

COUNCIL  
25<sup>TH</sup> JUNE 2015

Report of the Chief Executive

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## **LOVERS' WALK CLOSURE**

### **SUMMARY**

This report sets out the background to the recent closure of Lovers' Walk in Matlock Bath and details the actions taken to date and progress made. It also addresses the potential impact on the Matlock Bath Illuminations event.

### **RECOMMENDATION**

1. That Council notes the action taken to date and endorses the further action and works proposed.
2. That Members endorse the cost of the report (£1,800) and the rock scaling works (£25800) being added to the 2015 / 2016 Capital Programme and financed from the Capital Programme Reserve.

### **WARDS AFFECTED**

Masson

### **STRATEGIC LINK**

Matlock Bath is an area of Derbyshire Dales where residents and visitors alike enjoy the dramatic surroundings and attractions presented there. The visitor economy is vital to the sustainability of the area and supports the priorities of the Council in terms of business growth and job creation.

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## **1 BACKGROUND**

- 1.1 The District Council owns land through the Derwent Valley which links Matlock and Matlock Bath via a series of five linked public parks. One of the main parks extends through the Derwent Valley Gorge and is known as Lovers' Walk which runs alongside the River Derwent in Matlock Bath. Lovers Walk comprises Limestone cliffs that rise approximately 60m above riverside pathways and extend a linear distance of some 450m – 500m. The area is a designated Site of Special Scientific Interest (SSSI) as it comprises extensive areas of mature Lime tree woodlands.
- 1.2 In the Autumn of 2013, during the Matlock Bath Illuminations, there was a rock fall on Lovers' Walk (*Appendix 1*). A boulder fell onto the path and damaged the fencing running alongside the river. Following this a programme of rock scaling was undertaken by Derwent Treescapes to stabilise the rock face in the immediate vicinity. With the Illuminations having already started, a Risk Assessment was also carried out and several actions were taken to minimise the risk to the public:-

- ◇ catch fencing was put in place in the area where the rock had fallen;
- ◇ rock fall signage was put in place alerting the public to the potential risk;
- ◇ Property Services staff and Derwent Treescapes staff inspected the catch fencing for any additional rock fall in the lead up to and during the Illuminations event;
- ◇ Clean & Green staff regularly inspected the area for any evidence of further rockfalls.

- 1.3 To the Council's knowledge at the time, this was the first evident rock fall in many years. The actions taken above, given the infrequency of recorded rock fall events, together with the employment of a greater number of Stewards to move the public through the area of risk (i.e. the area where rock fall had taken place), was deemed to be an appropriate response given the Council's knowledge at the time and enabled the Illuminations event to take place in 2013. It was also agreed that a full rock face survey by appropriate specialists should be commissioned.
- 1.4 Quotes were received on 21<sup>st</sup> February 2014 for a Geotechnical Field Report. However, in order to undertake such a report, the works could only be undertaken during the Autumn / Winter months due to dense vegetation and the inability to access the rock faces for inspection purposes.
- 1.5 A meeting was held on site on 31<sup>st</sup> October 2014 to discuss a programme of inspection works. A quote was received on 31<sup>st</sup> October 2014 and the scope of works was agreed on 14<sup>th</sup> November 2014. Rock Solutions were formally appointed on 15<sup>th</sup> December 2014 and their final report was received on the 1<sup>st</sup> June 2015 (*attached at Appendix 2*).
- 1.6 The Council continued to monitor the rock face during 2014 and carried out a further Risk Assessment for the 2014 Illuminations. There had been no further recorded rock falls, fencing and signs were checked and, again, further personnel employed to steward the public through the area. Again, this was considered an appropriate approach in terms of what the Council knew about the stability of the rock face at the time, whilst we awaited the results of the survey being undertaken.

## **2 RESPONSE TO THE SURVEY REPORT**

- 2.1 The Corporate Leadership Team considered the report on the 4<sup>th</sup> June 2015 and, given the significance of its findings and the risk to public safety, the Chief Executive, after consultation with the Deputy Leader, instructed that the Lovers' Walk pathway be closed to the public and this was done on the 5<sup>th</sup> June 2015. Advice was sought from the Council's own Solicitor regarding the Council's legal duties now that we had been made aware, through the Survey, of the potential risk to the public.
- 2.2 There are two main issues arising from the report. The first and primary one is ensuring that the area is made safe for the public in the immediate short-term. This has, unfortunately, meant closing the footpath whilst Officers explore with Natural England and Rock Solutions what can be done to enable us to re-open the path. The second issue is the impact this has on the Matlock Bath Illuminations, an event that attracts thousands of visitors to the area and provides many local traders with much needed business and offers a unique and historic experience to visitors and residents alike.

- 2.3 Rock Solutions, within their report, do make recommendations for a long-term solution. This needs to be evaluated and costed fully and discussed with Natural England. Given the potential for any long-term solution to incur significant costs it is thought prudent to investigate further options from other specialists in the field. The long-term solution, if Members accept any proposals, will eventually involve a tendering exercise.
- 2.4 With regard to the short-term and enabling the Illuminations to go ahead, Rock Solutions have recommended that a team of specialists be deployed to remove vegetation growth and carry out scaling of the rock face which will involve removing all loose boulders from the buttresses and those at risk of falling. Natural England has been contacted and agrees that this action can be taken in the interests of public safety but should it involve the removal of any trees their permission needs to be sought.
- 2.5 The survey was carried out in the greatest area of risk, i.e. where a known rock fall had taken place and the surrounding buttresses, and covers the path between new bridge in Derwent Gardens and the Pavilion. Currently there are no recorded incidences along the rest of the pathway, however, the rest of pathway continues past a children's playground and Jubilee Bridge which is one of the main emergency exits for the Illuminations. The legal advice received details the Council's responsibilities with regard to the safety of the whole area and the requirement to put public safety first. Rock Solutions were, therefore, asked for costs and timescales associated with a further survey of the remaining area that would impact on the Illuminations event, i.e. past the playground and Jubilee Bridge, and the timescales and costs of any further work required as a result of this further survey. The surveys requested cover those areas of the rock face that border the pathway used by the public during the Illuminations event. The legal advice is clear that the whole area, including the area that extends beyond the area used for the Illuminations, i.e. from the new bridge to Willersley Castle. This area will be the subject of further survey work and any subsequent remedial works carried out either at the same time as the work already identified along Lovers' Walk, if this can be done without affecting the timescales for completion for the Illuminations event to go ahead.

### **3. Legal Considerations**

- 3.1 The legal advice provided by the Council's Solicitor has been confirmed by Counsel. Although the opinion remains privileged the gist of Counsel's opinion is as below:-

Counsel has confirmed that "*the steps the Council has undertaken to date are perfectly proper namely to close the footpath put up fences and signage*". The Occupiers Liability Act 1957 imposes a common duty of care on the Council to its visitors in respect of dangers due to the state of the premises and what things are done or omitted to be done on them. Under section 2(2) of the Occupiers Liability Act 1957 the common duty of care is a duty to take such care as in all the circumstances is reasonable to see that the visitor will be reasonably safe in use of the premises for the purposes for which he is invited or permitted by the occupier to be there.

- 3.2 Counsel's advice is that the Council should not re-open the footpath until any remedial works have been undertaken. In addition, before reopening the footpath, the Council will need to ensure that any other areas of the cliff, not already subject to the survey, are surveyed and any necessary works undertaken.

- 3.3 In considering appropriate remedial measures the Council is entitled to take into account all the circumstances and balance them, including not only the likelihood that someone may be injured and the seriousness of the injury which may occur, but also the social value of the activity which gives rise to the risk and cost of preventative measures. If the Council chooses to carry out temporary remedial works it will be necessary to ensure that this is undertaken at intervals in accordance with expert advice.
- 3.4 As the area is an SSSI the Council is prohibited from carrying out any remedial work unless Natural England provides written consent under section 28E of the Wildlife and Countryside Act 1981. If Natural England refuses to provide written consent then pursuant to section 28F of the Act the Council has the right to appeal to the Secretary of State who is likely to appoint an inspector to determine whether Natural England's decision should be overturned.
- 3.5 The Council has previously sold the fishing rights to Matlock Angling Club. The Club has been informed of the position because if a decision were made to permanently close the path it would have implications.
- 3.6 Consideration has been given to dedicating the land as 'access land', however, due to this land forming a park it would not be appropriate. Parks are listed as an exception in schedule 1 to the Countryside and Rights of Way Act 2000.
- 3.7 The Council currently has a safety stewarding contract in place for the Illuminations for three years. In the event the Illuminations are unable to take place the Council would need to consider the implications for the contract.

#### **4 CONCLUSION**

- 4.1 The Council's legal responsibilities have been clearly estimated by the Council's own Solicitor and confirmed by Counsel. Once the Council was made aware of the instability of the rock face, it had no choice but to protect public safety through the closure of Lovers' Walk. The legal advice also makes it clear that the Council should ensure that the survey extends the whole length of the Lovers' Walk rock face beyond the area first surveyed (where the rock fall occurred). The Council has obligations and a duty of care to all visitors walking the pathway and has obligations with regard to those who have purchased fishing rights.
- 4.2 In responding to these obligations, Officers have worked with Rock Solutions and prioritised the work needed to ensure the Illuminations can go ahead and the play area be re-opened. Rock Solutions have provided estimated costs to carry out the remedial works required so that the immediate risk is significantly reduced. The cost of this is £25800 and will take approximately three weeks. Officers have instructed Rock Solutions to undertake this work pending Members endorsement tonight and they will commence on 1<sup>st</sup> July 2015. Rock Solutions advise that this does not offer a long-term solution and will need continual inspection and maintenance to ensure that public safety is maintained and recommend the implementation of a more permanent solution. This will be the subject of a further report later in the year.
- 4.3 If Members agree the recommendations to night, it is anticipated that Lovers' Walk (apart from the New Bridge in Derwent Gardens to Willersley Castle) will be reopened by the end of July and that the Illuminations event can take place as planned from September 12<sup>th</sup> 2015.

## **5 RISK ASSESSMENT**

### **5.1 Legal**

The legal risk of opening the footpath without carrying out the necessary further survey and remedial works is assessed as “high”. However, the action taken by the Council to close the Lovers Walks and to commission experts in their field to carry out remedial works aims to lower the risk in health and safety terms. The procurement route of those specialist services accords with Contract Standing Orders. The emerging legal risk is therefore considered to be low and will be continually monitored through progress reports by Rock Solutions.

### **5.2 Financial**

The cost of the rock Solutions report is £1,800. The estimated cost of the rock scaling is £25,800. There is no provision for this in the current capital programme. The expenditure could be financed from the capital programme reserve. The financial risk is, therefore, assessed as “medium”.

As stated in the body of the report, Rock Solutions recommend the implementation of a more permanent solution. This will be the subject of a further report later in the year, when the financial risks will be assessed.

## **6 OTHER CONSIDERATIONS**

In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

## **7 CONTACT INFORMATION**

Dorcas Bunton – Chief Executive  
Telephone : 01629 761126  
Email : [dorcas.bunton@derbyshiredales.gov.uk](mailto:dorcas.bunton@derbyshiredales.gov.uk)

## **8 BACKGROUND PAPERS**

Appendix 1 : Rock fall on Lovers’ Walk 2013  
Appendix 2 : Rock Solutions Limited – Final Report