

REGENERATION, COMMUNITY AND CULTURE OVERVIEW AND SCRUTINY COMMITTEE

31 JANUARY 2013

MEMBER'S ITEM: DARNLEY ARCHES, STROOD

Report from: Robin Cooper, Director of Regeneration, Community and Culture

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Summary

This report sets out a response to questions, raised by Councillor Igwe, regarding works at Darnley Arches in Strood.

1. Budget and Policy Framework

- 1.1 Under Medway Constitution Overview and Scrutiny rules (Chapter 4, Part 5, Paragraph 9.1) Councillor Igwe has requested that an item on this matter is included on the agenda for this meeting.

2. The Issue

- 2.1. Councillor Igwe has requested that an item was placed on the agenda and the reasons are set out as follows:

“In 2006 there was a proposal for the replacement and widening of the rail bridge on Darnley Arch and the construction of a pedestrian tunnel as part of regeneration programme for Strood.

To meet the cost of the pedestrian tunnel, Tesco and Safeway (now Morrison) stores donated half a million pounds (£250,000 each) to Medway council.

However, in September 2012, the council provided information suggesting that Network Rail had pulled out from the original plan and had proposed like-for-like rail bridge replacement. The information went on to state that the tunnel was no longer feasible due to a shortfall of funding, as the current estimated cost of constructing a pedestrian tunnel was £1,300,000.

There are obvious issues that need clarification in relation to the negotiation procedure between the council and Network Rail.

Officers are asked to clarify the following:

- At what point did the council become aware of change to the proposal by Network Rail, given the fact that there was a six year gap between the initial conception and execution of the plan?
- Can officers demonstrate that appropriate negotiation was carried out with Network Rail before the final decision was made?
- What happened to the unused £500,000 to meet the cost of the pedestrian tunnel?
- What was the accrued interest for the £500,000 over the past six years and what will it be used for?
- Are there any lessons to be learned, as it appears that the council lacks the capacity to negotiate appropriately?"

3. Director's comments

- 3.1 Proposals by the Council to improve pedestrian access at Darnley Arch have been actively pursued since 1999. The Council has always been committed to progressing such a scheme and in September 2000, secured developer contributions totalling £500,000 via a section 106 Agreement from the owners of the adjacent supermarket site. The original proposal was to construct a pedestrian tunnel through the north side of the railway embankment adjacent to Darnley Arch. Whilst the Council has endeavoured to drive the scheme forward by producing designs, liaising with and attending numerous meetings with Network Rail's Project Team, progress has been slow, owing to Network Rail's stringent internal procedures concerning third party works affecting the railway and their overriding objective of avoiding damage to their assets and disruption to the railway. Additionally, different parts of the organisation have responsibility for discrete areas resulting in a complicated approvals procedure where third party works affect their property.
- 3.2 Whilst the negotiations for a pedestrian tunnel were continuing, a periodic inspection of Darnley Arch by Network Rail revealed that the bridge was in poor condition. Although responsibility for the repair of such structures rests with Network Rail's Area Manager, the Council was able to facilitate meetings between the Project Team and the Area Manager to pursue the possibility of improving pedestrian access by widening Darnley Arch as part of the improvements to the bridge. These negotiations have been positive but it was always accepted that the safety of the railway took precedence over all other considerations.
- 3.3 Following a more detailed inspection by Network Rail of Darnley Arch, it became apparent that the bridge was in far worse condition than had previously been thought. Consequently, because of the deterioration and the inherent safety risks Network Rail had no option but to programme essential maintenance work for the earliest available track possession date, being

Christmas 2012. The next available possession is Easter 2014 and Network Rail could not risk waiting that long.

- 3.4 Taking into account all these circumstances, the only way that the proposal to widen the arch could have been viable was if it were a Network Rail project (hence added on to their bridge replacement project) because Network Rail would then bear all the set up and site costs, take it through their own approval and procurement processes and bear the risk of additional contract costs. As a result of the bridge being in such poor condition combined with other technical problems, there just was not enough time to allow for a pedestrian facility to be designed and approved without putting the bridge replacement scheme at risk.
- 3.5 The Council has received payments totalling £654,721.75, which includes indexation and also interest of £61,820.45, calculated to end of March 2012. Of that figure, £153,836.63 has been spent on scoping and designing the works, and preparing technical drawings. The sum of £562,705.57 is currently held by the Council on an interest bearing account for the provision of a pedestrian access.
- 3.6 As Network Rail's main bridge project has now proceeded without pedestrian improvements, it is proposed to:
- Employ a consultant to consider and design an alternative scheme
 - Consider how a revised scheme might be funded
 - Consider whether a two-phase scheme might be most appropriate, whereby phase 1 deals with improvements to the pedestrian areas either side of the Network Rail bridge and phase 2 provides a pedestrian tunnel through the railway embankment at a later date (potentially Easter 2014).
- 3.7 Challenges to delivering this strategy include:
- The availability of sufficient funding to implement Phase 2
 - The support and agreement of Network Rail to a further closure, in Easter 2014, to enable the pedestrian tunnel to be constructed under operational rail lines.

4. Risk Management

Risk	Description	Action to avoid or mitigate risk
The balance of funds to be returned to Morrisons	If the money is not spent on the purpose for which it was taken the Agreement requires its return.	Negotiate an extension or alteration to the Agreement.

5. Financial and Legal Implications

- 5.1 The section 106 agreement provided that the owner or its successors in title (now Morrisons) contributed the sum of £500,000 towards the provision of a dedicated pedestrian route at Darnley Arches, such sum to be paid in two instalments of £250,000 with the second payment being made at the latest within three years from the commencement of the development, in this case, January 2008. The Council may not use the monies other than for the above purpose and if the monies are not used within a period of 5 years from the date of the final payment, the monies must be returned together with simple interest. Morrisons have subsequently agreed to extend the repayment period until 10 August 2014.
- 5.2 If it is not possible to implement the scheme or agree further extensions with Morrisons the monies held by the Council would need to be returned. As the monies are on deposit in an interest bearing account their return would not affect the overall Council budget.

6. Recommendation

- 6.1. Members are asked to consider this matter.

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Background Papers

Network Rail Standard Contribution Agreement (draft) - May 2012
A228 Darnley Arch Briefing Note – May 2012
Darnley Arch Bridge Widening – March 2012