

EAST RENFREWSHIRE COUNCILCABINET1 September 2016Report by Deputy Chief ExecutiveEASTWOOD NURSERY ALLOTMENTS BOUNDARY WALL**PURPOSE OF REPORT**

1. To report on the outcome of the deliberations of the Audit & Scrutiny Committee on the Cabinet's decision relating to the boundary wall at the site leased from the Council by the Eastwood Nursery Allotments Association (ENAA).

RECOMMENDATION

2. That the Cabinet:-
- (a) note that the Audit & Scrutiny Committee does not support the Cabinet's original decision to construct a replacement wall as set out as Option (ii) of the original Cabinet report; and
 - (b) consider the recommendation by the Audit & Scrutiny Committee that Option (i) of the original report, that the existing wall be allowed to remain, be approved.

BACKGROUND

3. On 16 June 2016 the Cabinet considered a report (Appendix A) by the Director of Environment providing an update on the current position regarding the Eastwood Allotments boundary wall and inviting the Cabinet to consider various options for the wall.
4. Having considered the report, the Cabinet agreed to support the option contained in the report which involved the Council funding and overseeing the reinstatement of the wall to a brick wall specification at a height of up to 2.4m or an appropriate height at an estimated cost of £60,000 (subject to tender).
5. The Cabinet's decision was subsequently called in for scrutiny and the Audit & Scrutiny Committee met on 4 August 2016 to consider the matter.
6. Councillors Gordon Wallace (Audit & Scrutiny Committee Chair), Barbara Grant (Audit & Scrutiny Committee Vice-Chair), Charlie Gilbert, Paul O'Kane, Gordon McCaskill, Tommy Reilly and Ralph Robertson of the Audit & Scrutiny Committee were present at the meeting. Councillor Stewart Miller, lead signatory to the call in notice, and Councillor Jim Fletcher, Leader of the Council, also attended. The officers present were Iain Maclean, Head of Environment (Planning, Economic Development and City Deal), Stuart Free, Principal Officer Asset Management, Eamonn Daly, Democratic Services Manager; and Jennifer Graham, Committee Services Officer.
7. Members of the committee accompanied by officers had visited conducted a site visit on 3 August.

REPORT

7. Councillor Miller was heard further in respect of the 7 reasons for the call-in of the Cabinet's decision as outlined in the call-in notice. It was noted that of the issues raised in the call-in, only 2 directly related to the decision. The first related to the contractual arrangements that were in place which led to the construction of the wall currently in place and to the level of involvement in that process by Council officers, whilst the second related to the accuracy of the proposed price of the replacement, tendering arrangements, and appropriate safeguards in place to ensure no repetition in future.

8. Thereafter Councillor Wallace summarised the call-in to be in respect of 3 matters:-

- Integrity of the organisation
- Liability issues
- Accuracy of costings for any proposed works

9. Speaking in relation to the decision taken by the Cabinet Councillor Fletcher provided some further context, explaining that in reaching its decision the Cabinet took account of the following matters:-

- Concerns that had been expressed by local residents that the new wall as constructed was not a like for like replacement for original wall and that this had been the expectation of local residents;
- That whilst the Council was in general supportive of allotments, where they were established they needed to be appropriately screened;
- Concerns about the delay in the completion of the current wall due to contractual issues between the Association and their contractors;
- Officers had taken a decision to reduce the height of the wall based on the funding available to the Association, and not taking account of the views of local residents;
- The Association had no funds to carry out the reinstatement;
- Despite entering into a lease with the Association, the land and the wall were owned by the Council and ultimately were the responsibility of the Council;
- When a wall on Woodfarm Road had been replaced by the Council it had been on the basis of a like for like replacement and so that should also apply in this case.

10. He noted that many of the questions relating to the integrity of the organisation referred to funds that it had received from other organisations, and that it was for those organisations to be satisfied that any funds awarded to the association were used in accordance with any conditions attached to the awards.

11. Mr Maclean was heard in respect of the proposed costings of the replacement wall. He clarified that the £60,000 in the Cabinet report was an estimate based on the schedule of rates used by officers in PaTS. In the event the Cabinet decision was ratified, a full tendering exercise would be undertaken, and it would only be once quotes were received that an accurate cost for constructing a replacement wall would be established.

12. Mr Maclean and Mr Free were also further heard on the history of the contract and the involvement of PaTS leading to the construction of the wall currently in place. This was as set out in the report to Cabinet.

13. In addition Mr Maclean outlined the terms of the lease between the Council and ENAA. He explained that the lease had been agreed in 2012, and that responsibility for the repair of the wall lay with ENAA. In 2013 the original wall had been deemed unsafe and at that time the Council had advised ENAA that in terms of the lease ENAA were responsible for repairs. ENAA had accepted this and as the previous wall was in such an advanced state of disrepair had taken steps for a replacement to be constructed. He acknowledged that with hindsight, the group did not have the project management skills for such a project, and that this would be something for the Council to reflect on in future when dealing with the implications of the Community Empowerment Act. However he clarified that ENAA were in effect a third party with leaseholder responsibilities and as such PaTS were reluctant to get involved in providing project management support as this was not a service that the Council offered to third parties. Councillor Wallace stated that knowing the makeup of the organisation and their lack of project management skills in his view officers had been dilatory in allowing ENAA to proceed with the commissioning of the new wall.

14. Mr Maclean also advised the committee that the files held by officers showed 4 or 5 complaints regarding the new wall, although he could not comment on the number of complaints received by Elected Members.

Funding sources

15. Mr Maclean commented on the various funding packages accessed by ENAA. He explained that it was for each organisation to satisfy itself that any funds awarded were used appropriately and in accordance with any conditions attached to their award.

16. Although not Council funding, the Council had administered the Whitelee Windfarm Fund, and he confirmed that officers were satisfied that ENAA had complied with the conditions attached to the funds they had obtained from that Fund. He confirmed that with regards to the construction of the wall to the original specifications, once ENAA had established that they had insufficient funds to complete the wall it would have been open to them to make further approaches to the Fund for an increased grant. However that would have been a decision for ENAA and the Fund Panel was only able to make a decision on the application before them.

Safety Concerns

17. Members sought further clarification regarding the comments made by the structural engineer in relation to the new wall as constructed, that when the wall was subject to wind loading the movement in the brick piers exceeded the design capacity of the wall. It was noted that the Cabinet report indicated that the construction was considered acceptable to both PaTS and Building Standards

18. Mr Maclean and Mr Free were questioned as to whether or not this meant that the wall as constructed was unsafe. Mr Free explained he had approached the structural engineer again to seek clarification that the statement that he had made. The structural engineer had declined to comment specifically as to whether or not the wall was unsafe in his opinion, but reiterated that when the wall was subject to wind loading the movement in the brick piers exceeded the design capacity of the wall.

19. It was also highlighted that the views of the structural engineer were that in the event the wall were to be replaced to a solid brick specification, then the height of the replacement wall should not exceed 1.8m. This was the height of the brick and timber wall already in place.

20. It was noted that there were several engineering methods available that would allow the existing piers to be strengthened to meet the design capacity.

Decision to amend specification

21. Mr Maclean and Mr Free were questioned on the decisions taken to agree to an altered specification for the wall from that originally agreed.

22. This was as outlined in the original Cabinet report (paragraphs 8 to 11).

23. In summary the timeline was:-

- April 2015 – PaTS agreed to a reduction in the height of the brick wall from 2.4m to 1.8m, taking into account the financial position of ENAA at the time, and that 1.8m high screening for an allotment was considered acceptable.
- August 2015 – original contractor (YES) withdrew from the contract
- August 2015 - Approach to Council by ENAA to change contractor
- August 2015 PaTS agreed to change of contractor
- October 2015 – Wall constructed to amended specification from that agreed; i.e. not closed timber panels and timber not dressed

24. Mr Maclean and Mr Free were questioned as to whether taking account of the expectations of local residents that a 2.4m high brick wall was to be built, it was appropriate for officers not only to agree to amended specifications for the wall, but also to accept the final version of the wall the specification of which varied from the amended specification that had been agreed by PaTS. They explained that PaTS was responsible for the management of the Council's estate. This also included ensuring that any lessees of Council-owned land complied with the terms of their lease. In terms of their lease, ENAA had tried to deal with the issue of constructing a replacement wall when advised to do so by the Council, but insufficient funding had meant they were unable to complete the wall to the original specification. PaTS had taken all relevant factors into account at the time in deciding to accept amended proposals. Thereafter, once it had become apparent that the wall as completed was different from the amended specification that had been agreed officers in PaTS had to decide whether or not the wall as constructed was acceptable. Again, taking all relevant factors into account PaTS officers took the view that the wall as constructed was acceptable although the timber infill screening was not to a standard as previously agreed.

25. Questions were also asked in relation to the visibility of the tops of some of the structures and equipment on site due to the reduced height of the wall, and to the prospect of discussions with ENAA to try and mitigate the effects be relocating some of them. In reply Mr Maclean explained that discussions with ENAA were ongoing and that officer did have continued dialogue with ENAA to make sure that the site was managed in accordance with the terms of the lease. He confirmed, in response to suggestions from members of the committee that these discussions could include dialogue regarding ways in which screening provided by the existing fence could be improved, such as the planting of hedges inside the wall, or the movement of some of the structures within the allotments to a less visually intrusive part of the site.

Current wall and alternative options

26. Having considered the background to the construction of the current wall in terms of available funding and changes to the originally agreed specification, the committee then considered the alternatives to the decision taken by the Cabinet.

The 4 options were listed as:-

- i. Existing wall to remain
- ii. Reinstatement of wall to full brick at a height of up to 2.4m or an appropriate height at an estimated cost of £60,000 (subject to tender)
- iii. Reinstatement to a solid timber fence at a height of 2.4m at an estimated cost of £20,000 (subject to tender)
- iv. Ask the tenant to reinstate the wall to an agreed specification and height.

27. Firstly the committee accepted that ENAA had no remaining funds to reinstate the wall to an agreed specification and height and so agreed to discount Option iv.

Committee deliberations

28. Thereafter in terms of their deliberations, the committee focussed on the following matters:-

- Was the wall as constructed appropriate taking into account its purpose and location?
- Was the wall as constructed safe taking into account the comments made by the structural engineer?
- If the committee considered the wall to be both appropriate and safe, was it appropriate for the Council to consider spending approximately £60,000 to construct a replacement?

29. In terms of the first question, the committee acknowledged that the expectations of local residents were that a like for like replacement wall was to be constructed. The committee recognised that due to changing financial circumstances it had been necessary for the specification of the wall to be changed. These changes had been made in consultation with and with the agreement of PaTS. The committee acknowledged that as the Council's property managers it was appropriate for PaTS to agree to a change in the specification and also recognised that in agreeing to a change all relevant factors were taken into account. However, the committee felt that bearing in mind the expectations of local residents communicating changes in the specification and managing the expectations of the local residents could have been handled better.

30. The committee recognised that the reduced height of the wall meant that the tops of some of the structures within the allotment were visible. They also recognised that the amended specification had proposed closed treated timber panels whilst the wall as constructed used untreated timber with gaps between the timber spars, resulting in activities within the allotments being visible from outside. The committee's view was that using a suitable coloured wood preservative would help the timber to blend in with the surrounding brickwork.

31. Members of the committee also referred to planning legislation, highlighting that residents had no right to a view.

32. On balance taking account of the location of the allotments the committee's view was that the wall as constructed and the levels of screening provided by the timber panels were acceptable.

33. The committee then considered the question of whether or not the wall as constructed was safe. The committee noted that the construction had been considered acceptable by both PaTS and Building Standards. They also noted the comments made by the structural engineer regarding wind loadings and that having been asked the specific question about the safety of the wall, that the structural engineer was not prepared to offer an opinion. The committee further noted that there were several methods available which could be used on the existing wall to ensure it met the design capacity.

34. The committee also noted that as the current 1.8m wall including open timber slats did not meet the design capacity a 2.4m closed panel fence would be even more susceptible to wind loading on the brick piers. Furthermore, the committee noted that the structural engineer had recommended that the maximum height of any full brick replacement wall should not be above 1.8m so residents' concerns about the height reduction of the wall may not be addressed.

35. Having taken all these factors into account, the view of the committee was that the wall as constructed was safe and that there was no need for it to be replaced on safety grounds.

36. In conclusion, the committee's view was that the key determining factors in deciding whether or not to replace the wall were down to the adequacy of the wall that had been constructed.

37. Officers in PaTS had agreed an amended specification with ENAA which they considered to be suitable. However, local residents had expected a like for like replacement and this had not been delivered.

38. The committee noted that the Cabinet's decision was to spend up to £60,000 building a wall of up to 2.4m. However as the proposals would be subject to tender, whilst it was possible that £60,000 would be an adequate sum, there was no absolute guarantee that this would be sufficient to build a wall of this height and so the issues regarding the tops of some of the structures being visible may remain unresolved. Furthermore, the structural engineer had recommended that any solid brick wall should be no higher than 1.8m.

39. The committee recognised that a number of complaints had been received about the new wall. However taking all factors into account, the committee's view was that the wall as constructed, whilst not a like for like replacement, provided adequate screening for the allotment. Therefore the committee agreed not to support the Cabinet's decision and agreed to recommend to the Cabinet that it support Option (i) that the existing wall be allowed to remain.

RECOMMENDATION

40. That the Cabinet:-

- (a) note that the Audit & Scrutiny Committee does not support the Cabinet's original decision to construct a replacement wall as set out as Option (ii) of the original Cabinet report; and

- (b) consider the recommendation by the Audit & Scrutiny Committee that Option (i) of the original report, that the existing wall be allowed to remain, be approved.

41. In the event the Cabinet accepts the recommendation by the Audit & Scrutiny Committee this will become the decision of the Cabinet. If the Cabinet does not accept the Committee's recommendations, the matter will require to be referred to the next available meeting of the Council to decide whether either the Cabinet's original decision or the Audit & Scrutiny Committee's proposals should be approved.

Local Government (Access to Information) Act 1985

Report Author:- Eamonn Daly, Democratic Services Manager Tel: 0141 577 3023
e-mail: eamonn.daly@eastrenfrewshire.gov.uk

Background papers:- None

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