

# North Somerset Council

## REPORT TO THE EXECUTIVE

**DATE OF MEETING: 5 FEBRUARY 2020**

**SUBJECT OF REPORT: BIRNBECK PIER AND ASSOCIATED LAND,  
PROPOSED WAY FORWARD FOLLOWING ISSUING OF REPAIRS NOTICE**

**TOWN OR PARISH: WESTON-SUPER-MARE**

**OFFICER/MEMBER PRESENTING: COUNCILLOR DON DAVIES, LEADER**

**KEY DECISION: NO**

### REASON:

For this decision the council's expenditure is less than £500k and the impact is not significant in 2 or more wards

### RECOMMENDATIONS

To note the content of this report and to support the ongoing work to seek a sustainable future for Birnbeck Pier, including preparation for a potential Compulsory Purchase of the Pier and the associated land holding. (A further report, at the appropriate time, will be brought to members to make a decision on whether or not to make a CPO).

To authorise officers to prepare for making a compulsory purchase order and taking other preparatory steps for securing the preservation of Birnbeck Pier, including but not limited to:

- (a) serving requisitions for information on persons identified as being likely to hold an interest in land likely to be included in a Compulsory Purchase Order;
- (b) taking all steps with interested parties to seek to acquire the necessary interests in land by agreement including negotiation of headline terms, agreements, undertakings, transfers and any new rights required, for report to and decision in accordance with applicable delegations in the Constitution; and
- (c) preparing all necessary documentation to prepare the Compulsory Purchase Order, for submission to the Secretary of State for confirmation.

To engage with any party with an interest in Birnbeck Pier with a view to securing agreement for the preservation and repair of the Pier.

To continue to engage with Historic England to explore options for securing the repair and preservation of Birnbeck Pier, including the potential for a Compulsory Purchase Order

## **1. SUMMARY OF REPORT**

Since a formal Repairs Notice was served on the owner of Birnbeck Pier in September 2019 seeking action to repair the decaying structure, no substantive proposal for repairs or any evidence of action being taken has been received. Due to the concern about the deterioration of the Listed structure officers have, with Historic England, continued to explore all options including the potential for a Compulsory Purchase Order (CPO).

This report provides a summary of work to date and seeks authority for officers to continue to explore options with Historic England, including a potential CPO, and to bring a further report to Council for a formal decision on whether to proceed with making a CPO.

## **2. POLICY**

Great Weston Conservation Area: Appraisal and Management Plan adopted 4/12/18  
Action Plan - *Review rescue and reuse plans for Birnbeck Pier*  
Priority timescale within the action plan = short to medium term i.e. 1 – 5 years

## **3. DETAILS**

### **Background**

Birnbeck Pier is a Grade II\* listed structure, its condition is deteriorating and consequently it is a top priority on Historic England's Heritage at Risk national register (category A, very bad). It is considered to be a nationally important structure that is 'at imminent risk of being lost because of neglect, decay or inappropriate development'.

The decline has been ongoing for many years. Public access ceased in 1994 and the RNLI who had operated from the Pier for over 130 years, left in 2013 when it was deemed unsafe for their crews to launch and recover their lifeboats from that location.

CNM Estates Ltd has owned Birnbeck Pier since 2014. Since taking ownership there have been no deliverable proposals for repair or development to secure the future of the Pier. The Pier is deteriorating at an increasing rate and is at great risk of being lost permanently.

### **Repairs Notice**

Due to the increasing concern regarding the Pier, the Council has been working with Historic England to explore options to protect the Listed structure and its environs.

Local Authorities have the statutory power to serve a Repairs Notice, under the Planning (Listed Buildings and Conservation Areas) Act 1990 (often referred to as the Listed Buildings Act). Serving a Repairs Notice places a legal requirement on the owner to undertake repairs, to properly preserve the relevant listed building.

Historic England provided grant funding to the Council to commission specialist engineers to undertake survey work and advise on the schedule of repair works necessary, and also for legal advice to ensure the repairs notice was prepared and served correctly.

After sending two 'warning' letters to the owner advising that the Council was considering serving a repairs notice (which did not result in any substantive response from the owner),

the Council, with Historic England's support, proceeded to issue the formal Repairs Notice in early September 2019.

At the time of writing this report no substantive response to the notice has been received that confirms that any of the required works will be undertaken nor any proposals to develop such a plan. Engagement with the owner and its representatives will continue.

Should the owner choose not to carry out repairs in a reasonable time (2 months minimum from the date of serving the Notice), the Council may make a Compulsory Purchase Order (CPO) to acquire the site.

### **Way forward**

Clearly the best option would be for the owner to come forward with a plan of action to effect the repairs to secure the proper preservation of the pier. Officers have sought to meet with the owner to discuss the way forward but to date this offer has not been taken up.

As, at the current time, there is no evidence of any progress by the owner, the Council has continued discussion with Historic England about the potential alternative options and has recently secured further grant funding to proceed with work toward finding a sustainable solution for the long-term future of the Pier and its environs including use of Compulsory Purchase powers.

From work undertaken on behalf of the Birnbeck Regeneration Trust and Historic England, together with learning from the experience of restoration of Clevedon and other Piers, it is clear that restoration of the Pier would be a multi-million pound capital project. There is also a considerable ongoing maintenance cost that would need to be factored in to ensure a sustainable future for the site.

Grants toward the capital works might be found from bodies such as the National Lottery Heritage Fund, however a clear and deliverable plan for ongoing operational costs will need to be developed for any such applications to be successful.

There are numerous examples of where properties neglected by their owners have been acquired by Local Authorities using CPO powers and then passed on under the terms of a 'back to back' agreement, to either a developer or voluntary sector body for restoration or redevelopment. This arrangement would limit the risk to the Council as it usually involves entering into an indemnity agreement with the final purchaser, before the CPO process commences.

For example;

- Bristol City Council served a compulsory purchase order (CPO) to acquire Arnos Vale Cemetery before transferring management to the Arnos Vale Cemetery Trust (AVCT). This project was subsequently awarded £4.8m of funding from Heritage Lottery Fund (HLF) towards repair and restoration costs.

The site is now actively used for a variety of functions and the Trust now employs the equivalent of nine full-time staff, including a fundraiser, and have 60 active volunteers.

- The extensive Denbigh Asylum was acquired by Denbighshire Council using CPO powers and transferred to a local developer working in partnership with North Wales Building Preservation Trust, to deliver a £30m+ scheme of 300 homes and over 1100m<sup>2</sup> of commercial uses.

This report is seeking approval for officers to continue to press the landowner to take appropriate action to safeguard Birnbeck Pier but in the absence of any demonstrable progress to work with Historic England to seek potential partners to work up detailed proposals including the management of the costs and risks, which could lead to the restoration of Birnbeck Pier and a sustainable future. A further report will be brought to the Executive or Full Council, as appropriate, seeking approval of the next steps.

#### **4. CONSULTATION**

To date only very limited consultation has been undertaken with Ward Members and the Leader, and Historic England. Should members approve this report, any proposals will be developed in consultation with Policy and Scrutiny Panel members and other interested parties.

#### **5. FINANCIAL IMPLICATIONS**

##### **Funding**

Historic England provided an initial grant of £15,000 to the Council for the preparation and serving of the Repairs Notice including legal and specialist engineering inspection costs and an allowance for Council staff time.

Historic England have now made a further grant offer of up to £127,000 to investigate options, seek potential partners, and if appropriate to proceed with a CPO. This grant provides funding for some staff time but the Council is expected to also contribute staff time equating to approx. 30 days work.

##### **Costs**

At this point it is estimated that officer time, in the region of 30 days' work, will be required to develop proposals sufficiently to seek a further authority from Members.

In addition, external costs relating to legal, financial and other investigative fees are likely to be incurred to develop further options and to potentially proceed with a CPO, all of which will be funded by the grant.

#### **6. LEGAL POWERS AND IMPLICATIONS**

The Planning (Listed Buildings and Conservation Areas) Act 1990 ("Listed Buildings Act") at Section 47 allows the Council to make a Compulsory Purchase Order to secure land for the proper preservation of a listed building. The precursor to exercise of powers under Section 47 is service of a Repairs Notice on the persons with interests in the relevant land under Section 48. That precondition has now been satisfied and the two month period for the owner to make proposals for the proper preservation of the Pier has now expired.

If a Compulsory Purchase Order is made it will be submitted to the Secretary of State for confirmation. The Secretary of State will have to be satisfied that there is a compelling case in the public interest generally for the compulsory purchase to proceed. In particular under Section 47 the Secretary of State must be satisfied that reasonable steps are not being taken for properly preserving the listed building.

If a CPO is made, then any person whose interest is proposed to be acquired compulsorily may make an application to the Magistrates Court requesting a stay in the process to demonstrate that reasonable steps have been taken for properly preserving the relevant building.

Under Section 50 of the Listed Buildings Act an acquiring authority may seek a direction from the Secretary of State that minimum compensation is payable on the basis that the building has been deliberately left derelict. Otherwise compensation for compulsory acquisition if the Compulsory Purchase Order is confirmed by the Secretary of State, will be payable in accordance with the legislation, Court decisions and the decisions made by the Lands Chamber of the Upper Tribunal that relate to payment of compensation following compulsory purchase – collectively known as the Compensation Code.

If the Compulsory Purchase Order is made by the Council, confirmed by the Secretary of State and then compulsory powers are used to vest the Pier and associated land in the Council then any interests in land less than freehold or leasehold ownership, such as rights of way or private rights to lay apparatus may also be extinguished by the Council, subject to the payment of compensation in accordance with the Compensation Code.

The Council is also empowered under Section 52 of the Listed Buildings Act to acquire by agreement land that is of special architectural or historic interest and any contiguous or adjacent land required for preserving the relevant building or its amenities, affording access to it or for its proper control.

Under Section 53 of the Listed Buildings Act the Council may make arrangements for the management to use or disposal of the Pier as considered appropriate for the purpose of its preservation.

If officers decide to recommend making a Compulsory Purchase Order, the report doing so will include consideration of human rights and equalities issues, likely costs and a full analysis of the case for exercising compulsory powers. Members will also be advised of the likely compensation liabilities arising from the exercise of powers.

## **6. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

The Pier is located in an area subject to several designations under International Treaty (the Ramsar Convention) the Habitats Regulations and the Wildlife and Countryside Act 1981. Any proposals for works to the pier will have to be considered in the context of the environmental protections afforded by those designations.

## **7. RISK MANAGEMENT**

This will form a vital part of any further report but given the support from Historic England, at this stage there are no significant risks to the Council.

## **8. EQUALITY IMPLICATIONS**

As this is essentially a feasibility project exploring options no EIA has been undertaken. If/as this project progresses equality impact assessments will be undertaken at the appropriate time. The Council's public sector equalities duties and considerations under the Human Rights Act 1998 will be considered in any report to members submitted seeking use of compulsory purchase powers.

## **9. CORPORATE IMPLICATIONS**

None at this stage

## **10. OPTIONS CONSIDERED**

n/a

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## **APPENDICES**

none

## **BACKGROUND PAPERS**

REPAIRS NOTICE IN RESPECT OF **Birnbeck Pier, Birnbeck Road, Weston-super-Mare, BS23 2BT**