

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA**PUBLIC REALM SCRUTINY COMMITTEE 17 JUNE 2019****REPORT OF THE MAINTENANCE OF HISTORIC BUILT FEATURES
WORKING GROUP**

This report outlines the findings of the Public Realm Scrutiny Committee's Working Group on the Maintenance of Historic Built Features and sets out its recommendations. The Committee is recommended to agree the report, to agree any amendments, and agree that the report with its recommendations be referred to the Lead Member and Full Council.

FOR COMMENT AND APPROVAL

1. INTRODUCTION

- 1.1 The Public Realm Scrutiny Committee agreed to establish a working group looking into the maintenance of historic built features. This was in response to the following motion to the full Council meeting on 8 March 2017, which was moved by former Councillor Moylan, seconded by Councillor Palmer, and subsequently carried:

“That the Council note that there are many built features of historic interest in the Royal Borough, some listed, some in Conservation Areas, that are important to public amenity but have no registered owner, many mews arches being examples of such, and recognise that it has a responsibility, not legal but as a public body exercising community leadership, to ensure that they do not decay utterly; and that the Council, taking note in particular of the collapsing condition of the historic wall in Kynance Mews, request the Cabinet to consider how it might find resources from the Capital Budget to maintain historic fabrics with no registered owner.”

- 1.2 In October 2017 a key decision on ‘Reserve for Community Projects to Maintain Unowned Heritage Assets’ (KD05080/17/P/A) was implemented. This decision set out how community groups could access a fund to partially finance the maintenance of historic assets, and the criteria that would need to be met in order to secure this funding. The Key Decision is attached as Appendix 2. This funding mechanism is limited to projects of <£50k in total value and private funding must be found to match the Council’s contribution. No bids have been made against

this fund since its establishment, while residents have continued to highlight to ward councillors cases of historic built assets that are visibly deteriorating.

2. MEMBERSHIP AND TERMS OF REFERENCE

2.1 The Working Group was established with the following membership: Councillors Greg Hammond (Chairman), Aarien Areti and Tom Bennett.

- The terms of reference are set out in Appendix 1.

3. MEETINGS AND SOURCES OF ITS FINDINGS

3.1 The Working Group has met on five occasions. It has heard evidence from Council officers in the Planning and Place directorate, and the Director of Planning and Place led advice to the Working Group.

3.2 The Working Group invited representatives from other organisations to learn how they maintained historic built features, including the Wellcome Trust and Cadogan Estate. Enquiries were also made of Westminster City Council (WCC). External organisations were unable to attend working group meetings or share their knowledge, though informal contacts had established the estates' practices. Through officer contacts it was reported that WCC had no particular maintenance issues with unowned historic built assets.

3.3 The Working Group also heard evidence directly from a resident in Gaspar Mews, whose Grade 2 listed entrance arch was badly deteriorated, and sought written inputs from residents associations.

4. IDENTIFYING ASSETS

4.1 Working Group members had knowledge of features in their individual wards but recognised that, for the purposes of the review, a reliable and comprehensive database of assets was needed.

4.2 In order to have a baseline against which to measure the future condition of assets, it was important to establish a reliable list of all built features of historic interest, whether owned or unowned. Neil Armour, Planning Enforcement Officer, compiled a matrix of features known to the Planning and Place Directorate and visible from on-street searches. His compilation of this information included:

- description of the feature;
- listed status and grade;
- ownership status; and
- general state of repair (based on visual observation from site visits, not full structural assessments).

4.3 Many of the features identified were mews arches and walls, but also included statues, sculptures, cabmen shelters and features such as stone drinking fountains. The Working Group decided to exclude categories of assets such as pillar boxes that had obvious owners and were in current usage. A copy of the matrix is at Appendix 3. Its contents are a snapshot in time and some of the recorded information, notably the condition of assets, is likely to evolve. Furthermore, even after this study it is unlikely that the list of features is exhaustive, so it may expand if new information emerges.

5. CONSULTATION EXERCISE

5.1 The Working Group wanted to harness the interest and knowledge of residents' associations and residents to ensure that the database of assets was as comprehensive as possible across the borough. The initial list of built features was circulated to residents' associations and ward councillors in January 2019, inviting comments and contributions. Appendix 4 and Appendix 5 are copies of the consultation letters respectively.

5.2 From the number of responses from residents' associations it became clear that many shared the interest in historic features and a concern for their protection. These assets were felt to be part of our heritage and worth preserving. Comments on the review included the following:

- "The Trust welcomes this initiative and would willingly participate" (from an amenity association);
- "I see that all the entries in the list are gateways to Mews – which certainly need taking care of." (from a residents' association);
- "Great to see this initiative" (from a residents' association),
- "Good idea" (from a councillor);
- "I think this is a great initiative, I am sure various RAs have sent you lots of info - but here's mine too!" (from a councillor)

6. OWNERSHIP

6.1 HM Land Registry searches confirmed that few of the historic assets on the database were owned. The working group heard from a resident who had investigated the damaged Gaspar Mews arch. Her solicitor had advised her that liability for rectifying the damage was for the organisation or person that owned the arch. In the absence of a registered owner, anyone who conducted maintenance would be accepting responsibility for the asset in perpetuity. In the case of Gaspar Mews, with only ten properties in the mews, it was assessed to be highly unlikely that the owners of these houses would be willing or able to take on the maintenance costs for the arch in perpetuity when the current cost estimate for its repair was at least £100k. This situation was assessed to be not untypical.

- 6.2 Officers advised that the same legal liability would arise if the Council conducted maintenance on features. This could provide a significant ongoing liability for the Council. However, were the Council to undertake works to the features under a statutory power, that risk would be minimised.
- 6.3 Should a feature become dangerous then the Council's Building Control dangerous structures officers have a duty to make them safe. Should a structure become dangerous to users of the public highway then the Highway Authority also has a duty to keep users of the public highway safe.
- 6.4 Where neither of these circumstances apply, but the appearance of a feature needs improving in the interests of the appearance of the area, the Working Group was advised that serving notices under Section 215 of the Town and Country Planning Act can help. Such a notice could require the improvement works to be undertaken but, if they were not complied with, the Council could do the required works in default as Local Planning Authority. In the absence of a legal owner, compliance with a Section 215 notice would be highly unlikely. It was noted that a Section 215 notice had already been served to get the appearance of Gaspar Mews improved.
- 6.5 The Working Group explored the links between Assets of Community Value (ACV) and the features covered by this review. Officers advised that it would be unlikely that such historic built features would be deemed ACVs because such assets do not provide venues for delivering services to the benefit of the community.

7. FUNDING OPTIONS

- 7.1 The Council's current approach is to make funds available from a capped reserve for specific projects of <£50k in value, if residents have raised half the project cost, in accordance with the October 2017 Key Decision (KD05080/17/P/A). Continuing with this approach alone is the 'Do Nothing' option and is not recommended. As the historic built assets deteriorate to the point where they need rectification work, such as the Gaspar Mews arch has now, project costs could well exceed the maximum value set aside for this approach. Furthermore, it was considered that occasions when residents were able or willing to raise a half-share of a <£50k project would be the exception rather than the norm. Continuing this policy and doing nothing else would result in most of the assets deteriorating gradually over time, with the Council probably having to step in from time to time as they became dangerous, using the revenue budget for emergency works. Moreover, examples from many fields show that emergency repairs on any kind of asset often turn out to be more expensive than conducting maintenance at an earlier stage.

7.2 The Working Group considered six approaches for acquiring additional funding to create a more sustainable future for the unowned assets, as outlined below:

	Funding source	Comments
1	Capital programme	<p>A bid for funds from the RBKC capital programme could be made in time for the 2020/21 programme.</p> <p>This could take the form of, a long-term rolling programme expecting to spend an average of, say, £50,000 a year on extending the life of the features. The priority would be those in worst repair.</p> <p>The bid would be assessed against other bids and the available capital funds. Those projects which are demonstrated to meet the Council's priorities are then funded in order of priority.</p> <p>The Working Group considered this to be a realistic option that was worth taking forward to the next stage.</p>
2	Revenue budgets	<p>It is unclear which budget would provide funds as this issue does not neatly fit into any existing departmental budget line. These features are not highway structures, nor are they the Council's property, nor are they a leisure or community facility.</p> <p>Irrespective of these challenges, existing revenue budgets are decided in advance through the budget setting process. Were a 'home' budget selected, spending on this project would need to be a 'growth' item in the next budget round and would need to be justified against other budget growth bids and savings measures. Spending on the unowned historic assets would require savings elsewhere in the overall budget and the Working Group recognised that the timing for this option was not propitious.</p>

3	City Living Local Life (CLLL)	<p>Councillors can already allocate their CLLL ward spending (up to £20,000 in FY18/19 for a three-member ward) to projects relating to unowned historic built features if they wish. Unspent funds currently cannot be rolled over to the next year.</p> <p>CLLL can fund all or part of a project and can be used as part of the existing crowd funded approach.</p> <p>However, larger projects such as repair of the damaged Gaspar Mews arch, would be too expensive to fund exclusively through CLLL.</p> <p>Nevertheless, the Working Group considered that CLLL will continue to provide a realistic option for small scale works in some instances (such as small repairs and painting), and has the potential to do more if its scope is expanded by the ongoing Governance review.</p>
4	Neighbourhood Community Infrastructure Levy (NCIL)	<p>Under national legislation new developments pay Community Infrastructure Levy (CIL) at a level dependent on the size of the development. The collected funds are then used to fund community infrastructure like transport improvements, schools and community facilities to provide the infrastructure needed to support development.</p> <p>15% of CIL collected (25% in neighbourhood forum areas) is required to be spent in the area local to the development which led to the payment. The projects to benefit must be consulted on locally and, if supported by the consultation, could include historic built features.</p> <p>However, distribution of NCIL funds, being based on the location of new developments</p>

		<p>around the borough, is unevenly spread, with some wards or areas likely to receive nothing in certain years. Therefore there is a high chance that the availability of NCIL funds in each area will not be correlated with the requirement for funds for the maintenance of historic assets</p> <p>Nevertheless, with governance over the bid process for NCIL currently being developed, the Working Group considered that this option has enough potential to be worth more detailed exploration.</p>
5	Establish a charity to raise funds	<p>Consideration could be given to establishing a 'Friends of' type charity to raise funds from those interested in supporting such a cause. The Working Group considered that such an approach would probably have most success if it were hyper-localised and focused in each case around individual assets. While it had potential for success in limited cases, the Working Group did not consider it worth pursuing as a solution to the whole problem and noted that it would likely be a significant administrative burden to coordinate if it were run by the Council.</p>
6	Funding from other organisations such as Heritage Lottery Fund or other grant-giving organisations	<p>A search of charitable organisations and other funding streams did not reveal any which might fund a general programme of the type required, though the Working Group recognised that this might change in the future.</p> <p>A bid to the Heritage Lottery Fund was unlikely to meet the current funding criteria.</p>

8. RECOMMENDATIONS -

Recommendation One

The Working Group recommends that the Director for Planning and Place ensures that the database detailing the description, location and condition of historic built assets continues to be maintained.

Recommendation Two

The Working Group recommends that the Director for Planning and Place drafts a capital bid from the financial year 2020/21 for the next capital programme for £50k per year over a five-year period to use for the maintenance of unowned historic assets on the database.

Recommendation Three

Once governance arrangements for the Neighbourhood Community Infrastructure Levy (NCIL) are in place, the Working Group recommends that the Director for Planning and Place should advertise how community bids can be made to use NCIL funds, where these are available, for the maintenance of priority historic built assets in need of repair.

Recommendation Four

Following approval and implementation of new arrangements governing City Living Local Life (CLLL), the Working Group recommends that ward councillors consider CLLL bids for maintenance of historic assets when potential projects fall within scope.

8. CONCLUSION

The Working Group was grateful to all the officers involved for their dedication to, and enthusiasm for, this task. Particular thanks are due to Graham Stallwood for his expert advice, and to Carolyn Goddard and Neil Armour, who supported the project from the Planning department, and to Jerome Treherne in Governance Services who provided administrative and secretarial support to the Working Group meetings.

The Working Group hopes that its recommendations are adopted, and that these will make a positive contribution to preserving historic built assets that are part of the fabric and heritage of our borough, and can be enjoyed by future generations of residents as much as they are appreciated today.

COUNCILLOR GREG HAMMOND (CHAIRMAN)
COUNCILLOR AARIEN ARETI
COUNCILLOR TOM BENNETT

Background papers: All reports submitted to working group meetings and notes of working group meetings

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