

---

<b>REPORT TO:</b>	<b>Development Control Committee</b>	<b>AGENDA ITEM: 4</b>
<b>DATE OF MEETING:</b>	<b>16 September 2003</b>	<b>CATEGORY: DELEGATED/ RECOMMENDED OPEN</b>
<b>REPORT FROM:</b>	<b>DEPUTY CHIEF EXECUTIVE</b>	
<b>MEMBERS' CONTACT POINT:</b>	<b>TR Dening</b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>The restoration of the footbridge at the UCI Site at Findern.</b>	<b>REF: 9/2003/0447</b>
<b>WARD(S) AFFECTED:</b>	<b>Etwall and Findern/Willington</b>	<b>TERMS OF REFERENCE:</b>

---

## **1.0 Recommendations**

- 1.1 That the Unilateral Undertaking accompanying this report be accepted and that the planning permission be issued in accordance with the recommendation to the Development Control Committee on 17 June 2003.

## **2.0 Purpose of Report**

- 2.1 To advise the Committee of the progress of negotiations relating to contributions towards the restoration of the footbridge over the A38 between the UCI site and Findern.

## **3.0 Executive Summary**

- 3.1 Members will recall that the report to Committee on 17 June 2003 (copy attached) recommended that planning permission be granted for the erection of a warehouse on the UCI site at Findern. This was subject to a Section 106 Agreement to secure the restoration of the footbridge over the A38 including its future adoption as a public right of way.
- 3.2 During the course of negotiations, it has become apparent that the Highways Agency cannot sign a Section 106 Agreement. It needs to be a signatory as the Agency is the authority responsible for the maintenance of the A38. Whilst not doubting the willingness of the Atkins Family Trust to enter into the Agreement, the company emphasises its need for certainty and an ability to start the development in the very short term. This, together with uncertainty about costs, has led the applicants to offer a unilateral undertaking (copy attached) to pay for the costs of the restoration of the bridge. The works to restore the bridge are identified in the Schedule accompanying the Undertaking. They would also pay reasonable additional costs up to a limit of £6000 should it be proven that the bridge is capable of economic repair following a full internal survey of the bridge that they would undertake.
- 3.3 If the survey reveals that the bridge is capable of economic repair, then the works identified will be undertaken. The applicants will then approach the Highways

Agency and the landowners on the other side of the road with a view to transferring the bridge to the Highways Agency with a view to the bridge being adopted as a public right of way. This would be achieved under the provisions of Section 94 of the Highways Act 1980. The undertaking makes provision for the dedication of the necessary land to facilitate public access.

- 3.4 The alternative is that the survey will reveal that the bridge is not capable of economic repair and the consequence may be the removal of the bridge unless other Agencies put funds towards its restoration.

#### 4.0 Detail

- 4.1 Negotiations have been underway to secure a Section 106 Agreement as set out in the Committee report of 17 June 2003. The Highways Agency has indicated that it cannot sign up to such an agreement for legal reasons and suggested that the matter be progressed through Sections 94 & 278 of the Highways Act. This would have meant that this Authority would have no control over the restoration of the footbridge that was the primary objective.

- 4.2 The applicants have also expressed concern about a number of factors.

- The costs of repairing the bridge as identified in the schedule prepared and agreed far exceeded their original idea when agreeing to the restoration. Nevertheless, they remain committed to doing this restoration work subject to the results of the new structural survey.
- They have no idea of the costs of ongoing maintenance costs that formed part of the original suggested package for the Section 106 Agreement. In view of the above point, there is concern about the cost to the company spiralling out of control.
- The company is a worldwide partner to Toyota. The reason for the application for the warehouse is that Toyota is moving to a 3-shift system and space on the factory currently occupied by the applicants will no longer be available to them. The warehouse needs to be in place when Toyota moves to its new shift pattern. There is already a delay in starting the project (scheduled start date 16/09/03). Further delay will prejudice the ability of the Company to deliver on its contract to Toyota. This may mean that the business is undertaken in a site away from the Derby site. *This would clearly be a much less sustainable option*
- The company, in the light of the above is prepared to commit to the restoration of the bridge. It will fund the restoration of the bridge but it needs certainty as to the costs. So, the proposal is to fund the cost of restoration and then seek the public adoption of the bridge with the other landowner and the Highways Agency under Section 94 of the Highways Act. It would also fund the full internal survey of the footbridge. If that survey identifies reasonable additional costs than the Company would fund these if the additional costs do not exceed £6000. If the costs exceed those identified, the consequence would be the loss of the private footbridge on the basis the costs of restoration go beyond the agreed schedule costs. *(This may be avoided if other agencies were able to fund the additional costs of restoration.)*
- The company argues that this would give the Local Planning Authority the assurance that the reasonable restoration of the bridge would be undertaken and give the company the certainty it needs both in terms of costs and the ability to start the project.

- 4.3 A Unilateral Undertaking has thus been prepared on behalf of the applicants and it is brought to Committee for consideration.

## **5.0 Financial Implications**

5.1 None

## **6.0 Corporate Implications**

6.1 None

## **7.0 Community Implications**

7.1 There is a possibility that the private footbridge that people have used over the years would be lost to the community.

## **8.0 Conclusions**

8.1 There is clearly a risk that the bridge would be removed if the costs go significantly beyond those already identified. The applicants are aware that if the bridge is restored, then the negotiations undertaken with the Highways Agency are likely to include an element of funding for future maintenance. The alternatives are that the bridge does not get transferred and the current owners bear the future maintenance liability or the transfer to public ownership progresses smoothly.

8.2 The view is that this represents the best that can be achieved in the circumstances that are described above.

## **9.0 Background Papers**

9.1 File 9/2003/0445

