

Agenda No

AGENDA MANAGEMENT SHEET

Name of Committee Stratford on Avon South Joint Committee

Date of Committee 18 December 2008

Report Title Disabled Access over Lucy's Mill Footbridge, Stratford-upon-Avon

Summary This Report details the advice given by the Strategic Director for Performance and Development regarding County Council obligations for providing disabled access over Lucy's Mill Footbridge.

For further information please contact Lisa Arben
Senior Solicitor
Tel. 01926 418288
lisaarben@warwickshire.gov.uk

Mushtak Ahmed
Section Engineer
Tel. 01926 418191
Mushtakahmed@warwickshire.gov.uk

Would the recommended decision be contrary to the Budget and Policy Framework? Yes/No

Background Papers Committee Report dated 25th September 2008.

CONSULTATION ALREADY UNDERTAKEN:-*Details to be specified*

Other Committees ☐

Local Member(s)
(With brief comments, if appropriate) ☒ Councillor R Hyde
Councillor M Perry

Other Elected Members ☐

Cabinet Member
(Reports to The Cabinet, to be cleared with appropriate Cabinet Member) ☐

Chief Executive ☐

Legal ☐ I Marriott

Finance	<input type="checkbox"/>
Other Chief Officers	<input type="checkbox"/>
District Councils	<input type="checkbox"/>
Health Authority	<input type="checkbox"/>
Police	<input type="checkbox"/>
Other Bodies/Individuals	<input type="checkbox"/>

FINAL DECISION **YES/NO** *(If 'No' complete Suggested Next Steps)*

SUGGESTED NEXT STEPS :

Details to be specified

Further consideration by this Committee	<input type="checkbox"/>
To Council	<input type="checkbox"/>
To Cabinet	<input type="checkbox"/>
To an O & S Committee	<input type="checkbox"/>
To an Area Committee	<input type="checkbox"/>
Further Consultation	<input type="checkbox"/>

**Stratford on Avon South Joint Committee
18 December 2008**

Disabled Access over Lucy's Mill Footbridge, Stratford-upon-Avon

**Joint Report of the Strategic Directors for
Performance and Development and Environment & Economy**

Recommendation

That the Committee notes the findings of this Report regarding the provision of disabled access over Lucy's Mill Footbridge..

1. Introduction

- 1.1 A Report was presented to this Committee on 25th September 2008 regarding feasibility studies which investigated several options proposed by Stratford Voice to upgrade this footbridge.
- 1.2 The Report concluded that the options explored do not appear to be suitable and that a further examination should be undertaken to review the Council's obligations regarding accessibility over this bridge. This Report presents the findings of this examination and the associated practical and legal issues.
- 1.3 The Strategic Director for Performance and Development has also reviewed the proposals and given advice on this matter, which is summarised in the findings below.

2. Background

- 2.1 The footbridge and the footpath leading up to it from the Town side is public highway maintainable by the Highway Authority at public expense. This public highway stops at the Eastern end of the footbridge.

3. Requirements of the Disability Discrimination Act 2005

- 3.1 The Disability Discrimination Act 2005 (the DDA) makes it unlawful for those who provide goods, facilities or services to the public to discriminate against a disabled person in relation to the goods, facilities or services in question. It also makes it unlawful for the County Council, acting as a public authority, to discriminate against a disabled person when carrying out one of its functions.

- 3.2 The form of discrimination, which is relevant for the purposes of this matter, occurs when a public authority in carrying out a function fails to make reasonable adjustments which makes it impossible or unreasonably difficult for the disabled person to receive any benefit that is or may be conferred and cannot show that the failure is justified.
- 3.3 The duty to make reasonable adjustments comprises a number of duties which include the duty to overcome a physical feature by either removing the feature; altering it; avoiding it; or carrying out the function by an alternative method. It is clear that a bridge and its approaches come within the definition of “physical feature”. In this case the County Council needs to look at whether it is required to alter the bridge or carry out its function by an alternative method.
- 3.4 The duty to make reasonable adjustments is a duty owed to disabled people at large. The County Council is required, when it is considering reasonable adjustments, to have regard to the Department For Transport’s Inclusive Mobility document and to use the design standards set out in this document.
- 3.5 The duty to make reasonable adjustments places public authorities under a responsibility to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to make reasonable adjustments. The DDA does not specify that any particular factors should be taken into account. What is a reasonable step for a particular public authority to have to take depends on all the circumstances of the case. It will vary according to the type of function being carried out; the resources of the public authority and the effect of the disability on disabled persons generally. However, the following are some, but not an exhaustive list, of the factors which might be taken into account when considering what is reasonable. These are as follows:
- whether taking any particular steps would be effective in overcoming the difficulty that disabled people face in accessing the services in question
 - the extent to which it is practicable for the public authority to take the steps
 - the financial and other costs of making the adjustment
 - the extent of any disruption which taking the steps would cause
 - the extent of the public authority’s financial and other resources
 - the amount of any resources already spent on making adjustments ; and
 - the availability of financial or other assistance
 - the nature and extent of any benefits.

4. Consideration of Reasonable Adjustments?

- 4.1 What is a reasonable adjustment depends on all the circumstances of the case, including the particular factors set out above.
- 4.2 The report to this Committee on 25th September 2008 indicated that the refurbishment options considered are not feasible or practical mainly due to the location of the bridge and the land on either side of it. The Environment Agency has already indicated the restrictions it would place on any proposed scheme.
- 4.3 Regardless of this, if the bridge was refurbished, the refurbishment would be done in such a way as to enable those people with reduced mobility to use it. However there is a crossing approximately 1 kilometre upstream which is accessible to those with reduced mobility – the tramway footbridge. This bridge provides access to the main facilities and amenities of the town. Lucy's bridge, although it provides for recreational users, on the other hand has no obvious facilities or amenities within a short distance which would favour crossing at this point rather than further upstream. Whilst there has been no detailed survey taken of the number of disabled people who would be likely to benefit from the scheme, it can be said that the location of the tramway footbridge is more convenient to access Stratford town centre.
- 4.4 The scheme is estimated to cost in excess of £1.5 million. The County Council is unlikely to receive funding for the scheme from other sources. In particular, this scheme does not meet current criteria for AWM funding.
- 4.5 The County Council inherited the bridge when it took over responsibility for the structure. Since then it has maintained the bridge. There appears to be no significant expenditure required in the short to medium term to keep the structure of the bridge maintained. Making Lucy's Mill bridge accessible to disabled persons would require the County Council to go further than maintaining the structure, it would in effect require the creation of a new bridge albeit on the same footings.
- 4.6 Consideration should be given to those who would be affected by the works to the bridge. Those who would be affected to the greatest extent would be those whose land is needed to be able to construct the ramp on the West Bank. The County Council should only seek to interfere with their rights in cases where there is a compelling need for the scheme that would benefit a significant number of people. Even at this initial stage the scheme is unlikely to justify the interference by the County Council of the rights of the landowners.
- 4.7 Whilst the County Council must ensure that any refusal by the regulatory bodies is reasonable and it is unlikely to successfully appeal their decision, it is not suggested this means that the County Council has to go to the time and expense of making an application or an order which it knows has no chance of success or being confirmed. Additionally it would be unreasonable for the County Council to proceed with a scheme which it considered unlikely to be confirmed by either the Secretary of State or the Environment Agency. This

would mean that the landowners may incur significant costs in protecting their interests.

5. Installing Lifts at both ends of the Footbridge

- 5.1 The possibility of providing a lift at each end of the bridge has been raised by a local resident representing the disabled users, who quoted an example of a lift being installed at the new sports pavilion being constructed for Worcester Cricket Club.
- 5.2 A lift at such a venue or a multi-storey car park or a shopping mall is in a completely different setting in terms of location, emergencies, maintenance, security, vandalism, breakdowns, flooding, personal safety, etc when compared to the setting for Lucy's Mill Footbridge. In the former situations it is a reasonable adjustment on the facility provider to install a lift to comply with DDA because of the expected number of disabled users and the need to access key facilities provided. Lifts in such locations do not present the same level of operational issues as those most likely to be presented by installing lifts at remote or isolated locations such as Lucy's Mill Footbridge.
- 5.3 In terms of setting, Lucy's Mill Footbridge can not be compared to sports venues or town centre facilities when a lift option is under consideration as this creates more operational problems stated above that are difficult to resolve. It is for this reason that installing a lift option at this bridge is not a realistic solution.

6. Other Legal Requirements

- 6.1 The report to this Committee on 25 September 2008 appended 2 reports which set out the 3 proposals put forward by Stratford Voice for either refurbishing the existing bridge or constructing a new one abutting the Seven Meadows Road bridge. The reports also set out the feasibility study which your officers have carried out into whether the proposals could work in practice.
- 6.2 The feasibility reports conclude that from the outset, there would be practical and regulatory difficulties realising any of the proposals. Carrying out any works to the bridge would require the consent of the Environment Agency. The Agency has already, at this initial stage, given a number of restrictions on the way in which the bridge could be altered or a new one built. Their restrictions appear to have a negative impact on whether the proposals could be effected. The Agency cannot unreasonably withhold its consent. Nor can it impose unreasonable conditions on an approval. However their reasons for the restrictions also appear to be reasonable in that the bridge is located within the flood plain for the River Avon and at the narrowest point for the river. Any alteration which could restrict the flow of the water at that point during a flood could impact on the surrounding area. There is therefore no reason to believe that there would be grounds for challenge to the Agency's decision, based on its current position.
- 6.3 Even if it was possible for the County Council to design a scheme to refurbish the existing bridge or construct a new one in that area which the Environment

Agency would consent to, it would need to acquire land on the east and west banks to be able to provide ramped access to and from the bridge on each side. If the land cannot be acquired by agreement, the County Council would need to follow the statutory procedure to compulsorily acquire the land required.

- 6.4 If there were objections to the scheme, the decision would be made by the Secretary of State rather than the County Council. In making the case the County Council would have to show that there was a compelling case in the public interest and that interfering with the rights of those with an interest in the land affected would be sufficiently justified. The Secretary of State would take a balanced view between the intentions of the County Council and any concerns of those whose interest in the land it is proposed to acquire compulsorily. There would need to be clear evidence that the public benefit would outweigh the private loss.
- 6.5 Even from the outset, the County Council may struggle to present a compelling case for compulsory acquisition of the land, notwithstanding the intention of the scheme would be to give greater access to disabled persons, particularly because only recently the County Council considered in detail other proposals to improve access to the town across the river, the most preferable option being a new bridge further along the river.

7. Conclusion

- 7.1 The Council has undertaken various studies and investigations to assess the provision of a bridge incorporating disabled access over Lucy's Mill Footbridge. However, the refurbishment options considered previously and the findings in this Report show that the County Council is not legally obliged to alter Lucy's Mill footbridge to make it accessible for disabled persons and that it would be unlikely to obtain the necessary approvals.
- 7.2 Disabled access is not the only benefit capable of resulting from a new or refurbished bridge and any benefits for people with disabilities should be assessed along with other benefits to the community. However, even doing so, the costs and the obstacles involved are in the view of your officers disproportionate to any likely benefits.

DAVID CARTER
Strategic Director for Performance and Development
Shire Hall
Warwick

PAUL GALLAND
Strategic Director for Environment & Economy
Shire Hall
Warwick

11 November 2008