
REPORT TO:	Development Control Committee	AGENDA ITEM: 8
DATE OF MEETING:	16 November 2004	CATEGORY: DELEGATED
REPORT FROM:	DEPUTY CHIEF EXECUTIVE	OPEN PARAGRAPH NO: N/A
MEMBERS' CONTACT POINT:	TIM DENING EXTN 5748	DOC:
SUBJECT:	Footbridge at the A38 Derby Road Burnaston	REF: TRD/9/2003/0447
WARD(S) AFFECTED:	Willington and Findern Etwall	TERMS OF REFERENCE: DC01

1.0 Recommendations

1.1 It is recommended that:

- i. The Committee authorises the acceptance of the report on the restoration of the footbridge and its subsequent demolition on the basis that the cost of repair goes beyond that envisaged in the application reports to Committee and the Highways Agency is unwilling to adopt the footbridge as a public right of way due to the unwillingness of third party landowners to allow access to their land.
- ii. That the offer of £15,000 made by NYK Logistics be accepted as a contribution towards local amenity projects in the Parishes of Findern and Burnaston.

2.0 Purpose of Report

- 2.1 To seek Member approval for the demolition of the footbridge and the provision of funds towards local amenity projects in Willington and Findern.

3.0 Detail

- 3.1 The site had been used as a storage facility and haulage yard for many years and during that time the landowners of this site and one over the road constructed a footbridge over the A38 to link the two sites. This reflected a previous use of the sites as petrol filling stations.
- 3.2 In 2003 planning permission was granted for the erection of a warehouse building on the land at Derby Road Burnaston. A Unilateral Undertaking was attached to the permission requiring that a survey be undertaken of the structure with an upper limit for the cost of repair of £66,000. The building is now in place and the internal survey of the footbridge has been undertaken.

- 3.3 The survey reveals that the footbridge is in reasonable condition and on that basis the Company sought three tenders to carry out the necessary work to the footbridge. These all came in at a cost of in excess of £100,000 and to this the cost of a commuted sum would need to be added. At a recent meeting, this was estimated by the Highways Agency to be in the vicinity of £15,000. This total is far in excess of the amount included in the Unilateral Undertaking.
- 3.4 In addition the Highways Agency has indicated that it would be unwilling to adopt the footbridge in the absence of agreement from the third party to allow public access to pass and repass and for future access for maintenance purposes by the Agency.
- 3.5 In the light of this Councillor Ford sought a meeting with the company and the Highways Agency. This was held on 1 October 2004. At the meeting the company representatives outlined the problems set out above. Councillor Ford then explained that the footbridge was seen as a valuable local resource used by people to cross the A38 albeit without the landowners' permission. He had carried out local research that revealed three people had come forward stating that one used the footbridge on a twice-weekly basis and the others were occasional users. Councillor Ford said that the footbridge is a valuable community asset and for the sake of a few thousand pounds it should be retained. The current appearance of the footbridge deters people from using it.
- 3.6 Company representative went on to explain that the company was happy to try and retain the footbridge. When first approached it had allocated some £15,000 to refurbish the footbridge. Subsequent negotiations took the cost to a maximum of £66,000. Now the company was in a position where the full cost to the company would be somewhere in the region of £160,000 that in no way was comparable with the very small benefit that would accrue to the community. The reason for the increase in the costs of restoration was the need to close the A38 and crane the footbridge down to effectively carry out refurbishment and then reverse the operation once works were completed. This would be the most cost effective way of doing the work. Carrying out the refurbishment of the footbridge in situ would be even more expensive.
- 3.7 It was clear that there would be no change to the position of the Atkins Family Trust in that it would be unwilling to grant public access to its lands. There then followed considerable discussions about the merits of retaining the footbridge. This resulted in the company representatives leaving the meeting to have private discussions about a way forward.
- 3.8 Upon their return to the meeting, the company representatives emphasised the company's commitment to the community and that it wanted to work with the community for the benefit of the area. Whilst it was regretted that the footbridge could not be refurbished within a reasonable cost base, the company would be willing to commit to provide £15,000, the original amount it had set aside for the works to the footbridge, to the local Parish Councils to undertake local amenity projects in those areas as a gesture of goodwill. The company would bear the cost of removing the footbridge.

3.9 The meeting closed with the next stage being a report on the Unilateral Undertaking being brought before this Committee. For the information of the Committee a copy of the Committee reports of 17 June 2003 that sets the background to the consideration of the application and 16 September 2003 that sets the details of the Unilateral Undertaking are attached as Appendix A to this report.

4.0 Planning Assessment

4.1 The wording of the Unilateral Undertaking is clear. If further works over and above the works specified in Schedule 2 are required to bring the footbridge up to the requisite standard for use as a public footbridge and adoption by the Highways Agency and the costs of this exceeds £6000, then the Unilateral Undertaking shall cease to have effect. The Committee report on the Unilateral Undertaking dated 16 September 2003 made it clear at Section 8, that the footbridge would be removed in those circumstances.

4.2 Of equal significance is the reluctance of the Atkins Family Trust to allow for public access to its land on the east side of the A38. If there were no public access to the land then the Highways Agency would not adopt the footbridge in any circumstances under the provisions of the Highways Act.

4.3 The original request to retain the footbridge came from the Highways Agency and its unwillingness to adopt the footbridge is significant.

4.4 The offer from the Company to provide £15,000 as a gesture of goodwill to local amenity projects was made as a means of ensuring that the community benefited from the removal of the footbridge. The projects would have to have a benefit to the local area. Initial verbal consultation has taken place with the Clerks to both Parish Councils and both have identified there are potential projects within the parishes that would benefit from an injection of new funds. The intention would be to formally consult the Parish Councils if the Committee is minded to accept the goodwill gesture from the Company.

4.5 Accordingly, the views of the Committee are sought.

5.0 Legal Implications

5.1 The Company entered into a Unilateral Undertaking. In order to protect its financial position the Company required an upper limit to the amount it would be required to spend. The limit was £66,000, this was based on the best estimates available at the time + a contingency of 10%. Subsequently additional research has been undertaken and the costs have been shown to be well in excess of £100,000. Given the clauses in the Unilateral Undertaking, the company no longer bound by the Unilateral Undertaking because the further works cost more than £6,000. As the company is the owner of the bridge it can choose to remove it if it so wishes.

5.2 In addition, the landowners on the opposite side of the A38 have stated that they would be unwilling to allow public access to the land. The Highways Agency will not accept the footbridge for public adoption in these circumstances.

6.0 Financial Implications

- 6.1 There is a potential income to the Authority of £15,000 that would be held for the use of Findern and Burnaston Parish Councils pending notification for local amenity projects to which the funds could be allocated.

7.0 Conclusions

- 7.1 The provisions of the Unilateral Undertaking cannot be enforced against the company. The £15,000 being offered by the Company would help to mitigate the loss of the footbridge.

8.0 Background Papers

- 8.1 File 9/2003/0447/F
- 8.2 All relevant correspondence.