be pensioners to carry out works to vast walls and have the money or expertise to carry out the works, although as part of their property they should have adequate insurance cover for such expense. Certainly, by ensuring that new developments go through the structures A.I.P. process so that major walls can be adopted, this will benefit householders of the future and help the council have a better understanding of its wall stock and commitments.

#### **4. Risk Management**

- 4.1 The Council carries out inspections on 150 retaining walls every two years. It also carries out “Special inspections” as a result of Member or public enquiries where concern is shown over the condition of a privately owned wall.
- 4.2 The risks associated with privately owned walls are set out in paragraph 5.1 below.

#### **5. Financial and Legal Implications**

##### **5.1 Legal implications**

The legal implications are set out in the body of the report. In addition, section 167 of the Highways Act 1980 enables a local authority to serve a notice on the owner of a private wall within 3.66m (4yds) with a retained height in excess of 1.37m (4'6”) above the street, where that wall is in a condition as to be liable to endanger persons using the street, requiring the owner/occupier of the wall to execute such works as will obviate the danger. The owner/occupier may appeal to the Magistrates Court against such a notice.

##### **5.2. Financial implications**

Highways has a revenue budget of £6,000 and a capital budget of £250,000 per annum which funds the works detailed in this report along with carrying out all the legally required general and principal inspection of all of our structures. In addition to this there is provision in the Local Transport Plan 3 (LTP3) maintenance budget of between £200,000 and £300,000 per year (dependent upon other priorities around highway assets), which has in recent years been used primarily for the river retaining walls along the Esplanade at Rochester.

## **6. Recommendation**

6.1. Members are asked to consider this matter.

### **Lead contact:**

Name: Caroline Salisbury, Democratic Services Officer

Tel. No: 01634 332715 Email: [caroline.salisbury@medway.gov.uk](mailto:caroline.salisbury@medway.gov.uk)

### **Background Papers**

Highways Act 1980

Management Of Highway Structures" a Code of Practise (COP) 2005