

ABERDEEN CITY COUNCIL

COMMITTEE	Communities Housing and Infrastructure
DATE	15 March 2016
DIRECTOR	Pete Leonard
TITLE OF REPORT	Bridge Street Arches – Water Ingress
REPORT NUMBER	CHI/16/042
CHECKLIST COMPLETED	Yes

1. PURPOSE OF REPORT

To present to the Committee for consideration, the request of Mr Iain Hawthorne - that Aberdeen City Council should exercise discretion in terms of Section 66 of the Roads (Scotland) Act and fund work to prevent water ingress to the arches at 15-17 Bridge Street, which form part of his business premises there.

2. RECOMMENDATION(S)

That the Committee refuse Mr Hawthorne's request.

3. FINANCIAL IMPLICATIONS

The cost of waterproofing the arches occupied by Mr Hawthorne's business could be substantial, amounting to hundreds of thousands of pounds. If a precedent is set, the owners of similarly affected premises in Bridge Street, Union Street and other locations could also make applications for funding.

4. OTHER IMPLICATIONS

Roads authorities have not traditionally accepted responsibility for water ingress to privately owned vaults. To accept responsibility in this case could set a precedent.

5. BACKGROUND/MAIN ISSUES

The arches or vaults under Bridge Street are privately owned. They support the adopted road. The road construction is porous and allows water to percolate downwards. When the arches were constructed in the mid 19th century they were lined externally with puddle clay. The puddle clay gives a reasonable level of protection against water ingress. However over the last 150 yrs various works by public and private organisations and individuals may have damaged the clay lining. This is likely to continue to be a problem, as utility providers install or repair services running under the pavements. In addition the numerous utilities and pipes which run along and across the street can act as conduits for ground water below road level.

There are other locations in the city where businesses have used similar type arches as premises – e.g. Union Street, Rosemount Viaduct and St Nicholas Street. In all these locations the arch owners have installed internal linings and drainage systems to deal with the ingress of ground water.

Section 66 of the Roads Scotland Act states:-

(1) As regards any road, the following things shall be kept in good condition and repair by their owners or occupiers or by occupiers of the premises to which things belong-

(a) every vault, arch, cellar and tunnel under the road;

(b) every opening into any such vault, arch cellar or tunnel from the road surface.

(c) every door or cover (whether fixed or removable) to any such opening

(d) every pavement light in the surface of the road; and

(e) every wall or other structure supporting any such vault, arch, cellar, tunnel, door or cover.

(2) Where an owner or occupier is in contravention of sub-section (1) above the roads authority may by notice to him require him within 28 days of the date of service of the notice to replace, repair or put into good condition the thing in respect of which the contravention arises.

(3) A person upon whom a notice has been served under subsection (2) above may, within the 28 days mentioned in that subsection,, refer the matter by summary application to the sheriff; and the decision of the sheriff on the matter shall be final.

(4) A local roads authority may, if they think fit, pay the whole or any part of any expenditure incurred by a person in complying with subsection (1) or (2) above.

At no time has Aberdeen City Council asked Mr Hawthorne or any of the businesses in which he is involved to carry out maintenance work on the arches at 15-17 Bridge Street.

City Council engineers are satisfied that the arches in their present condition are safe to carry 44Tonne vehicles, and adequately supports the adopted road - as required by law.

6. IMPACT

Improving Customer Experience –

N/A

Improving Staff Experience –

N/A

Improving our use of Resources –

N/A

Corporate –

N/A

Public –

N/A

7. MANAGEMENT OF RISK

To grant discretion as described above could set a precedent and allow future like claims to be submitted.

The greatest risk to the structural integrity of arches/vaults of this type is the accidental removal of walls or other structural elements during alteration work. Any alterations by owners require a building warrant. Building Control will then notify the Roads Authority of any such work and notify the arch owner of any concerns.

The arches were assessed in 1999 as more than adequate to carry the 44 Tonne vehicle – as required by EU directive. Periodic inspections of Bridge Street have not given any reasons to alter this assessment.

8. BACKGROUND PAPERS

Letter of 09 November 2015 from Fraser Bell to Mr Iain Hawthorne appended to this report

9. REPORT AUTHOR DETAILS

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9 November 2015

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Dear Mr Hawthorne

Bridge Street Arches

I refer to your letters of 12th and 29th October addressed to Douglas MacDonald, Engineer with a copy sent to me. I have taken instructions on this long-standing issue and have reviewed your letter with Fiona Selbie who, as you will appreciate, has had considerable involvement in this matter over the years.

You have confirmed that you are not the owner of the vault in question, nor is the firm of McCalls Ltd, although you are the occupiers.. You do not say if you know who the owner is, nor what the basis of your occupation is. I can confirm that the Council does not know who the owner is or was.

You make reference to the Management of Highway Structures Code of Practice and request to see an agreement between the owner of the arches (vaults) and the Council to clarify maintenance responsibilities. As the council is not aware who is or was the owner you will appreciate that there is no such agreement with the owner of the arches. As you say the road is adopted and as such, full maintenance responsibility for the road rests with the Council. Full responsibility for maintenance of the arches rests with the owners of the arches. Pragmatically, if the owner cannot be established, it would seem that the power to carry out works would fall to the occupier who wishes to make use of the vault, but that is a matter on which you will have to take your own advice. The condition of the road is the responsibility of the roads Authority, and I can confirm that this has been examined, and the Council engineers are satisfied that the road is structurally sound.

In my view there is no obligation on the Roads authority to keep the arches watertight, or in a condition fit for occupation. That is a duty that falls on the owner of the arches. As previously analysed, the percolation of water through the ground is a natural condition which the lower proprietor must accept.

You have suggested that in 2007 the Council installed a waterproof membrane in the pavement in acknowledgement of the fact that the water ingress to your premises emanated from the road. This statement is incorrect. The waterproof membrane was installed by the Council at your request during on-going planned pavement resurfacing works, as you said you considered that such a membrane would protect your property from water ingress. This was not a solution suggested by the Council. I note that you say the membrane has been breached by various utility companies. That is a matter you must take up with them, if you consider that they owe duties towards you as the occupier of arches underneath the Bridge Street pavement. It is not within the power or duty of the roads department to require those working in the road to carry out work so as to have an effect on adjacent third party owners or occupiers.

You refer to a documented inspection carried out by the Council in 1999. Having taken instruction I can advise that an assessment was carried out in 1999 in relation to the load bearing capacity of the arches only – this was to assess its ability to carry 40 Tonne vehicles as required by EU directive. An attempt to inspect the arches was made by the Council in 2013, access was not obtained on that occasion. You have also made reference to the iron beam. Following previous inspections, the Council is satisfied that the iron beam forms no part of the load carrying structure of the arches.

I appreciate that you have attempted to take appropriate action to protect the integrity of your property and as landowner, it is the Council's position that it is entirely your responsibility to do so. You mention that you have engaged a company to identify the source of the water and offer a solution to stop the ingress. The Council would be interested to see the report prepared by this Company on your behalf.

The Council attempted to inspect your vault in 2013, but was not able to obtain access. Adjacent vaults, built at the same time as your vault were inspected at these times and no concerns were noted. The Council did not therefore have concerns regarding the structural integrity of your arches as it might affect the road. The Council is under no obligation to inspect or examine vaulted properties – in this case as Roads Authority the inspections would be to ensure the safety of road users and not to determine the suitability of the arches as business premises.

You have referred to Section 66 of the Roads (Scotland) Act 1984. As you have noted, the Council may exercise their discretion to make payment to vault (and other) owners to compensate for payments made by owners to keep their property in good condition and repair. We would have to refer any request to CH& I with a full report – however the recommendation of officers would be that the Council refuse any such request.

In summary of your main points:

- 1) The Council does not have any agreement with the vault owners and the Council is unaware of who the owners are
- 2) The last attempt to inspect the vault was in 2013. I was not aware that you had recently contacted the roads Department to ask them to visit your premises to inspect, and I have referred this to the Roads Department to allow such an inspection to happen.

- 3) The Council has considered your request for the exercise of discretion in terms of Section 66 of the Roads (Scotland) Act 1984 and will present this to committee in March 2016
- 4) I note your request to be allowed to inspect certain gillies and electrical boxes, and I have asked colleagues in the roads Department to respond to you direct.

I trust that this answers the points raised within your correspondence of 12th October 2015 and reiterates the Council's position in relation to this matter.

Yours sincerely

Fraser Bell
Head of Legal and Democratic Services