

Decision under Delegated Powers

Officer Requesting Decision

David Hankin: Team Leader Regeneration and Economic Development

Officer Making the Decision

Clare Hodgson: Head of Finance and Property Services

Recommendation

That authority is approved for entry into a licence with the owners of Bleach Yard, Loughborough for the creation of a permissive path between Wards End and the Granby Street Car Park.

Reason

To support the vitality and viability of local businesses and to define the terms and conditions under which the permissive footpath is to be managed and maintained by the partners to the agreement for the term of the licence.

Authority for Decision

Under the provisions of the Constitution the Head of Finance and Property Services has delegated authority to approve the purchase of land or to enter into a lease for the use of land by the Council where the value is under £50,000 (capital) or £20,000 per annum (periodic payment). (Item 6 on Page 19 of document 2a – Delegations to Officers).

Decision and Date

C.L.Hodgson 23rd October 2015



Background

Loughborough Master Plan Public Realm Improvements.

The delivery of a high quality pedestrian connection between Wards End and the Granby Street Car Park to improve accessibility and encourage higher foot fall within a marginal area of the town centre has been a feature of Council policy for over eight years, as evidenced by the following record.

On 15 February 2007 the Borough Council adopted the Loughborough Town Centre Master Plan (Minute 06/07: 154). The Master Plan approved an overall vision;

“Loughborough Town Centre will be a successful, attractive and vibrant place and improve its relative position in the hierarchy of town centres year on year.”

In support of that vision the Master Plan adopted a set of key objectives founded upon the following principles:

- The delivery of an accessible town centre
- The achievement of high quality design and development
- The incorporation of sustainable development, and
- The creation of a distinctive character.

The Master Plan identified priority areas for high quality improvements to the public realm. Those areas included Bedford Square / Wards End and Queens Park / Devonshire Square / Granby Street. Indicative drawings demonstrated the principal components of potential public realm enhancement packages. They included the prospect of improved access to Granby Street car park by way of improvements to New Street, Devonshire Square and Bleach Yard.

In June 2008 Bellinger Design was commissioned to prepare detailed design proposals based on the indicative layouts in the Master Plan for Bedford Square / Wards End / Queens Park / Devonshire Square / Granby Street, in sufficient detail to allow the preparation of cost estimates as the basis for submitting bids for external funding. Detailed proposals were developed in consultation with businesses and stakeholders and submitted to the Council in April 2009. Those proposals were approved by Cabinet on 23 April 2008 as a basis for supporting bids for funding from external agencies to assist in their delivery. (Minute 08/09: 205).

In February 2010 Cabinet approved a capital allocation of £73,500 to permit the implementation of the Granby Street Car Park / Wards End link (via Bleach Yard) subject to the necessary permissions being secured. (Minute 09/10: 152). Under the same item cabinet allocated the balance of the Loughborough Town Centre Improvements capital fund to support the delivery of the Sidings Walk / Glebe Street / Grand Union Canal link (£100,000) and public realm improvements to Loughborough Railway Station [Eastern Gateway] (£100,000).

In December 2010 escalating costs associated with the delivery of the Eastern Gateway project necessitated the diversion of available capital resources resulting in the reallocation of the funding previously directed towards the Sidings Walk and the Bleach Yard projects. (Minute 10/11: 104).

Loughborough Business Improvement District (BID) Proposal

In March 2012 the BID was incorporated following a successful ballot of local traders founded upon a prospectus setting out measures for improving the commercial performance of the town centre. That prospectus included the theme, “Getting Here, Feeling Safe,” against which £305,000 was committed over the five year term of the BID.

Engagement with local traders persuaded the BID of the need to address concerns in Wards End and Devonshire Square over falling foot fall and declining commercial viability, as evidenced by increasing levels of shop vacancies and higher turn over of tenants. Anxieties were heightened by the apparent shift in the focus of foot fall in the town centre initiated by the development of The Rushes. That was compounded by the expectation that further trade diversion might be encouraged by the then proposed Inner Relief Road and associated public realm improvements to the A6 corridor and Baxter Gate.

Those anxieties have been increased over the intervening period as the commercial viability of businesses between Cattle Market and Bedford Square have shown greater fragility. Additionally, work has commenced on a major leisure complex in Baxter Gate which and is expected to impact upon businesses in Devonshire Square upon its opening in early 2016.

The BID has sought to resurrect the Borough Council's previous proposals for the creation of an attractive pedestrian link between Granby Street and Wards End, utilising Bleach Yard. Bellinger Design have been commissioned by the BID to draw up a detailed scheme which has formed the basis for bids to the County Council's Better Places Fund and the Local Sustainable Transport Fund. The BID has committed £20,000 of its own resources to the project and the Borough Council has approved a contribution of £30,000 through the capital plan (Minute 12/13: 117).

The level of funding has fallen short of the original estimated costs of the scheme but it has been re-designed by design and build partners, SMP consulting engineers, to fit within available resources.

Implementation

The BID is a limited life organisation and therefore cannot commit to the acquisition of assets requiring on-going maintenance and management. Accordingly it had always been the intention of the BID to commission the works required to deliver the pedestrian link and to then offer the land, as improved, for adoption by the County Council in its capacity as the highway authority. The County Council has indicated that it would be prepared to adopt the link but that it would levy a charge consistent with that for the scale of fees applied to a private developer, estimated at £20,000, which cannot be afforded within the budget.

The Borough Council has no powers to adopt the land but may take over the maintenance and management of the asset under licence. The terms and conditions of the agreement are set out in the draft licence and maintenance scheme attached at Appendix 1 , the main elements of which are summarised below:

- The existing tarmac surface, extending over approximately 14.5 metres from the entry point off Wards End will be retained as it is

without alteration and maintained by the Borough Council subject to the base line condition being evidenced and agreed through a dilapidation survey.

- The remaining un-surfaced section of the right of way, extending to approximately 7 metres in length, will be made up to the agreed standard specified in the approved drawings (Ref 6369 01 & 02) and thereafter will be maintained by the Borough Council.
 - A close boarded fence erected alongside the Wood Brook, with a return section partially enclosing the service yard, will be maintained by the Borough Council.
 - The Council additionally will maintain all bollards (fixed and removable) cycle racks, thermoplastic lines and markings, entry signage and any free standing lighting installations which may be required.
 - The Council agrees to cleanse the permissive path to a reasonable standard.
-
- For the avoidance of doubt, the Council will not be responsible for any services above or below ground or for any drains or drainage channels.

Liabilities

Overall repairs and maintenance costs have been calculated as approximately £350 per annum, with resurfacing potentially being required at some time in the longer term necessitating a capital bid.

With wall mounted lighting being funded by the owners of 6a – 6b Wards End (Wetherspoons) the scheme may require the installation of only one additional lighting column supplementing fittings already installed within the Granby Street Car Park. Accordingly electricity supply and maintenance costs will be nominal.

The CCTV systems also will be managed and maintained by the owners of 6a – 6b Wards End (Wetherspoons).

Additional cleansing costs for an area of 260 sqm are estimated at £150 - £200 per annum..

The scheme occasions no additional liability in respect of National Non Domestic Rates.

The Council's obligations in taking a licence over land would be covered by its existing Public Liability Insurance. As that policy is based on employee costs and the risks would not appear to be great, either at present or into the foreseeable future, it is not anticipated that there would be any great effect on premiums.

The management of the permissive footpath will be undertaken by the Asset Management service.

Financial Implications

Ongoing maintenance and management costs amounting to £350 per annum will be met from within the existing car parking management budgets.

Cleansing costs amounting to £150 to £200 per annum which can be assimilated within the current street cleansing contract.

Risk Management

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
That maintenance costs exceed available budgets leading to a default on the agreement	Unlikely	Minor	Dilapidation survey will ensure the satisfactory condition of the existing surface prior to the commencement of the agreement. Newly surfaced area to be constructed to an agreed specification. Responsibility for higher risk maintenance projects (repairs to services and drainage) retained by land owner / service providers.
That shared use of the access road by vehicles and pedestrians leads to an accident occasioning personal injury	Unlikely	Moderate	Lining and signing will clearly demarcate the allocation of available space to vehicles and pedestrians. Provision of street lighting and CCTV coverage will reduce the risks of accidents and anti social behaviour. The permissive path is subject to the provisions of the Council's overall Public Liability Insurance cover.

Key Decision: No

Background Papers:

- Loughborough Town Centre Master Plan (August 2007)

- Loughborough Town Centre Public Realm Proposals (April 2009)
- Bleach Yard Outline Proposal - Drawing No: 15.12/03 A Bellinger Design (August 2013)

DATED

PERMISSIVE PATH AGREEMENT

between

ELIZABETH SMITH

and

CHARNWOOD BOROUGH COUNCIL



The Council of the Borough of Charnwood
Southfields
Loughborough
Leicestershire
LE11 2TX
(ref:RJP/1074.88)

Clause

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Schedule

SCHEDULE	THE SIGNAGE WORKS.....	ERROR! BOOKMARK NOT DEFINED.
1.	The Signage Works	Error! Bookmark not defined.
2.	Appendix 1 1	

THIS AGREEMENT is dated

2015

PARTIES

- (1) ELIZABETH SMITH of 286 Beacon Road, Loughborough, Leicestershire LE11 2RD (**Landowner**).
- (2) CHARNWOOD BOROUGH COUNCIL whose principal office is at Southfield, Loughborough, LE11 2TX (**Council**).

BACKGROUND

- (A) The Landowner owns the freehold interest in the Property.
- (B) The Landowner does not intend to dedicate any new public rights of way over the Property.
- (C) The Landowner has agreed to grant permissive rights to use a path across the Property on the terms contained in this agreement.
- (D) The Landowner has granted rights to use the private roadway to the owners, occupiers and Tenants of 7, 7A,7B, 7D and 7E and outbuildings on Wards End Loughborough by way of a Deed of Grant dated 31st March 1963 and made between Peter Burton Bampton (1) and Reginald Henry Moseley and Grace Elizabeth Moseley (2).

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

- 1.1 **Adjoining Property:** each and every part of the adjoining property known as no 7 Wards End, Loughborough registered at HM Land Registry with title number LT364162

Default Notice: A notice to be served listing the obligations within this agreement which the serving party considers the recipient party to be in breach of and requesting these breaches to be remedied within 28 days of the service of the notice.

Effective Date: a date to be agreed in writing between the Council and Landowner, not to be prior to:

- i. the completion of the Works to the Permissive Path to a specification and standard approved by the Council
- ii. the completion of Works to the Permissive Path to a finish approved by the Landowner
- iii. The agreement of the Maintenance Scheme

Licence Period: the period from and including the Effective Date until the date on which this agreement is determined in accordance with clause 6.1.

Maintenance Scheme: a scheme for the Licence Period agreed in writing and referred to in Appendix 1 between the Parties prior to the Effective Date to include (but not limited to):

- i. The standard the Council is to maintain the Permissive Path to;
- ii. The standard the Council is to cleanse the Permissive Path to;
- iii. Provisions for a loading bay within Granby Street Car Park;
- iv. Responsibility for all maintenance of the Permissive Path and all costs in relation to the services on the Property, above and below ground.

Permissive Path: the path shown marked in blue on the Plan.

Plan: the plan attached to this agreement.

Permitted Use: to pass and repass on foot only.

Property: the freehold property known as Bleach Yard, Wards End, Loughborough LE11 3HA shown edged red on the Plan.

Third Party Insurance: fully comprehensive public liability insurance with reputable insurers in a sum not less than £5,000,000 (five million pounds) for each and every claim arising in respect of the use of the Permissive Path.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and additional tax.

Works: means those works more particularly described within the first Schedule and Appendix 1.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 References to clauses and the Schedule are references to clauses and the Schedule of this agreement and references to paragraphs are to paragraphs of the Schedule.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives and successors.
- 1.5 The Schedule forms part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedule.
- 1.6 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to **writing** or **written** includes fax but not e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 Unless otherwise expressly provided, the obligations and liabilities of the parties to this agreement are joint and several.

2. LICENCE TO USE

- 2.1 In consideration of the obligations of the Council in this agreement, during the Licence Period the Landowner permits:
- (a) the Council and all others authorised by the Council to use the Permissive Path for the Permitted Use in common with the Landowner and all others authorised by the Landowner; and
 - (b) the Council to enter on the land up to one metre either side of the Permissive Path to comply with its obligations contained in this agreement.
- 2.2 The Council acknowledges that:
- (a) the Council and all others authorised by the Council will use the Permissive Path as licensee without hindering the existing use of the roadway by the owners and occupiers on the Adjoining Property; and
 - (b) the Landowner retains control, possession and management of the Permissive Path and the Council has no right to exclude the Landowner from the Permissive Path.
 - (c) the Council acknowledges that the Owner and tenants of the Adjoining Property use the private roadway to enter and leave the yard to the rear of 7, 7A, 7B, 7C, 7D and 7E Wards Lane and the outbuildings, and will require the full width of the private roadway for manoeuvring and turning unhindered.
- 2.3 *This agreement is personal to the Landowner and the Council and neither of them may assign or otherwise transfer the benefit of it.*

3. LANDOWNER'S OBLIGATIONS

The Landowner agrees with the Council:

- (a) that the Landowner may close the Permissive Path temporarily for land management;

- (b) except in an emergency, to give the Council at least one week's notice of any temporary closure;
- (c) no later than the date the Permissive Path is closed, to erect signs at each end of the closed section of the Permissive Path advising of the closure, the reasons for the closure and the date the Permissive Path will be re-opened;
- (d) to remove the signs advising of the temporary closure of the Permissive Path on the date the Permissive Path is re-opened; and
- (e) not to close the Permissive Path on more than 5 days in any 12 month period unless both parties have agreed to this in writing.
- (f) to act in accordance with the Maintenance Scheme

4. Council's obligations

The Council agrees with the Landowner:

- (a) to act in accordance with the Maintenance Scheme
- (b) to erect signs advising users of the Permissive Path of their entitlement to use the path and warning of any dangers on or near the Permissive Path;
- (c) not to cause any nuisance, annoyance or disturbance to the Landowner or any occupiers of the Property, or any neighbouring land, or to anyone entitled to use the Permissive Path in common with the Council, as far as this is in the control of the Council;
- (d) not to assign or part with possession or control of any of the rights given in clause 2.1;
- (e) not to cause any damage to the Property, or to any property of the occupier of the Property and to make good any damage caused as soon as possible to the reasonable satisfaction of the Landowner;
- (f) that the Council may close the Permissive Path temporarily for maintenance of the Permissive Path;
- (g) except in an emergency, to give the Landowner at least one week's notice of any temporary closure;
- (h) no later than the date the Permissive Path is closed, to erect signs at each end of the closed section of the Permissive Path advising of the closure, the reasons for the closure and the date the Permissive Path will be re-opened;
- (i) to remove the signs advising of the temporary closure of the Permissive Path on the date the Permissive Path is re-opened; and
- (j) not to close the Permissive Path on more than 5 days in any 12 month period unless both parties have agreed to this in writing.

5. INSURANCE

The Council will maintain Third Party Insurance and will ensure that:

- (a) a copy of this agreement has been produced to and acknowledged by the insurer;
- (b) the interest of the Landowner has been noted on the policy;
- (c) the current premium is paid and up to date;
- (d) the Council complies with the terms of the Third Party Insurance and does not allow it to lapse; and
- (e) satisfactory evidence of the terms of the policy is produced to the Landowner upon reasonable request.

6. TERMINATION

6.1 *The licence to use the Permissive Path granted by this agreement shall end on the earliest of:*

- (a) the Landowner ceasing to own the freehold of the Property;
- (b) the granting and implementation of planning permission for the Property
- (c) the expiry of not less than Six months' notice given by the Landowner to the Council, such notice not to be given prior to the tenth anniversary of this agreement;
- (d) the expiry of not less than Six months' notice given by the Council to the Landowner, such notice not to be given prior to the tenth anniversary of this agreement; or
- (e) the expiration of a Default Notice

6.2 Termination is without prejudice to the rights of either party in connection with any antecedent breach of any obligation subsisting under this agreement.

7. NO WARRANTY OF CONDITION

The Landowner gives no warranty that the Permissive Path is in a safe condition and fit for the Permitted Use.

8. LIMITATION OF LANDOWNER'S LIABILITY

8.1 Subject to clause 8.2, the Landowner is not liable for:

- (a) the death of or injury to the Council, its employees or persons authorised by the Council to use the Permissive Path;

- (b) damage to any property of the Council or that of the Council's employees or persons authorised by the Council to use the Permissive Path; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Council or the Council's employees or persons authorised by the Council to use the Permissive Path in the exercise or purported exercise of the rights granted by clause 2.1.

8.2 Nothing in clause 8.1 shall limit or exclude the Landowner's liability for:

- (a) death or personal injury or damage to property caused by negligence on the part of the Landowner or its employees, agents or tenants; or
- (b) any matter in respect of which it would be unlawful for the Landowner to exclude or restrict liability.

9. NOTICES

9.1 A notice given under or in connection with this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice as set out below:

- (a) to the Landowner at: [ADDRESS] and marked for the attention of [POSITION]; and
- (b) to the Council at: Southfields, Loughborough, LE11 2TX and marked for the attention of Legal Services

or as otherwise specified by one party by written notice to the other party.

9.2 Any notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first-class post or recorded delivery service, at 9:00am on the second working day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

9.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

10. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

11. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

12. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

**THE FIRST SCHEDULE
THE WORKS**

The modifications made to the Permissive Path in accordance with the plans and specifications as approved by the parties.

Signed by ELIZABETH SMITH

Signed for and on behalf of Charnwood
Borough Council
Officer

Draft Heads of Terms Maintenance Scheme

1) The Council will maintain:

- The existing surface to the permissive path
- The entry way to Granby Street Car Park, including the bollards (fixed and movable) and the cycle racks
- All signage at the entrances to the permissive path from Wards End and the Granby Street Car Park
- All line markings on the permissive path
- The lighting installed at the entrance to the Granby Street Car Park
- The close board fencing adjoining the Wood Brook and returning along the southern boundary of the permissive footpath, as shown in brown on plan 6369 / 01

2) A schedule of dilapidations will be prepared and agreed between the parties prior to the commencement of the works which will detail the condition of the existing surface of the permissive path.

3) An update to the schedule of dilapidations will be prepared and agreed between the parties following the completion of the works which will detail the condition of the permissive path once the works have been completed. The Council agrees to maintain the permissive path in no worse condition than evidenced by the updated schedule of dilapidations.

4) The Council agree to cleanse the permissive path to the standard defined by Zone 1 of the current contract, being to the same standard as the adjacent public areas.

3) The Council will provide a loading bay within Granby Street Car Park for use by the tenants of the Landowner. This bay will be marked with hatched yellow lines and can be moved at any time at the Council's discretion. If the car park is full, this loading bay cannot be accessed and the Council have no control over this. The loading bay can be accessed for free for 20 minutes, any time longer than this will require payment of the requisite parking charge.

4) The Council bears no responsibility for any services above or below ground on the permissive path. Where works are required to the services by a service provider, the Landowner will obtain the Council's consent (not to be unreasonably withheld) prior to the commencement of any works.

5) The Council bears no responsibility whatsoever for any drains or drainage channels above or below ground on the permissive path.