

# Executive Decision Report

<b>Decision maker(s) at each authority and date of Cabinet meeting, Cabinet Member meeting or (in the case of individual Cabinet Member decisions) the earliest date the decision will be taken</b>	<p>Councillor William Pascall, Deputy Leader and Lead Member for Borough Services</p> <p>Date of the report 2 October 2017</p> <p>Forward Plan reference: KD05080/17/P/A</p>	 <p>THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA</p>
<b>Report title (decision subject)</b>	Reserve for Community Projects to Maintain Unknown Heritage Assets	
<b>Reporting officer</b>	Executive Director, Planning and Borough Development	
<b>Key decision</b>	Yes	
<b>Access to information classification</b>	Public	

## 1. EXECUTIVE SUMMARY

This report seeks approval to earmarked a capital reserve of £250,000, created to be available for community projects to maintain arches, walls and other important heritage assets in the Borough which have no registered owner. The Lead Member is asked to agree the 'crowdfunding' approach and the identified criteria for the community accessing the fund described in paragraphs 3.2 and 3.3.

## 2 RECOMMENDATIONS

- 2.1 I recommend that the Lead Member approves Option 2 (as detailed in paragraph 7.2), of **Creating a fund with projects led and managed by the community**. This approach requires accessing the funds and criteria for their release, noting that the pledges will be made by the Executive Director, Planning and Borough Development under existing delegated powers.

### **3 REASONS FOR DECISION**

- 3.1 In response to a motion at the Council meeting on 8 March 2017 Council resolved:

“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.”

### **4. BACKGROUND**

- 4.1 Georgian and Victorian development laid out in a network of streets often with garden squares, followed by Edwardian mansion blocks, has left the borough with a legacy of a high quality built environment that is one of the finest in country with over 4000 listed buildings and 38 conservation areas.
- 4.2 Privately owned buildings and other structures are generally well looked after and the Council has a proud record of decluttering streets and maintaining a very high quality public realm. Where the maintenance of privately owned buildings and structures has fallen short of the surrounding standards a successful project over the last few years using powers under S215 of the Town and Country Planning Act 1990 has seen the owners held responsible and significant improvements secured.
- 4.2 However, there are also important features of the borough which have no registered owner. Sometimes these features were built at the time of the original homes and were not subsequently transferred to new owners. This applies to many mews arches, but can also apply to other features such as walls.

### **5. A NEW EARMARKED CAPITAL RESERVE**

- 5.1 In response to the Council motion, a new earmarked capital reserve of £250,000 has been created by the Director of Finance so the Council can support local residents and/or businesses wishing to undertake one off projects to maintain such heritage features. The funds would be available on a matched funding basis, with the

community being responsible for leading the project and raising the balance of funds.

5.2 To access the reserve those promoting the project would use the already well established Mayor of London's Spacehive crowdfunding platform to create the project and raise funds from the community to test support for the project in the community. The Council would contribute:

- Up to 50% of the total project cost including professional fees but excluding VAT up to a maximum of £25,000 once at least 50% has been raised, in order to reach the project's required funding total;
- A lower level of funding where another source of Council funds is also contributing (such as ward councillor pledges under City Living Local Life) to avoid a circumstance where the Council funds more than 50% of the project.

5.3 The funds would be released for one off projects which:

- Have a total project cost of between £10,000 and £50,000 including professional fees but excluding VAT;
- Will undertake essential maintenance to heritage assets which have no registered owner, have not had ownership de-registered and have no obvious owner (for example, that the absence of a registered owner is not an indication of no ownership);
- Have been scoped by an appropriately qualified person for the project and declared as no more than essential for the maintenance of the asset;
- Will be supervised by an appropriately qualified person;
- Where necessary, have any planning permission and/or listed building consent in place; and
- Have no requirement for recurring expenditure.

## **6. CONSULTATIONS**

6.1 Public Realm Scrutiny Panel has been consulted. The Chairman and Vice Chairman consider are content with the approach in this report.

6.2 Opposition members of the Panel take a different view. They consider that financial resources should be focussed on rehousing and supporting the Grenfell recovery and that the Council's role should be in encouraging the community to raise the full amount or use community fundraising to attract non-Council funds. Council funds should only be used where there is documented evidence that ownership is unknown.

## **7. OPTIONS**

### **Option 1 – Creating a fund with projects led and managed by the Council**

7.1 Rather than the proposed community-led model, the Council could take full responsibility for leading projects. The project scoping, tendering, contract and project management process would need to

be prioritised alongside existing projects unless funds were made available for new staff to support the implementation of the reserve, with the associated potential for that to be a recurring cost. The Council would take on all project costs and risks. Were matched funding to be part of this model, there would be associated costs for securing and managing funders.

**Option 2 – Creating a fund with projects led and managed by the community (recommended option)**

- 7.2 The community takes responsibility for scoping, tendering and running the project, with the Council supporting the community's efforts with up to 50% of the project costs. The potential for staff (and recurring) costs to the Council and the projects are kept to a minimum by maximising the capacity of the community to use its skills and experience for common good. Matched funding tests the community's support for the project before the Council commits funds and the crowdfunding platform bears the costs and risks of securing and managing funders.

**Option 3 – Create no fund and contribute on a one-off basis where there is evidence of no ownership**

- 7.3 Creating no fund and instead encouraging the community to raise all the funds would be inconsistent with the ambition of the Council resolution. Documentary evidence generally shows ownership rather than 'non-ownership'. Demonstrating non-ownership in documents will generally require the commissioning of specialist surveyors and solicitors to establish boundaries and ownerships, resorting to the courts if necessary. This is likely to be far more expensive than the required works themselves.

## **8. FINANCIAL IMPLICATIONS**

- 8.1 Some hitherto unallocated funds within the Council's accounts, have been legitimately diverted to create the proposed earmarked capital reserve in response to the Council motion. The reserve will be added to the capital programme in due course.
- 8.2 The reserve is a one off allocation of £250,000 that will not be replenished. The Council's contributions to schemes from the reserve will not exceed 50% of the total project cost, including fees.
- 8.3 It is intended that the form of agreement to provide a matched funding contribution will limit the Council's liability and there will be no ongoing financial risk in respect of the projects funded from the reserve.
- 8.4 Funding from the reserve will be on a "first come, first served" basis. There is risk associated with this that potentially high priority/profile

schemes may not be funded if the reserve has diminished to a level where there is not sufficient resource remaining to fund a scheme.

- 8.5 The maximum level of contribution proposed precludes implications associated with State Aid rules.

## **9. LEGAL, RISK AND EQUALITIES IMPLICATIONS**

- 9.1 The Lead Member has power under Part 3A, Para 1.15 of the Council's Constitution to approve the recommendations set out in this report.

- 9.2 Legal Services is advised that the Council subscribes to the Mayor of London's Spacehive, which includes provisions for raising money by means of crowdfunding, and that this will be the proposed mechanism for promoting the project. The terms and conditions have been provided to Legal Services to ensure that they afford the Council protection against the risks identified below.

Legal comments provided by Margaret O'Connor, Solicitor, Tri-Borough Legal Services (Tel 020 7641 2782)

- 9.3 Relying on the community to lead the projects and providing funding to maintain unowned assets has associated risks including the potential for:

- an unknown owner to challenge works taking place;
- pledged funds not being used for the intended process;
- tender processes not securing best value to the same extent as public sector procurement;
- non-compliance, negligence or breach of legislation;
- future liability falling to those who have maintained the structure previously; and
- projects to falter or for funding to be insufficient to complete.

- 9.4 These risks are minimised by the framing of the criteria for matched funding including:

- limiting the scale of project by capping its cost;
- limiting the scale of the Council contribution;
- testing community support through crowd funding;
- requiring confirmation that projects are no more than essential maintenance;
- requiring supervision by an appropriately qualified person;
- the Council providing part funding to others to do the work rather than undertaking the work itself;
- using an established crowd funding platform with its built-in mechanisms to collect, distribute and return funds; and
- requiring planning permission and listed building consent to be in place if necessary before funding is pledged.

- 9.5 The risk of the reserve creating new pressures on existing staff are minimised by the criteria and using the crowdfunding platform. Applying criteria and consequent automatic funding means the reserve is available on a 'first come, first served' basis rather than on a priority basis. The capping of the project size also rules out larger projects. Inherent in the approach is the risk that larger projects or those that arise after the reserve has been exhausted will not be funded. That situation is no different to the status quo with no specific reserve. It remains the case that specific exceptional projects could arise and request Council support and they can be considered on their merits.
- 9.6 The Council is already a supporter of Spacehive and has therefore already undertaken necessary due diligence checks. Requiring use of this platform removes the cost of having to undertake such checks with every new platform used by community groups. Spacehive charges 5% of the project cost for providing its services. If we did not use a crowdfunding platform then the Council would need to provide a staff resource to undertake the platform's roles and would also take on the additional risks associated with those roles.
- 9.7 The recommended option takes the opportunities of using skills and experience embedded in the community, using local initiatives to engender civic pride and commonality of purpose and using public funds to attract other funds. All threats and opportunities have been considered and risk mitigation actions where appropriate.
- 9.8 The fund is equally available to all residents and businesses across the borough who can meet the criteria, albeit that some areas of the borough have a richer heritage than others. There is some limited potential for indirect discrimination from the requirement that projects are set up online through the crowdfunding website should a protected person or group be considerably less likely to be able to meet that requirement. It is justified by the need to minimise risk and keep costs of supporting the reserve proportionate and to a minimum.

## **10. RECOMMENDATIONS**

- 10.1 It is recommended that the Lead Member approves the approach to accessing the funds and criteria for their release, noting that the pledges will be made by the Executive Director, Planning and Borough Development under existing delegated powers.

Graham Stallwood  
**Executive Director, Planning and Borough Development**

