

## **Cabinet – 13 April 2011**

### **Former Mellish Road Church – Payment of the Costs of Demolition Works and Recovery of Costs**

**Portfolio:** Councillor Adrian Andrew, Deputy Leader and Regeneration

**Service:** Regeneration – Development and Delivery

**Wards:** St. Matthews

**Key decision:** Yes

**Forward plan:** Yes

#### **1. Summary of report**

- 1.1 This report invites Cabinet, following an invitation to do so by Planning Committee on 17 February 2011, to consider endorsing the invitation, acceptance and appointment of contractors in accordance with the Council's Contract Rules. This would be for the purpose of demolition of Mellish Road Church pursuant to any direct action undertaken by the Local Planning Authority under section 219 of the Town and Country Planning Act 1990.
- 1.2 Mellish Road Church is in serious state of disrepair and Listed Building Consent was granted for its demolition on 22 October 2010. However, since then there has been little indication that the owner's will implement the consent.
- 1.3 Following a resolution by Planning Committee on 10 March 2011 authorising the issue of a section 215 notice under the Town and Country Planning Act 1990 a notice requiring the demolition of the building and other associated works is being prepared. If the owners fail to comply with the terms of the notice within the compliance period in the notice then the Local Planning Authority can take direct action to undertake demolition works and seek to recover the costs incurred.

#### **2. Recommendations**

- 2.1 That Cabinet endorses the use of delegated powers by the Executive Director Regeneration to appoint a demolition contractor in accordance with the Council's Contract Rules (2010) to undertake the demolition of Mellish Road Church in the event of non-compliance with the section 215 notice.
- 2.2 That Cabinet delegates to the Assistant Director Legal & Constitutional Services authority to seek recovery of costs incurred.

### 3. Background information

- 3.1 The former Mellish Road Methodist Church is a Grade II Listed building dating from 1910 and located within the Arboretum Conservation Area. The Church was abandoned following structural damage in 1990. Shortly after this many of the internal fixtures and fittings were removed and the property has since suffered from vandalism, fires and pigeon infestation. In its current state the building has a considerable detrimental impact on the local environment.
- 3.2 Officers have been in discussions with the owners of the property regarding the serious problems of disrepair for a considerable time. A section 215 notice was served in September 2005 and by December 2007 officers were of the view that the level of compliance was relatively high in terms of the number of items addressed but that the quality of work was variable. However, in February 2008 the building was the subject of a serious fire. As a result the main front gable and window had to be dismantled for safety reasons. Since that time the condition of the property has continued to deteriorate despite the fact that officers have stressed the need for the owners to take appropriate action.
- 3.3 As a means of moving this matter forward on 16 July 2009 Development Control Committee agreed to advise the owners that it was willing to consider the merits for demolition of the Church by the submission of an application for Listed Building Consent, subject to the owners preparing a submission that seeks to address the tests set out in PPG15 Planning and the Historic Environment.
- 3.4 The owners of the building submitted an application for Listed Building Consent for demolition in November 2009 and this was subsequently approved by Planning Committee on 9 September 2010, subject to referral to Government Office. In October 2010 Government Office advised that the Secretary of State did not require the application to be referred to him. As such listed building consent was granted on 22 October 2010.
- 3.5 In early November 2010 officers met with the owners of the building and stressed that demolition should take place promptly. While the owner's indicated that this would be the case since then progress in moving forward to demolition has been extremely slow. On this basis at its meeting on 17 February 2011 Planning Committee resolved that:
- 'Cabinet considers authorising relevant works to be undertaken to demolish the Church at Mellish Road and to recover the cost by placing a charge on the Owner's personal properties / assets or the land in question'.*
- 3.6 At its meeting on 10 March 2011 Planning Committee authorised officers to serve a s.215 notice requiring demolition of the building within 6 months from when the notice is served. While officers are currently preparing this notice it is anticipated that it will set a series of deadlines by which the owners must complete particular tasks to ensure that progress is being made towards demolition.
- 3.7 If the owners fail to meet one of the deadlines specified in the notice then the Council could take direct action in respect of the particular task and incur the associated costs. If the owners fail to demolish the building within the period for compliance then the Council could take direct action and undertake the

necessary work. In these circumstances the Executive Director Regeneration would appoint a demolition contractor to undertake the works in accordance with the Council's Contract Rules. At this stage the cost of this work cannot be specified but it is expected to be £60,000 – £150,000. The uncertainty regarding costs is largely due to the fact that neither the demolition methodology nor the additional ground works that may be required can be confirmed at this stage. Should the fee be in excess of the maximum figure stated then a further report would be submitted to Cabinet confirming the exact amount.

3.8 Attached to the Listed Building Consent were a number of conditions that must be discharged prior to demolition. These relate to:

- Production of a report that records the building
- Provision of details for protecting and storing existing materials identified as of archaeological interest (and reusing stored materials in any redevelopment of the site).
- Production of a site survey to identify hazardous materials and a method statement to prevent localised contamination.
- Production of a validation report to demonstrate that no contamination has occurred as a result of the removal of the building.
- Production of a method statement for the control of dust, grit and fume

In the event that the owners of the site do not discharge these conditions it will be the responsibility of the Council to provide the necessary information prior to demolition. Clearly it will take some time to resolve these issues as well some expense. At this stage the cost of this work cannot be specified but it is expected to be £10,000 -£15,000 in addition to the cost of demolition.

It will also be necessary to consider how best to manage the condition requiring storage and reuse of materials when the Council will not be responsible for the future development of the site.

There would also be a need to submit a s.80 notice of intended demolition under the Building Act 1984.

3.9 If direct action is undertaken the Council can seek to recover any expenses from the owner either as a contract debt or as a charge on the land.

3.10 If the amount is pursued as a contract debt the owners can be sued in the civil courts but there is a risk of non-recovery if the owners do not have sufficient financial resources to meet the debt. As part of this process the Council could seek injunctive relief (a Mareva injunction) which would prevent those from whom it was seeking to recover expenses from dissipating their assets. A court would need significant evidence before granting such an injunction that those being sued were trying to hide or transfer assets to avoid paying any liabilities.

3.11 If the amount is pursued by way of a charge on the land then the Council could force a sale to recover the debt. However, the site is situated over the former James Adams Limestone Mine and as such ground investigations will be required when the site is cleared to establish the extent of any ground remediation works necessary to enable the site to be developed. The extent of any works will impact on the value of the cleared site and if it is worth less than the debt then recovery of all costs would not be possible.

- 3.12 Therefore taking into account the above observations, it is impossible to pre-empt the outcome of any subsequent legal action taken to recover the costs incurred, if direct action is pursued. In the absence of comprehensive information concerning the financial circumstances / resources of the owners and clarification regarding the inherent ground conditions of the site, it is difficult to comment with any degree of certainty whether the Council will successfully recover its costs or benefit from a charge being placed on the land.
- 3.13 However if direct action is indeed pursued, civil action should be commenced with a view to obtaining a Judgment against the owners. Further consideration will have to be given as to the most appropriate method of enforcement to be adopted. As part of this evaluation, an order to obtain information can be applied for, this process would require the owners of the site attending court to give information to the court under oath concerning the assets they own, bank accounts, investments etc

#### **4. Resource considerations**

##### **4.1 Financial:**

- 4.1.1 There may be a need for expenditure to deal with outstanding listed building consent conditions prior to demolition.
- 4.1.2 If Direct Action has to be taken to secure compliance, the Council's costs are likely to be high. However action could be taken to claim re-imburement from the owners, or to attach a charge to the land through the Land Registry for reimbursement at a later date when next sold. Notwithstanding this there are risks associated with these means of recovery and there is risk that it may not be possible to recover costs.
- 4.1.3 Funding can be found from central contingency while potential recovery is sought from the owners. These costs will remain a charge on central contingency if they cannot be recovered.

##### **4.2 Legal:**

- 4.2.1 Under s.215 of the Town and Country Planning Act 1990 the Council has the authority to serve a notice setting out the steps required to remedy the condition of land that has an adverse affect on the amenity of a neighbourhood. If the owner of the land does not comply with the notice within the specified period then s.219 of the Town and Country Planning Act 1990 allows the Council to take any steps required by the notice and recover any expenses incurred.
- 4.2.2 The appointed contractor would be required to submit a Notice of demolition under Section 80 of the Building Act, to ensure that safe procedures are followed.

##### **4.3 Staffing:**

The Council will need to commit staff resources to the tasks of managing the demolition of the building and recovering costs incurred.

## **5. Citizen impact**

The condition of this prominent building has had a detrimental impact on the amenity of the local area for a considerable period of time. Demolition of the building will improve the local environment and facilitate future redevelopment of the site which will be of long term benefit.

## **6. Community safety**

Given that the building is vacant and poorly secured it has been a focus for vandalism and anti-social behaviour. Demolition will clearly eliminate the problems associated with the site.

## **7. Environmental impact**

The building is on a key gateway route into the town centre and is extremely prominent. As such it offers a very poor visual impression of the borough. Demolition of the building and development of the site will enhance the local environment significantly.

## **8. Performance and risk management issues**

### **8.1 Risk:**

#### **8.1.1 Risk 1 – Demolition impacts detrimentally on adjacent properties**

(Risk Level Medium)

The building is in a poor structural condition and the condition of the land is unknown. On this basis there is a possibility that the demolition of this considerable building could impact on adjacent properties. While the appointed demolition contractor will be required to possess the necessary public liability insurance any incident would be high profile and detrimental to the Council's reputation.

#### **8.1.2 Risk 2 – Failure to recover costs incurred in demolition**

(Risk Level High)

The Council can seek to recover costs via civil litigation or a charge on the land. If civil litigation is pursued then costs can only be recovered if the owners have sufficient financial resources to meet the debt. If a charge is placed on the land then the value of the cleared site will need to exceed the costs incurred.

### **8.2 Performance management:**

8.2.1 The management of the project will take place in accordance with Walsall Council's Project Management Approach.

## 9. Equality implications

- 9.1 Resolving the longstanding problems associated with the site will benefit the wider community.
- 9.2 An Equalities Impact Assessment has been undertaken for this report. The Council is seeking to achieve the highest possible level in the Equality Standard for Local Government. As part of this we are seeking to ensure that wherever possible our activities ensure a positive impact is made on people / communities using the 6 equality themes / strands:
- Gender
  - Ethnicity
  - Age (i.e. young and old)
  - Sexuality / sexual orientation
  - Religion and or belief
  - Disability

## 10. Consultation

- 10.1 The Council formally consulted on the application for Listed Building Consent for demolition and responses were received from a number of interested parties. Significantly, English Heritage confirmed that they would not object to the proposal.
- 10.2 As good practice the Council will notify the local community prior to the commencement of demolition.
- 10.3 Any future planning applications for the site will be the subject of formal consultation periods.

## Background papers

None

### Author

Joel Maybury  
Principal Regeneration Officer  
☎ 653221  
✉ [mayburyj@walsall.gov.uk](mailto:mayburyj@walsall.gov.uk)



Tim Johnson  
Executive Director  
Regeneration

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Councillor Adrian Andrew  
Deputy Leader  
Portfolio holder – Regeneration.

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