

Retaining wall, Milton Abbot Churchyard

For several years there has been concern over the condition of part of the retaining wall around the churchyard and the playground area, because if a section of the wall did collapse it would fall into the highway. Research in the minutes of the Parish Council shows previous agreement to the condition of the wall being monitored and enquiries being made as to the extent, if any, of the Council's liability for any necessary remedial work. Concerns over the condition of parts of the wall have been raised recently and the Parish Council needs to decide how it should take this matter further.

Given that the Parish Council is aware that there might be a potential hazard arising from the apparent condition of the wall and that the risks involved could affect the general public, there seems to be little doubt that it has a duty not to ignore the issue.

The action the Parish Council might take depends to some degree on the condition of the wall.

- *Has it deteriorated to such a degree that it would be obvious to any lay person that emergency work should be undertaken to avoid an obvious risk to passers-by?* If so, the Highway Authority ought to be informed as a matter of urgency, in case they wish to prevent vehicles and pedestrians passing alongside the wall, while responsibility for any necessary work is determined.
- *Is its condition such that an expert opinion would be needed to determine the degree of risk it presents?* If so, the Highway Authority should be given the opportunity to make its own assessment, as should any other party likely to have an interest in the land and/or a possible responsibility for the maintenance of the wall.
- *Is its condition so obviously sound that no reasonable person would conclude that remedial work of any kind was required?* If so, the Parish Council should state that this was their conclusion, and the reasons therefore, and advise any potentially interested parties of their decision to take no further action.

If the Parish Council reviews the condition of the wall and takes whatever action it thinks fit in the light of its assessment, it will have acted responsibly, in accordance with its general obligation to safeguard the interests of local residents.

The extent of any responsibility the Parish Council may have, has been a matter of concern for many years, for example:

September 2004: Cllr Westcott to collect the deeds from Chilcotts Solicitors, '*so that ownership can be established.*'

October 2004: The Clerk reported that she had sent all the leases/underleases to DAPC [predecessor of DALC] for perusal regarding the '*ultimate responsibility of the Village Hall and playground.*'

December 2004: The Clerk reported that '*she had ascertained from DAPC that the Parish Council had no legal responsibility for managing the Village Hall/playground and is purely the holding trustee for them.*' The Village Hall Committee was to be informed of this and that the

grass cutting in the playground should be organised by them, although the Parish Council would be prepared to make a grant towards the cost.

January 2005: However, the Clerk subsequently discovered that the playground was not mentioned in the 'underleases' and *'it was therefore doubtful if the Village Hall Committee would take over management of the grass cutting'*.

There was then a further attempt to get legal advice from DALC or the Borough Solicitor, but this does not seem to have been successful.

Cllr Hough has obtained a copy of a 999 year lease dated 23rd October 1963, between the Milton Abbot Parochial Council and the landlords, who included Baron Ampthill [otherwise known as the Duke of Bedford]. It is assumed that the Parochial Council is the Parish Council and not the Parochial Church Council.

The lease is in respect of two parcels of land. One is the land *'with the Village Hall and reading room erected thereon'* and the other is *'that parcel of land used as a children's playground adjoining the churchyard'*.

The Council has to *'carry out such repairs to the buildings on the property demised as may be requisite to keep the same in reasonable repair and condition and to insure the same.....'*

What does this lease tell us? Not much for certain. The freeholder is probably still the Duke of Bedford, especially as his estate was involved in the granting of a sub-lease or similar agreement in respect of the playgroup using the playground area in 2009.

It would appear that the Council's maintenance liabilities are limited to *buildings on the property demised*. But, does *buildings* also cover the retaining wall? The Council does not repair or insure the village hall, so there must have been some agreement that transferred that responsibility. Did such an agreement change other aspects of the lease? Does having a 999 year lease carry with it the normal obligations of a freeholder?

Cllr Asbridge has found no evidence that the lease or any subsequent agreement relating to the parcels of land was registered at the Land Registry. The Parish Council has never kept a proper archive of its records and there is therefore no reliable source of information on this issue.

If the Council does believe that the condition of the wall is such that it should explore further whether it has any responsibility for it, there would seem to be two options. To seek legal advice or to approach the Bedford Estate and ask them whether or not they believe they have any responsibility for this matter and the grounds for their conclusion.

The Parish Council's views are requested.