

Report of: Strategic Director of Housing Health and Community

To: Executive Board

Date: 13th March 2006

Item No:

Title of Report : Trap Grounds Access



Summary and Recommendations



Purpose of report: To seek Executive Board approval to serve notice on the Trap Grounds Allotment Association terminating their agreement and immediately offer a new agreement on identical terms except for the provision of a revised access route.



Key decision: No

Scrutiny Responsibility: Finance

Ward(s) affected: North

Report Approved by:

Strategic Director of Housing Health and Community
Strategic Director of Finance and Corporate Services

Head of Legal and Democratic Services

Business Manager – Financial and Asset Management



Policy Framework:

Making Oxford a safer city



Recommendation: That the Executive Board authorises officers to proceed with the termination/re-grant of the lease to the Allotment Association with an altered access route to provide a safe and secure access across the railway line. Members will note that this report has not been approved by the Portfolio Holder, however is promoted by the Strategic Director of Housing Health and Community.



1. This report arises as officers are seeking to vary the access route granted to the Trap Grounds Allotment Association.
2. In 1987 a 14 year lease was granted to the Association of the land edged red on the attached plan Appendix A to the West of the railway line. The land edged red to the East of the railway was originally part of the lease, but was removed by a Deed of Variation in 1994. Whilst removing the eastern site from the leased area, this Deed permitted the allottees to continue to use the pedestrian access to the allotments using the route shaded blue on the plan.
3. Officers feel it is desirable for the route to be varied as the blue route requires the allottees to cross active railway lines, whereas the brown route would allow them to cross the tracks via a pedestrian bridge. It is not possible to vary the right of access without agreement or termination of the existing lease.
4. The Allotment Society Chairman has been consulted on the proposed access route. He has confirmed on behalf of his members that they are not willing to voluntarily agree to the proposed rerouting. They are concerned that the new route involves a gentle incline (measured at 4.5 degrees) on either side of the bridge, which might prove a difficulty for some of their members.
5. The proposed route would be a little longer than the existing from Aristotle Lane by use of the bridge and the existing rear access to the allotments from Port Meadow.
6. Officers are also investigating whether, when and if resources allow, it would be feasible to shorten the proposed revised route to that equating to the existing access, by construction of the proposed bridge across the gully shown on the plan. Current estimates indicate that the cost of this potential shortening and improvements to the route might be in the order of £20,000.
7. The lease granted in 1987 has expired and the Association is therefore "holding over" under the terms of the old lease. The Council could therefore serve 12 months notice to terminate the Associations rights. It is however suggested that at the same time as terminating the existing lease, a new one is offered on substantially the same terms, with a variation that the access route be altered to that shown shaded brown on the plan. If the Association objects then the Council's requirement to vary the route would be considered by the courts under normal Landlord and Tenant Act procedures.
8. Although there have to date been no accidents, Officers have been advised by relevant agencies and interest parties that crossing live railway lines is not considered good practice. Extracts of their concerns follow.

The full documents are background documents to this report.

- Railtrack via their Infrastructure Liability Group stated “For reasons of safety there is an ongoing Railtrack programme to close as many level crossings as possible” They also confirmed that “It remains Railtrack’s opinion that the safest option would be for the foot crossing to be closed and pedestrian access to the allotments to be via the adjacent bridge over the railway”
 - The Health and Safety Executive have produced a number of reports on Level Crossings. Excluding suicides and vehicular accidents, 11-13 pedestrians are killed annually on the railways and most of these are at unmanned crossings. One of the HSE’s three aims is “ to seek the closure or upgrade of level crossings where this is reasonably practicable.”
 - The Health and Safety officer for the County Council who considered the existing route in the context of the adjoining primary school noted a number of concerns including “The present pedestrian crossing will undoubtedly provide an attraction to the pupils attending the school, and whilst supervision during the school day should restrict access to this hazardous location, problems are likely though prior to the start of and at the end of the school day. Pupils, some without parental supervision, will be able to access an area they would normally be restricted from, with the inherent risks this will present” He therefore recommended closure of the existing access and securely fencing the boundary.
 - The Council’s Health and Safety officer Mark Preston has suggested “that the Council should address the highest risk crossings first - risk is based on (in no particular order)
 - traffic - both rail and vehicle/pedestrian - in this case I'd say the former was very high, and the latter low, but the proximity of a primary school is a factor that significantly increases risk, and
 - type of crossing - your type of crossing is a UWC - user worked crossing with either gates or lifting barriers not operated by a railway employee - this is second only to a completely open crossing in terms of risk.”
9. The Finance Scrutiny Committee at their meeting of the 10th July 2002 accepted that a variation of the route should be made and also that “... the private access be gated, locked, controlled and restricted to use by allotment holders and additional fencing being provided for the children’s safety. Every time I have visited this site in the last 6 months the 4.5 foot open barred access gates have not been left locked by the last person to pass through them. The allotment holders hold the keys.
10. Under the Occupiers Liability Act 1984, the Council owes a duty of care both to allotment holders using the right of way granted to the Allotment

Society and to people (including children) trespassing on the access route. This is a duty to take such care as is reasonable in all the circumstances to see that such people do not suffer injury by reason of a known danger because of the state of the land or because of anything done there. Moreover, although the Council is entitled to expect adults to take reasonable care for their safety, it must be prepared for children to be less careful than adults and therefore at risk. In addition, the draft Corporate Manslaughter Bill proposes to create a new offence of corporate manslaughter. This offence is committed if the way in which senior managers manage or organize activities results in a death and is a gross breach of a duty of care owed by the organization as an occupier of land (among other matters). The penalty proposed is an unlimited fine.

11. Having considered all of the factors outlined above Officers therefore seeking approval to terminate the current expired allotments lease and re-grant one on similar terms save with a revised access route.

Appendices

- A - Plan of the area showing the current and proposed access routes (colour copies will be available at the meeting)

Contact:

John Kulasek

Tel 01865 252137

jkulasek@oxford.gov.uk

Background papers: As set out in paragraph 8 of the report