



# **BOOKHAM LIBRARY SAFE ROUTES TO SCHOOL PATH**

## **Local Committee for Mole Valley**

### **15 DECEMBER 2005**

#### **KEY ISSUE:**

Members are asked to approve the installation of a new gate in an existing fence line at Bookham Library. The fence is covered by a Covenant, the legal status of which is in some doubt.

#### **SUMMARY:**

This report sets out the history of the proposal for a footway to the side of Bookham Library to allow a 'Safer Route to School' for the pupils attending the Dawnay School, Bookham. Members are requested to approve the installation of the gate whilst accepting that there may be possible legal consequences.

**OFFICER RECOMMENDATIONS:**

The Committee is requested to:

- i) Note the contents of this report
- ii) Agree to the installation of a gate with auxiliary works as outlined in **Annexe 1**;
- iii) Acknowledge the possible legal consequences of ii above, as identified in paragraph 4.3 C).

## **1.0 INTRODUCTION AND BACKGROUND**

- 1.1 Numerous requests and two petitions dating back over 3 years have been received by Surrey County Council requesting a new route adjacent to the library be opened up by means of installing a new gate in an existing fence line. The proposed route would allow the children walking to the Dawnay School from the west of Bookham, to avoid having to use Lower Road, Bookham with its narrow footways, which a number of parents have concerns about. The route would also allow the parents, who park in the Somerfield car park, to walk their children the rest of the way into school.
- 1.2 For a length of approximately 50 metres, the footway in Lower Road is of sub- standard width (approx 1m) and as a consequence pedestrians are in close proximity to the traffic. There have been several reports of pedestrians going to the school being 'clipped' by vehicles, accordingly in officers' opinion there is a high risk of personal injury occurring before long to a pedestrian. Lower Road itself is also of limited width at this location (approx 5m). Road tables have in the past, been constructed to reduce vehicle speeds, however due to the width of the road and footway there is little scope for any other highway improvements without compulsory purchase of third parties' land.
- 1.3 In order to provide a much needed 'off road' pedestrian route to the Dawnay School, proposals have been developed to create the new route to the side of Bookham library, with the installation of a new gate in an existing fence. The works would require the erection of additional fences to ensure the privacy of residents adjacent to the proposals. In addition, these will provide increased security of the library garden, which was an issue that had been raised by the library. The library was also concerned about any future maintenance or repair of the new fence or gate, which would of course be the responsibility of the Transportation Service. Emergency access to/from the library would be provided by another gate in the proposed fence. **Annexe 1** outlines the proposals being developed and it should be noted that the path would not start or finish on a public highway

## **2.0 LEGAL ISSUES**

- 2.1 It has previously been thought a gate couldn't be installed in the fence without an alteration being made to the Covenant, requiring agreement from the party deriving benefit from it i.e. Eldonway Ltd. Investigations into land ownership issues concluded that the fence to the rear of the library was covered by a Covenant which had been drafted during the Transfer of land from Surrey County Council to Eldonway Ltd, in December 1988. The Covenant (**Annexe 2**) stated that the Council and the persons deriving title under the Covenant will forever afterwards maintain, in good repair and condition, the fencing marked on the plan. However, it is Counsel's opinion that whilst the Covenant is expressed as being for the benefit of the Transferees (Eldonway Ltd), the real purpose was to ensure that members of the public or the occupiers or visitors to the property or the library, would not be able to enter the school.
- 2.2 Negotiations were initiated with Eldonway Ltd to see if a mutually agreeable resolution could be made, but they declined to approve any plans for a new gate being constructed in the fence – citing the terms of the Covenant. All further suggestions put before Eldonway Ltd did not prove to be acceptable to them.
- 2.3 A number of residents living in Butterfield Court, in Townshott Close have expressed concerns to Eldonway Ltd, as their landlord. They are opposed to the proposals set out in paragraph 1.3 of this report, due the perceived risk of anti-social behaviour taking place following the creation of a new path. In order to try and address this issue, the school have agreed to take on responsibility for opening and locking the gate if the proposal should go ahead. This will allow pedestrians to use the path during school time only, to prevent any such anti-social behaviour. A letter of confirmation, agreeing to take on the responsibility for this act, is attached as **ANNEXE 3**.
- 2.4 Due to the apparent lack of support from Eldonway Ltd, clarification and further advice was requested from the legal team at County Hall. An independent Barrister has now given her view as to the status of the Covenant and the likelihood of legal proceedings being taken against the Council if a gate was installed without Eldonway's consent. This view is attached as **ANNEXE 4**.

- 2.5 Officers believe the new advice received from the Barrister is more robust in giving the Highway Authority belief that it could undertake the proposed works regardless of an individuals concerns due to the nature of the Covenant. A new dialogue was therefore re-opened with Eldonway Ltd and included an offer of £5000 (without prejudice) to the company if a short Deed could be prepared, stating that the installation of the gate would not constitute a breach of the Covenant. The Local Transportation Service are still awaiting a final response.

### **3.0 PLANNING APPROVAL**

- 3.1 As Bookham library is a Grade II listed building, planning permission is required to carry out the proposed works. Permission is currently being sought but the application is to be decided at Mole Valley District Council's Committee on 7<sup>th</sup> December 2005. Mole Valley Officers are recommending the proposal be approved. The decision of the Mole Valley Committee will be reported verbally to this meeting. It should be noted however that following the advertising of the planning application, Mole Valley District Council have received 6 letters from residents raising concerns over the scheme and a petition against the application with 47 signatories.

### **4.0 OPTIONS ON WAY FORWARD**

- 4.1 The courses of action available to the Transportation Service are listed below;
- A) No action is taken and the situation is left as it is. This would be a great disappointment to all the parents and families at the Dawnay School who have organised petitions and campaigned for this route to be opened for many years. The Council may also have to respond to questions as to why no action was taken, even though the legality of the Covenant was unproven.
  - B) Negotiations with Eldonway Ltd are continued for a variation in the Covenant. This course of action has already been tried without success. It is thought unlikely that this position will change for some time.
  - C) The gates and fences are installed on the basis that SCC is not acting in breach of the Covenant. This may lead to court action from Eldonway Ltd and Counsel is of the opinion that there is a risk that Surrey County Council will be found in breach of the restrictive Covenant. However, the Barrister also considers that an argument could be raised by the Council in the event of legal action would be that Clause 3 (see **Annexe 2** ) contained a number of Covenants, of which the maintenance of the fence was one. It may be possible to persuade a Court that this particular Covenant is unenforceable in that

the land divided by A to B (see **Annexe 2**) of the fence is not owned by Eldonway Ltd and accordingly the property cannot benefit from the Covenant. The Barrister also indicates it is impossible to fully establish the likelihood of successfully defending a claim by Eldonway Ltd, particularly as there is little case law on this point. Despite this, the view is that it is certainly arguable that the maintenance of the fence would include installation of a gate, provided such gate was installed between A and B on the plan' (which it would). The advice also anticipates that on balance the Court would have sympathy for the Council's approach to the Covenant.'

- 4.2 Having considered all the options and the advice received, Officers are keen to follow the route outlined in paragraph 4.1 (C) above

## **5.0 CONSULTATIONS**

- 5.1 Prior to the planning application being made to Mole Valley District Council, officers wrote to those properties adjacent to the proposed path so as to outline the proposals and to offer the residents the opportunity to raise any concerns prior to the formal application being made. At that time, two letters were received, one supporting the scheme 'in principle' and another raising various issues.

## **6.0 FINANCIAL IMPLICATIONS**

- 6.1 It is estimated that the total construction costs would be in the region of £10,000 including new fencing and gates and pathway. The scheme would be funded from the Local Transport Plan Safe Routes to School Programme in the Leatherhead implementation area.
- 6.2 If Eldonway Ltd were successful in taking action against the County Council it is likely that, in Counsel's opinion, the Council would be ordered to restore the original fencing or a fence of a similar type, to that which was in place prior to the gate or pay damages to cover such restoration. Furthermore, the Transferee is likely to be entitled to recover general damages for any inconvenience caused by the breach and legal costs. Whilst these likely costs cannot be ascertained, it is considered that those general damages would be minimal.

## **7.0 SUSTAINABLE DEVELOPMENT IMPLICATIONS**

- 7.1 The provision of a new route, avoiding the Lower Road will provide a safe route for pedestrians wishing to reach the school. It may also encourage a larger number of parents to walk to school and thereby contributing towards the objectives and targets of the Local Transport Plan.

## **8.0 CRIME & DISORDER IMPLICATIONS**

- 8.1 A number of residents in Townshott Close are concerned that the opening of a new footpath may encourage more children to congregate outside the library as some presently do. The school have agreed to lock and unlock the gates at the beginning and end of the school day as part of their usual routine. The school are eager to ensure the gates remained locked as this will help reduce the likelihood of vandalism taking place around the school or Medical Centre.
- 8.2 Clive Smitheram, the Community Safety Officer for Mole Valley District Council, has inspected the site and considers that the benefit of the proposal will far outweigh the complaints. His letter is included as **ANNEXE 5**.

## **9.0 EQUALITIES IMPLICATIONS**

- 9.1 The creation of a new route away from Lower Road will also be of benefit to those people with disabilities, including the visually impaired or hard of hearing, mothers with pushchairs and the less able when visiting the school or health centre.

## **CONCLUSION AND REASONS FOR RECOMMENDATIONS**

The purpose of the Safe Routes to School Initiative is to promote safer and more sustainable journeys to and from school. It is clear that this proposal fills both criteria, by encouraging walking and providing a safer route in which to do so. The Dawnay and South Bookham schools had been ranked third in the Leatherhead implementation area in 2004, under the Safe Routes to School Initiative Priority List. It had also been agreed in the Safe Routes to School Priority List Committee Report July 2005 that it is considered appropriate to continue with the work previously identified at the Dawnay school. Members are therefore recommended to approve the undertaking of such works to provide a safer route for the community as identified in Annexe 1 to this report and in mind of the advice outlined in 4.1 C) above.

**Report by: Roger Archer-Reeves, South East Area Transportation  
Director**

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**BACKGROUND PAPERS: Previous Committee Papers**

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