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## SUPPORTING STATEMENT & STATEMENT OF REASONS

### FOOTPATH STOPPING UP (IN PART) AND DIVERSION

**Footpath:** Public Footpath HOL/60/20 (Part)  
**Location:** Adj. Wolfstone Heights Farm, Upperthong, Holmfirth, West Yorkshire HD9 3UU  
**Applicant:** Mr. Richard H. Butterfield ('applicant')  
**Date:** 23 June 2020

#### 1.0 BACKGROUND

- 1.1 This Supporting Statement & Statement of Reasons ('**Statement**') is submitted on behalf of Mr. Butterfield in support of an application pursuant to Section 247 of the Town and Country Planning Act 1990 (as amended) ('**TCPA**'), for the diversion of part of the existing public right of way ('**PROW**'), being Footpath HOL/60/20 ('**Footpath 60**' or '**the Footpath**') which currently crosses land ('**the Site**') that is owned by the applicant.
- 1.2 This application is made for the diversion of part of Footpath 60, in order to enable development to be carried out in accordance with the Permissions granted for the Site. Details of the diversion are submitted in the accompanying DfT Application Form, which this Statement accompanies, and are delineated in on the accompanying Plan.
- 1.3 Construction work has been/is currently taking place pursuant to two planning permissions on both sides (south and north) of the Footpath. The relevant planning permissions were granted pursuant to Local Planning Authority references: 2014/92814 and 2017/91374, as amended by two respective non-material amendment permissions under Section 96A TCPA, being 2018/NMA/93302 and 2018/NMA/93277. The planning permissions, including the NMAs shall from hereon in be referred to as the '**Permissions**'. The decision notices and relevant accompanying plans for the said Permissions are all attached at **Appendix A (Appendix A(1) to Appendix A(11), inclusive)**.
- 1.4 The application for a diversion of part of Footpath 60 is in order that the Permissions can be implemented in full. This cannot occur without the diversion of part of the Footpath, being a total length of 151 metres (but see paragraph 2.10 below) from point 'B' as to its westerly termination point at point 'A', both as identified on the plan accompanying this application, compiled by Messrs ADP Architects dated April 2020, attached at **Appendix B (the 'Plan')**.

The following is, for illustrative purposes only and no other purpose, an extract from a GIS plan identifying the footpath which is derived from the Council's website, as well as the line of the diversion applied for under the Section 257 TCPA application as compiled and kept by the Council's Rights of Way Section.



1.5 A previous application was made to the Council under Section 257 TCPA. Despite the Rights of Way Officer's recommendation to the Committee to make an order following non-statutory pre-consultation, which contained not insignificant levels of support, including from the local Holme Valley Parish Council, the Council's duly convened Huddersfield Planning Sub-Committee declined to make an Order, citing alleged public safety issues. The relevant Rights of Way Officer report to the said Committee, recommending that Committee resolves to make an order under Section 257 TCPA, is attached at **Appendix C**.

1.6 The Committee declined to make an order under Section 257 TCPA despite the officer recommendation and despite having professional evidence to the contrary before it. The evidence was contradicted only by anecdotal and in most (if not all) part, incorrect evidence from objectors, whom we are keen to cross-examine at Public Inquiry in the event that objections to a made order are received. The applicant reserves his position on a claim for costs in this respect.

However, it is hoped that such objectors are minded to engage, as this had been largely resisted during the course of that application under Section 257 TCPA, despite our best endeavours. This is a shame, because to take the example of the Holme Valley Parish Council, who were previously against the proposal, once we had met with its Planning Committee and provided a chance to explain it so that it was understood what actually was happening and not mere speculation, the Holme Valley Parish Council supports the diversion proposal.

1.7 For completeness, the applicant did consider challenging the said Kirklees Council Committee's decision not to make an order under Section 257 TCPA by way of Judicial Review in the High Court. The applicant and its team were highly confident such a challenge would have been successful. However, the applicant is a relatively well-known local employer with strong connections generally, but also has strong relations at chief officer level with the Council in an ex-officio capacity, being a key adviser involved in significant regeneration plans for the Huddersfield area. In addition, where



the decision was quashed following the reference to the High Court, it would likely return to the same Committee for determination as to whether or not to make an Order, risking the possibility at present yielding a similar result. Accordingly, it was decided that the more appropriate and less acrimonious approach was a direct application to the Secretary of State under Section 247 TCPA. In this way, the relevant issues may be properly and objectively scrutinised and in the event of objection, examined properly at Inquiry, away from the local political situation.

- 1.8 The following is a description of the current route and the proposed diversion, with subsequent full explanation and reasoning for the proposed diversion in this Statement.

However, the reasons for making the order can be summarised by stating that it is necessary to divert the relevant part of Footpath 60, otherwise, quite simply the Permissions cannot be implemented in full. However, it is also shown that the advantages of the proposed diversion considerably outweigh any perceived disadvantages.

## **2.0 FOOTPATH HOL/60/20 ('Footpath 60' or 'Footpath') and the Proposed Diversion ('Diversion')**

### **Footpath 60**

- 2.1 Footpath 60 runs from Netherthong Village to Point A on the Plan. For the most of its whole length, it passes through open fields, over stile structures and through gates, rising as it progresses in a westerly direction up towards Wolfstones Road. Footpath 60 does intersect with other footpaths throughout its length, but not on any part of the Footpath that is the subject of this application.
- 2.2 Throughout the route, save for the part to be diverted, far-reaching panoramic views exist in northern, southern and easterly directions. This is the case save mainly in the area where the Footpath is proposed for diversion, which is built up (and being further built up as a result of the Permissions), enclosed and where any view is restricted and narrowed in all directions.
- 2.3 The Footpath is a leisure route. It is not at all likely that the route is used for commuting on a daily or other basis. It is a leisure route enjoyed mainly by walkers and the odd runner, enjoyed for recreation and exercise, with its extensive views for the most part, save for the area is proposed for Diversion, as described above.
- 2.4 Footpath 60 is legally 1.2m (120cm or four feet) in width as evidenced by its reference in historic documentation provided by the Council's Rights of Way Section. It exists at the northernmost side of the current gated driveway to Wolfstone Heights Farm, which it currently shares.
- 2.5 The Footpath currently terminates at its westerly point on to Wolfstones Road (point 'A' on the Plan). It currently passes through the curtilage area of Wolfstone Heights Farm to the south and adjacent (to the immediate north) of the southern gable of the residential building known as Wolfstone Heights, which fronts onto Wolfstones Road, albeit cushioned by a verge and large dry stone wall. Wolfstones Road is an adopted rural road open to all traffic, moving to the south towards the village of Upperthong and moving north towards Wilshaw and Honley, terminating/beginning at the intersection of Moor Lane to the north of the Site. A verge on the outside of the rural road at its

**Noel Scanlon Consultancy Ltd ('NSCL')**

**NSCL is registered in England with company regn no.: 10092591**

**Company registered office: Hollinwood Business Centre, Albert Street, Oldham OL8 3QL and**

**Correspondence Address: 3 Dryden Way, Lindley, Huddersfield, West Yorkshire HD3 3YF**

**VAT Registration Number: 237709683**



easternmost side has been deemed serviceable and suitable for walking by the Council's Rights of Way Section.

The total length of the proposed diversion – from point A to point B on the Plan – is 151 metres. However, paragraph 2.10 and 2.11 below identifies the reality of this situation, as the Diversion in part runs almost parallel to the existing Footpath.

- 2.6 Where Footpath 60 currently terminates at its westerly end on Wolfstones Road (point 'A' on the Plan), it is currently possible to cross the rural road from the east to the west and progress onto land that is owned by the Holme Valley Land Charity, being the charitable trust organisation of the Holme Valley Parish Council. This land (the '**Charity Land**') contains a relatively recently constructed 'trig point', where far-reaching almost 360-degree panoramic views are available.

However, importantly, the way up to this trig point on the Charity Land, is NOT a PROW and has been identified as permissive only, but only very recently by the Land Charity, possibly as a result of realisation following approaches made to the Land Charity and the Holme Valley Parish Council ('**HVPC**') prior to and during submission of the application to the Council under Section 257 TCPA.

- 2.7 The sign at the entrance simply states that it is land owned by the Land Charity. Brief investigation has found that the Land Charity land has only been blocked/closed once or twice in the last couple of decades for logistical reasons, mainly to do with the makeshift path being blocked.

A tall lamp post-style sign with an arrow pointing eastwards away from the Charity Land exists at the entrance to the Charity Land on Wolfstones Road, identifying Footpath 60 as a public footpath on the opposite side of the road going eastwards. In more simple terms, identifying Footpath 60 from its own land, but not in any way implicating or identifying its own land as a right of way.

Again, the Charity Land is **NOT a PROW**, this is an area of land that it is possible may be closed at any time, for any reason, without notice.

#### **Diversion**

- 2.8 Helpfully, the Diversion has been constructed by the applicant in accordance with the Permissions, albeit entirely at the applicant's risk. The line of the path, side verges, sitting benches, some planting and enclosed by open timber fence exists on site, though the Diversion is not yet full surface finished, which shall be with rolled crushed sandstone aggregate. The applicant is at present having signage made identifying the Diversion as a permissive path which can be closed and withdrawn at any time (until it is hopefully confirmed/finally made, as a result of this application).
- 2.9 The Diversion is to be surfaced finished as described above if/where the order is finally made and sustained. The applicant has left matters open to Council if they want to take on the stewardship and maintenance of the Diversion path, hence 'TBC' is referenced in Part G of the Application Form. At present the Council has not continued to engage, but it is not known if this position may change during the course of this application.



- 2.10 The Diversion begins at point B on the Plan, moving north for only a few meters before running in parallel to the current Footpath 60 moving due eastwards for approximately 75 to 77 metres, before diverging northwards again in a sweeping motion north/northwest and then finally west/northwest for 148-150 metres to point C on the Plan.

The total distance from point C to point A on the Plan and vice versa is 118m on the adopted rural road along the walking verge on the eastern side of Wolfstones Road. The total distance from point B to point C being a maximum of 226 metres. Accordingly, the diversion is moving from a route of 151 metres to a total of 344 metres to arrive back at point A on the Plan.

However, it is important to note that due to the parallel direction of the Diversion path, running only metres away alongside the current Footpath 60 for the first 75-77 metres, then in reality this reduces a total of 344 metres to 267 metres back to point A on the Plan (if indeed users elect to get back to point A, which evidence will show is not always the position – see part 6, below). Therefore, a distance in real terms of an additional 116 metres back to point A (if indeed this is the desired pedestrian travel) from point B, as a result of the Diversion.

- 2.11 However, from the point of view of a leisure route, which Footpath 60 is, the Diversion is a far superior user experience. Compared with the current Footpath, which is only 1.2m in width and the relevant part of which is increasingly enclosed (*sandwiched*) by buildings, the Diversion is by contrast much wider and offers far reaching panoramic open unspoilt views to the far vista. At its widest, between the inner faces of the fences the path width is 4.3 metres, the to-be-surfaced finished part of the path between the fences varies between approximately 2.4 and 3.0 metres. The narrowest point on the Diversion is where the wall finishes and the fence starts on the left hand side approaching from Wolfstones Road (i.e. point C on the Plan) with a width of 2060mm. Accordingly, the width of the Diversion is in all cases considerably wider than the 1.2m of the current Footpath 60. It is at least twice the width of Footpath 60 in all cases, save for the wall finishing entrance/termination at point C on the Plan.
- 2.12 Furthermore, Parts 6 and 8, below, will demonstrate why the Diversion is all round more conducive to the pedestrian users of the area. It is in part more commodious, safer, has a more appropriate surface (especially in poorer weather conditions) and overall a much more pleasant user experience than the current part of Footpath 60 which the applicant wishes to divert in order to implement the Permissions.

### **3.0 Law and Guidance**

- 3.1 Section 247 TCPA provides that (for the purposes of this application) the Secretary of State ('SoS') may by order authorise the stopping up or diversion of any highway if he is satisfied that it is necessary to enable development to be carried out in accordance with planning permission granted under Part III TCPA. For completeness it should perhaps be noted that the power of the SoS to make an order under this Section 247 TCPA includes the power to provide for the improvement of any other highway as appears to the SoS to be expedient or necessary. The order may also provide that any such a highway created or improved by virtue of this order becomes a highway maintainable at the public expense.



- 3.2 A difference between Section 247, under which this application is made, and Section 257, under which an application to the Council was made, is that Section 247 can relate to any form of highway, whereas Section 257 TCPA relates to non-vehicular highways. Section 257 is limited to footpaths, bridleways and restricted byways. Other than that difference, Section 257 applications to Councils, with a few minor exceptions, effectively mirrors the powers of the SoS under Section 247 TCPA. The similar balancing exercise in Section 257 applies as for Section 247.
- 3.3 The procedure before the making of an order under Section 247 by the SoS, is set out in Section 252 of the same. This sets out the publication stating the effect of an order, which includes how representations can be made in relation to it. This also covers the requirements for serving copies of the order on certain parties as well as causing notices to be erected on the path. There is a period of at least 28 days for persons to make any representations in relation to a draft order. There is, unlike for an Order made under Section 257, not a requirement for confirmation of an order. However, where there are objections from any local authority, any statutory undertakers, etc., a public inquiry must be held. Where there are objections from others that are not the Council or statutory undertakers, then the SoS has the power to dispense with the need for a public inquiry. However, where an examination is to be made, the applicant is clear that it would like this to be by method of Inquiry, in order that objectors may be subject to due cross examination in public. The applicant reserves its position on costs in this respect.
- 3.3 The essential components for the making of an order by the SoS under Section 247 TCPA are (i) the existence of planning permission; (ii) the extinguishment or diversion of the highway is necessary for the development permitted by planning permissions to be carried out; and (iii) the said development should not have been substantially completed.

The Permissions are in place and construction works under them are currently taking place. The necessity test is met and surpassed, but this is elaborated on below. There is no question that the development has not been substantially completed, but this is again elaborated on below.

All of the essential components are in summary, but without question, available and met for the purposes of this application.

- 3.4 Following this, the SoS must conduct a balancing exercise. The first issue is whether the proposed diversion is necessary to enable the permitted development to proceed, whether the public or adjoining property owners would be disadvantaged by the diversion and, if so, where the balance of advantage lies. The following will show that both the balancing exercise, as envisaged in the recommendation to its Committee by the recommendation of the Council's Rights of Way Officer to its duly convened Committee, albeit for an application pursuant to Section 257 TCPA, was tipped in favour of the making of the order to divert this relevant part of Footpath 60.



3.5 More colloquially, there are essentially two stages to consideration of an order, in what has become known as the *necessity* test and the *merits* test<sup>1</sup>;

(1) **the necessity test:** whether it is necessary to enable development to be carried out in accordance with planning permission (in this case, the 'Permissions'); and

(2) **the merits test:** in exercising the discretion whether to confirm an order, the obligation to take into account any significant disadvantages or losses flowing directly from the order which have been raised. The decision-maker must then decide whether any such disadvantage or losses are of such significance or seriousness that he should refuse to make the order.

3.6 DEFRA Rights of Way Circular 1/09, albeit primarily intended as a guide for local authorities for applications under Section 257 TCPA, provides at paragraph 7.1 and 7.2 that:

*7.1 Proposals for the development of land affecting public rights of way give rise to two matters of particular concern: the need for adequate consideration of the rights of way before the decision on the planning application is taken and the need, once planning permission has been granted, for the right of way to be kept open and unobstructed until the statutory procedures authorising closure or diversion have been completed.*

*7.2 The effect of development on a public right of way is a **material consideration** in the determination of applications for planning permission and local planning authorities should ensure that the potential consequences are taken into account whenever such applications are considered.*

Therefore, an examination of the consequences of the proposed diversion of part of Footpath 60 as a material consideration has already been considered, insofar as the Permissions have been granted.

More specifically for the Council, in considering whether to make an order, Paragraph 7.15 of the Circular advises that:

*"... Having granted planning permission for a development affecting a right of way however, an authority **must have good reasons to justify a decision either not to make or not to confirm an order.***

(NB. our emphasis)

This application, like others of its type, needs to be assessed through the prism that (as described at 4, below) planning applications affecting a PROW, including subsequent NMAs, have been assessed and the Permissions have been granted. As identified above, the LPA has assessed and taken account the potential consequences of this development on the PROW.

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<sup>1</sup> See *Vasilou v Secretary of State for Transport* [1991]



3.7 In addition, as identified in paragraph 41 of the PINS Rights of Way (RoW) Advice Note No. 9 (revised April 2019), before an order can be made by the SoS, it must be apparent that there is a conflict between the development and the right of way, such as an obstruction, though it can also be a change of use. Further, at paragraph 43 of the same said PINS RoW Advice Note, the Inspector does have latitude to consider wider issues. He should consider the overall public interest in diverting or stopping up a right of way and how it will affect those concerned.

3.8 It is perhaps helpful to establish what is meant by ‘necessity’ or ‘necessary’ to allow the development to be carried out. More recent case law has reinforced this position<sup>2</sup>. The Judge in the High Court Case, *Holgate J*, citing the language used in section 257 TCPA, outlined the parameters of the discretionary power to authorise by order the stopping up of a public right of way where it is necessary to do so to enable development to be carried out in accordance with a planning permission.

Therefore, the *necessity test* is concerned with whether such an order is necessary for that purpose. The case established that (albeit referring to the language in Section 257 TCPA) the diversion for the purpose of enabling, or facilitating, the carrying out of development, means that the word “necessary” does not for example mean ‘essential’ or ‘indispensable’. Instead, it means what is required in the circumstances of the case, which must include what is envisaged and allowed within and the terms of the planning permission or, applying that directly to this application, the Permissions.

3.9 When considering an order, the decision-maker needs to be mindful that the merits or otherwise of any planning permission for the development itself, are not relevant or at issue. This is a matter about rights of way and is not an opportunity to revisit the merits or otherwise of the planning permissions. This is well established in case law<sup>3</sup> and in practice. Paragraph 3, above, provides details on the Permissions here for context, because this does to some extent go to the reason for the Permissions and why the Footpath diversion is therefore required; the diversion is necessary because quite simply, the Permissions cannot be fully implemented unless the Footpath is diverted.

3.10 Furthermore, development, in so far as it affects a right of way, must not be started and the right of way should be kept open for public use, unless or until the necessary order has come into effect. A public right of way cannot be diverted where a development is substantially complete<sup>4</sup>. Given that the development pursuant to the Permissions cannot be fully implemented until the Footpath is lawfully diverted, then there is no possibility that the development is substantially complete. To suggest so, as objectors did in relation to the Section 257 TCPA application to the Council and its Committee, is absurd.

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<sup>2</sup> *Network Rail Infrastructure Ltd v Secretary of State for the Environment, Food and Rural Affairs* [2017] EWHC 2259 (Admin); this case was subsequently upheld by majority at the Court of Appeal: *R. (ex p. Network Rail Infrastructure Ltd.) v Secretary of State for Environment, Food and Rural Affairs* [2018] EWCA Civ 2069

<sup>3</sup> E.g. *Vasilou v Secretary of State for Transport* [1991]

<sup>4</sup> E.g. *Ashby and Anor v Secretary of State for the Environment and Anor* [1980]





There is no question in this case that the Permissions clearly identify that there is a conflict with the proposed development pursuant to the Permissions and the current part of Footpath 60, hence the application for the Diversion.

- 3.11 For the avoidance of any doubt and for completeness, the proposed diversion results in no conflict whatsoever with the Council's Rights of Way Improvement Plan 2010-2020 ('ROWIP'). The following will show the diversion of the Footpath in fact serves to enhance the route, which meets and even exceeds the objectives in the ROWIP. Accordingly, no further elaboration is required in this respect.

#### **4.0 The Permissions**

- 4.1 Although the merits of the Permissions are not relevant to the determination of this Footpath diversion application, the context, backdrop and rationale is. Accordingly, a brief description of the Permissions and from where they derive is described in order to assist.

- 4.2 Briefly, the re-location of the vehicular accessway to Wolfstone Heights Farm had been a consideration for the applicant for some time, due to the relative awkwardness, limited manoeuvrability, and visibility. Importantly, however, this driveway also serves in part as the Footpath. This obviously causes conflict between pedestrian users of the Footpath, particularly if accompanied by children and dogs using the narrow drive and the applicant's vehicles and those of their visitors, emergency or other services visitors.

The right-angle turn out of the driveway of Wolfstone Heights Farm combined with the gradient is difficult to negotiate, particularly in ice and snow. A small gap between buildings faces the prevailing wind, meaning the area is quickly affected by poorer weather conditions, for both the applicant's private vehicular use and the pedestrian use of the footpath.

- 4.3 The catalyst for the original applications for the Permissions, was not the applicant's keeping and transporting of horses and classic cars, as has been erroneously and rather facetiously suggested by previous objectors to the diversion. It was following a break-in at the residential property from a person using the Footpath, but also a serious fire at the property in 2014, during which the difficulty in using the current driveway was unfortunately brought into stark significance. The fire at the property destroyed a sizable part of the house on the north elevation and the fire engine appliance deployed to deal with the blaze became wedged in the narrow and awkward driveway. The existing point of access from the existing drive into Wolfstones Road is on a bend in the road at the crest of the hill, where visibility is poor. This crest is the area of the westerly termination point of the Footpath at point 'A' on the Plan.

- 4.4 The applicant has investigated alternative routes to create a more suitable access, but none were physically or legally feasible. The building and land to the north-east/north respectively, known as Wolfstone Heights, came up for sale. The applicant saw this an opportunity to substantially overcome access problems, whereby part of the residential curtilage of Wolfstone Heights containing one of the two driveways, could be purchased to be used as a new access to Wolfstone Heights Farm, with Wolfstone Heights continuing to be served by its existing access.



4.5 The Permissions require brief description to set this context. The permission allocated with Local Planning Authority ('LPA') reference: 2014/92814 permits in summary (quoting the related Decision Notice) the 'formation of a new access and stopping up of existing access, diversion of public right of way and related external works'. 2017/91374 permits in summary (again quoting the related Decision Notice) the 'demolition of a garage building, the erection of garages, garden room and fuel store with associated landscaping works associated within the curtilage of a Listed Building', being the building known as Wolfstones Heights. At the time of this diversion application, the garage building referenced has been demolished and the erection of the new garages, garden room and fuel store, etc. and roof terrace has commenced in accordance with the respective Permissions.

The Permissions sit immediately next to each other and meet at the point of the Footpath immediately to the north of Wolfstone Heights Farm and the area of the lower garages and the newly constructed driveway being constructed as part of the Permissions, which currently crosses the Footpath.

4.6 For information only and not related to this diversion application, the corresponding Listed Building Consent ('LBC') for the demolitions described was issued under LPA reference 2017/91375. Although again not related to this diversion application, by way of further information only and for completeness, works involving extensions, alterations and restorations are currently taking place on the Wolfstones Heights building under LBC ref: 2018/91284 and planning permission ref: 2018/91285.

By way of further information and for context, both Wolfstone Heights Farm and Wolfstone Heights (the building, not the Charity Land), with some of the wider surrounding land, are owned by the applicant. The applicant's main residence is Wolfstone Heights Farm. All of the land on which the relevant part of Footpath 60 and the Diversion is proposed is owned by the applicant under HM Land Registry numbers: WYK137187 and WYK448872.

4.7 Non-Material Amendment ('NMA') applications in relation to both 2014/92814 and 2017/91374 were applied for, in order to make some minor amendments for safety, engineering and to a smaller extent, aesthetic reasons. The two permissions also better integrate and sit harmoniously alongside each other. Both NMAs relate in part to the area whereby the part of the Footpath will need to be diverted. The NMAs were applied for in order to improve engineering and visual aesthetics on the site, as well as better integration of the overall development into the landscape. Briefly, these NMA permissions, with respective LPA references: 2018/93302 and 2018/93277, allow for:

- alterations in levels and to the parking area covered by the main planning permissions adjacent to the newly constructed lower garage and roof terracing, thereby creating a tandem parking area covered by 2017/91374, instead of the current side-by-side parking;
- new retaining wall with a drystone face to match existing materials, feeding into a retaining wall and slim raised bed adjacent to the part of the existing farmhouse to retain and protect the foundations to the boilerhouse, affected by a significant fire previously;
- stone steps from the proposed extended lawn area on the original permission across the area of the existing driveway (and therefore Footpath), in-part supported by the new

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retaining wall, with the steps meeting those proposed that carry on up to the lower-garage roof terrace, currently being constructed under permission 2017/91374

- additional hard and soft landscaping for improved aesthetics, screening and integration; and
- integrating the movement of the current northerly garden wall for Wolfstone Heights Farm to extend the garden and meet the boundary of the Wolfstone Heights hereditament.

4.8 Therefore, this is moving the intended retaining wall that divides the driveway and existing Footpath back towards the farm house to preserve and better protect the newer part of the building housing the boiler, which is where the significant house fire started. Most of the boiler house building was built/re-built as part of the construction under the ongoing 2014 Permission. The desire is to better protect the Wolfstones Heights Farm building, but also to achieve a more desirable looking and functioning development. The resulting development will overall sit seamlessly, functionally, attractively and integrally alongside each other.

4.9 However, this importantly avoids any conflict between vehicular and pedestrian users as a result of the Diversion, as well as protecting the buildings and allowing easier access to emergency services and similar vehicles where required, with the prospect of improving safety and security.

#### **5.0 Original Application pursuant to Section 257 TCPA and Feedback**

5.1 The Rights of Way Officer report to Committee (the 'Officer Report') at Appendix C identifies the previous application under Section 257, as opposed to this application pursuant to Section 247 TCPA. The Secretary of State should note that from a legal and factual perspective, not everything in the Officer Report was agreed, but the thrust of the report was the clear recommendation to make an order.

The Officer Report recommending the making of an order is attached at **Appendix C** and is available to read. However, the following are salient points in context for the purposes of this Statement for this Application under Section 247 TCPA.

5.2 As part of the original application pursuant to Section 257 TCPA to the Council, the applicant wrote to and attempted to engage with a number of stakeholder groups in order to better understand any misunderstandings, alleviate any concerns and understand anything that he may be able to do better.

Whilst the dialogue has yielded in part useful and interesting information, a thread running through the feedback and indeed the representations in the previous informal consultations, is the alleged link with the Charity Land, which as described above is not a PROW, which feeds into the narrative of the alleged impact on public safety as a result of the Diversion.

5.2 More particularly, feedback from that application, feeding into the narrative of public safety, is the clear assertion that the Footpath is overwhelmingly used to access the trig point on the Charity Land, which as described above, is not a PROW. Allegedly, the lack of a straight line/linear walk up to the current westerly termination point of the Footpath, straight across Wolfstones Road to the Charity Land is a significant disadvantage. Furthermore, the desired new termination point (point C on the

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Plan) would bring users down from the current termination point (point A), who would then have to walk up the hill to point A, in order to be able to access the Charity Land, which again according to objectors and notwithstanding the recommendation of the Rights of Way officer to the Kirklees Council Committee adversely impacts on public safety.

5.3 This concern is seemingly based mainly on **three assumptions** by those objecting.

**First**, that the Footpath is used by an overwhelming majority of pedestrian users to access the Charity Land.

**Second**, that there will be an increase in walkers using the rural road, having to walk a further south (i.e. up Wolfstones Road), thereby resulting in alleged increased conflict of vehicles and pedestrians.

**Third**, that this rural road is dangerous and that vehicles speed.

All three assumptions were and remain evidently baseless, as we shall explain in the following.

5.4 A professional highways usage and speed survey ('**Highways Survey**' or '**Survey**') was carried out as part of the Section 257 TCPA Application to the Council. There was no contrary evidence for the Council to consider and this remains the position. The Council has acknowledged itself that it has no speed data of its own and that there is no recorded accident on Wolfstones Road that it holds.

5.5 Public safety is undoubtedly and irrefutably important. However, in the case of this application, this presumes that every user, or the vast majority of users, are using Footpath 60 to access the Charity Land. In this way, the position is equated that all users would egress the diversion (point 'C' on the Plan) and always turn left to travel southwards up the hill on Wolfstones Road, in order to access the Charity Land.

However, the relevant surveys show that this is clearly not the case.

Neither the Council nor any objecting party, did not have and still does not have any evidence, other than baseless evidence from objectors to the contrary. This is compounded when considering that Mr. Cheetham, the Council's reporting Rights of Way Officer, had previously stated in consultation to the application for planning permission 2014/92814 that:

*"I would note that moving the terminus of path 60 to the north will take it away from the existing access to Wolfstones Height [i.e. the Charity Land], by over 100 metres, however that access is not currently recognised as public and this rural road has a serviceable verge for walking."*

(NB. our emphasis added)

5.6 The Committee resolved to decline to determine to make an order under Section 257 TCPA, on the grounds of public safety, because walking south up the grass verge from point C towards point A on the Plan exposes walkers to dangerous traffic on Wolfstones Road. This is despite the Council



acknowledging in its consultation response that there is a “serviceable verge for walking” (see 5.5, above). No issue in relation to highway safety or other public safety aspect was raised by the Council or any objectors was raised at any time by the Council during consideration or determination of the applications that duly resulted in the Permissions.

5.7 It can be seen from the Officer Report that improvements to the “serviceable verge for walking” (see above) between Points ‘A’ and ‘C’ on the Plan were investigated and discussed, the applicant even having proposals and CGI plans drawn up and provided to the Council. These were discussions which took place before the Officer Report was reported to the relevant Council Committee for determination.

5.8 We did identify to the Council that we believe that it did not have the legal capacity to insist on a new surfaced walking verge between point A and C on the Plan as a result of the Diversion and that in any event the evidence did not warrant it. Nevertheless, it was agreed that it may ‘do no harm’ and was something that the applicant did seriously engage with, with a view to making reasonable and suitable improvements under an agreement pursuant to Section 278 Highways Act 1980.

Nevertheless, on meeting on site with the Council’s Highways Engineers before the matter was reported to Committee, the Council’s Engineers were concerned that movements to a harder surface over the current established grass walking verges does potentially create a significant problem which the Council’s Engineers are keen to avoid, which is potential drainage issues. The Council’s Engineers have been clear that they would prefer to see no alteration to the verge surfaces. Nevertheless, the Council’s Rights of Way Section had conditioned this in the reporting to Committee, notwithstanding its own Engineers’ position.

It is noteworthy that in recent resurfacing works on Wolfstones Road, in May and June 2020, likely in anticipation of a motor sport event due to take place in 2021, the grass walking verges have not been touched.

5.9 Nevertheless, improvement to the verges between A and C remains on the proverbial table so far as the applicant is concerned. The door remains open for the Council to approach the applicant in this respect. However, it does not officially form part of this application. The applicant shall keep the DfT updated should there be any engagement and advancement from the Council in this respect. Otherwise, the perfectly “serviceable walking verge” will remain in situ.

## **6.0 Highways Survey**

6.1 As identified above, the applicant commissioned an independent Highways Survey (‘Survey’). Surveys were carried out by Messrs Paragon Highways and the full report is attached at **Appendix D**. It should be noted that the Survey does not just record pedestrian movements, but also vehicle speed data on Wolfstones Road, cycling and equestrian movements.

6.2 Seasonal variations may well have been raised by those opposing the diversion. For completeness and in addition to the information given to the Council for consideration to make an order under



Section 257 TCPA, a further survey was carried out on 13<sup>th</sup> September 2019 and 21<sup>st</sup> September 2019. This is now submitted as part of **Appendix D**.

- 6.3 An unfortunate omission, as identified in the Survey, is/was that the proposed diverted route, which is part made up but without a final surface, was observed being used in both directions by members of the public on the latest Survey days. However, no official data was recorded and so this remains anecdotal.

However, where objections are received and a Public Inquiry is convened, the applicant shall reserve the right to commission such a survey or surveys and table this in evidence.

The applicant does not wish to commission such a survey now, as the current Covid-19 situation may well provide skewed results, possibly being either much higher or much lower than would be usual.

However, again very importantly, nobody, including the Council, has any such real evidence or data. **Appendix D** contains the Survey report, which is and remains the only real independent professionally obtained data available on the Footpath and on Wolfstones Road.

#### 6.4 **Observations from the Surveys**

We do not propose to describe in detail the data ascertained for the purposes of this application, as the full report is available at **Appendix D** and its full reading is recommended. However, the following are brief headline observations<sup>5</sup>.

- 6.4.1 On average across the Survey days, less than 40% of pedestrian users utilising the local network used the Footpath in any/either direction. It is not denied at all that the recreational path is reasonably well used, but the evidence across all of the survey days identifies that more pedestrian users in the area utilising the local network do not use the Footpath, than actually do use it.
- 6.4.2 Importantly, addressing the first 'assumption' described at 5.3, above (i.e. all users walking west up the Footpath to access the Charity Land), across all of the survey days, only 72 users of the Footpath walked eastwards from point B to Point A and crossed the rural road to access the Charity Land. This amounts to less than one quarter (less than 25%) of all recorded users across the survey days. When removing the anomalous result<sup>6</sup> this amounts to only 34 users of the Footpath, which amounts to 13.5% of the surveyed pedestrian users actually walked from point B east towards point A on the Plan and subsequently accessed to Charity Land. Adding the anomaly of the memorial walk group<sup>7</sup>, this still only rises to an average of less than 25% of users of the Footpath.

This actual evidence runs completely contrary to assertions that (in the assertions of objectors) over 90% of users of the footpath walk westwards up the Footpath in order to access the Charity Land.

<sup>5</sup> The Survey on 21<sup>st</sup> September 2019 identifies a group of 38 people using the footpath and walking towards the Trig Point on the Charity Land. On questioning by surveyors, this was not an official walking group, but a one-off group on a specific one off memorial walk in memory of a relative/friend, with the group apparently making its way beyond the Trig Point on the Charity Land, to private land beyond this. Accordingly, this anomaly is not considered as part of these observations, but is identified in the interests of propriety and scrutiny.

<sup>6</sup> See footnote 5, above.

<sup>7</sup> See footnote 5, above.



Across all of the Survey days, which include the normally busier weekends, there is no evidence whatsoever of such an assertion or assumption even being remotely accurate.

- 6.4.3 On the Survey days, more pedestrians used Wolfstones Road, whether walking in a northerly direction towards Moor Lane, or southerly direction towards Upperthong, than used the Footpath.
- 6.4.4 On the Survey days, save for the identified anomaly<sup>8</sup>, it is observed that more pedestrians accessed the Charity Land following walking on Wolfstones Road coming from Moor Lane or from Upperthong, than following walking westwards up to the termination point of the Footpath at point A on the Plan. Contrary to popular belief, the trig point on the Charity Land was therefore not accessed predominantly by users of the Footpath travelling westwards up the Footpath.
- 6.4.5 A key finding is that only a negligible number of pedestrians leave the Charity Land and use the Footpath to walk eastwards (i.e. down the Footpath). Instead, they walk on Wolfstones Road towards Upperthong to the south, or towards Moor Lane to the north (down the hill). Generally, more pedestrians used Wolfstones Road walking from Moor Lane southwards (i.e. up the hill) towards Upperthong, than northwards from Upperthong towards Moor Lane, though the difference between the directions on Wolfstones Road is small overall across the Survey days.
- 6.4.6 This has been the concern of Highway Safety, but it is apparent that the road is being used on foot frequently in any event. There is no evidence that the diversion of the Footpath is going to result in increased conflict between vehicular traffic and pedestrians. Further, there is no evidence to suggest that the Diversion of the Footpath, is going to result in any significant increase (if in fact any increase at all) of pedestrian users on Wolfstones Road.
- 6.4.7 There have been no recorded accidents on Wolfstones Road in the last five years or beyond this, as already identified, and acknowledged previously by the Council's Highways Safety Engineer. The Survey revealed that traffic speeds are low (very low) along this section of Wolfstones Road and the number of vehicle trips is also low over the eight (8) hour periods (08:00 to 16:00) surveyed on each Survey day. In fact, the mean average speed of vehicles on any day, **does not even achieve 21 mph**. It cannot be reasonably concluded that this is a dangerous road.
- 6.4.8 A key advantage of the diversion is that the visibility for pedestrians egressing the desired termination point of the diverted Footpath, further north (i.e. down the hill) on Wolfstones Road, is considerably improved from the existing situation. Inter-visibility for drivers travelling along the major road of pedestrians stepping onto the carriageway or verge is also improved compared with the existing termination point. Given the frequency of vehicle movements along Wolfstones Road, together with the low speed of those vehicles (contrary again to what has been alleged), together with the frequency of pedestrian activity, the proposed relocation of the Footpath entry/termination point onto Wolfstones Road will, according to the Survey, only further reduce the potential for accidents.

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<sup>8</sup> See footnote 5, above.



## **7.0 Other Considerations Discounted**

### **7.1 The Charity Land/Trig Point**

7.1.1 Notwithstanding the fact that there is now professional assessment and reported evidence to identify that not all users of the Footpath are accessing the Charity Land, the applicant has identified previously that dialogue has been had with the Holme Valley Land Charity, with a view to forming a new pathway to the trig point, from a point approximately 40m to 50m further north (i.e. down the hill) on Wolfstones Road.

7.1.2 However, whilst undoubtedly improved access and egress of the Charity Land presents opportunities regardless of this diversion, we should stress that we are highly confident that the evidence means that this is not actually required in order to justify this diversion of the Footpath. In any event, regardless of this, the HVLC decided not to pursue this as an option.

Furthermore, the Council's Highways Safety Engineer does have concerns about inter-visibility on the inside of the bend on Wolfstones Road, such that the existing grass verge on the eastern side of Wolfstones Road was the better user option.

### **7.2 Alternative Termination Points**

7.2.1 Following dialogue with the Council's PROW officer and other officers at the Council, we have considered alternative locations for the termination point of the diverted footpath, ideally further south on Wolfstones Road; i.e. up the hill, compared with the desired new termination point that would result from this diversion application.

7.2.2 This has genuinely been investigated, but unfortunately cannot be accommodated, physically or legally, given surrounding land plots which are not owned by the applicant, as well as presenting significant engineering constraints in parts, which means that alternatives are simply not realistic.

However, the evidence is now pointing away from the requirement to have the termination point further south (up the hill) on Wolfstones Road in any event. Please see further above and below.

## **8.0 THE APPLICATION: FACTS AND EVIDENCE**

8.1 For completeness and by way of reminder, whilst construction has taken and is taking place in accordance with the Permissions, the Footpath has remained open at all times. This is notwithstanding the fact that the line of the intended diversion has been implemented at the landowner's risk, though this is not fully furnished and surface finished. The Diversion at present remains for permissive access only, until such time as the SoS makes a final order.

8.2 Briefly and as identified, works that cannot be completed without the diversion of the part of the Footpath are the current stone wall to the south of the Footpath area cannot move and the garden lawn cannot be extended northwards towards the building known as Wolfstone Heights. In addition, the engineering works, levels alterations and connecting steps to the lower garage roof terrace and establishment of parking areas, as well as underpinning engineering and retaining walls, all of which is now more particularly established through the respective NMAs, cannot be concluded. This is





because all such works necessitate the removal of the access drive to Wolfstone Heights Farm, part of which is covered by the part of the Footpath intended for diversion.

- 8.3 Such construction, engineering and hard- and soft-landscaping works cannot be completed without the diversion of the Footpath. This is simply a fact. Assertions that the development is 'substantially completed' are grossly inaccurate, both legally and physically. In some cases, this has come from people and organisations that really should know better, likely deploying a mischievous approach to objection which it probably knows to be inaccurate. We are keen to cross examine such objectors at Public Inquiry should this persist and again do reserve the position on costs in such a scenario.
- 8.4 The rationale for the application for the Permissions are identified at 4, above, which to some extent informs this application for the diversion of the Footpath.
- 8.5 The approved and envisaged layout and works required in respect of the Permissions would have an adverse effect on the use of the relevant part of the existing Footpath 60 by the public. In more simple terms, the development for which the Permissions have been granted could not therefore be completed if this part of the Footpath remains in situ.

There is accordingly no question that the *necessity test* is easily surpassed, because without question it is necessary to divert the Footpath to enable development to be carried out in accordance with the Permissions.

- 8.6 As identified already at 3.6, above, Circular 01/09 requires that the Council (in the case of an application pursuant to Section 257 TCPA), having granted the Permissions, would need to have a good reason not to make an order. Although the position is very slightly different in relation to an application to the Secretary of State under Section 247 TCPA, the principle and transferability to the SoS is the same. We now submit that having granted the Permissions, coupled with evidence provided in this Statement, there is no good reason not to make an order.
- 8.7 During the determination of the applications resulting in the Permissions, there were no representations relating to highway safety. Importantly, except for Mr. Cheetham (see below), no representations or objections during the course of the applications for the Permissions (any of them) related to the diversion of the footpath, despite this even being explicit in the description on 2014/92814. Whilst it would be disingenuous to posit that the Council's PROW Team explicitly agreed and supported the diverted route, the PROW section did not raise any lasting objection to any aspect of the Permissions, nor the proposal to apply for a diversion under Section 257 TCPA, given its recommendation to the relevant Committee to make an order.
- 8.8 Having established that the Permissions are in place, that development pursuant to the Permissions has commenced but is not 'substantially completed' and that the *necessity test* is without question surpassed, the issues turn to the *merits test*. This is a balancing exercise as to whether the public or adjoining property owners would be disadvantaged by the Diversion and, if so, where the balance of advantage lies.



- 8.9 Save for the applicant, there are no other properties in the vicinity of the Site, so no adjacent property owners or those in the vicinity are disadvantaged. The question of advantage and disadvantage therefore relates substantially to the public; more specifically, pedestrian users of the Footpath and the wider area.
- 8.10 The following outlines the considerations and ultimately the advantages to the public on the merits of the diversion, which are listed in no particular order or intended hierarchy. The following should also be read in conjunction with the headline observations identified above at paragraphs 6.1 to 6.4 above, as well as more properly reference to the full Survey and conclusions in the Highways Survey by Paragon Highways at **Appendix D**.
- 8.11 **Enclosing ('sandwiching') due to buildings**
- 8.11.1 It has been identified that the Footpath along its full length is a recreational route, mainly across open fields, allowing users to enjoy far reaching views in mainly northerly and southerly directions. There is no evidence of any kind that this is a commuter route.
- 8.11.2 The part of the current Footpath to which this Section 247 TCPA application applies is where the footpath narrows and becomes increasingly enclosed due to existing buildings and those currently being constructed. Consequently, at a particular 'pinch point', for approximately 75 metres, it can be observed on Site walking westwards up the rising incline, that the area becomes (and will continue to become) darker, with the far-reaching views becoming almost non-existent.
- 8.11.3 In stark contrast, the Diversion, as can be seen and is being used on the Site, maintains and even improves the far-reaching views enjoyed by users of the Footpath. Accordingly, the user experience will be vastly improved in this respect, on this recreational route, as a result of the Diversion.
- 8.12 **Width of Footpath v Width of Diversion Path**
- 8.12.1 The serving of notices pursuant to Section 130A of the Highways Act 1980 by the Peak and Northern Footpaths Society on the Council in 2019, concerning the longstanding closed gates (pre-dating even the applicant's ownership of the land) has ironically but helpfully raised an advantage to this application to divert part of the Footpath. The concern is/was that the gates, which are generally closed on an evening, are not a recorded 'limitation' on the Definitive Map and Statement, or any previous records. This is despite the facts that the gates pre-date the current ownership, which is around three decades.
- 8.12.2 Importantly, as the Council has conceded, all that could realistically be enforced is 120cm (four feet) width of the Footpath, were the Council to enforce (or be made to enforce) pursuant to the Section 130A Notices requirements, as identified in the Definitive Map and Statement.

It is of course possible that such a limitation (i.e. the gates) may be able to be shown on a full scrutiny of historical records and possibly property deeds, for example. However, given the proximity of the original diversion application, Mr. Butterfield, as a goodwill gesture, in the interests of establishing dialogue and not creating conflict and hostility whilst this application is outstanding, volunteered to leave the gates open, thereby negating the need for further recourse under Section



130A. This is even though the northernmost gate leaf (which incidentally is itself wider than 120cm itself) is all that is required to be left open.

- 8.12.3 More recently, following a theft of materials from Wolfstone Heights, which followed a van accessing the driveway with which the Footpath is shared, but more particularly given the Covid-19 situation, for both personal family and wider reasons, the gates were fully closed again, with the Council's knowledge and blessing. However, organisations have unfortunately again, despite the Covid-19 situation, raised the possibility with the Council of service of a further Section 130A Notice as a result of the closed gates.

Following this approach to the Council by persons unknown, the Council has proactively approached Mr. Butterfield. It was subsequently volunteered by Mr. Butterfield that the obstruction be removed by leaving the northernmost gate leaf open, reflecting the line of the Footpath and in fact being wider itself than the legally enforceable width of 120cm. This proactive voluntary approach was agreed with the Council which has communicated that it is now satisfied that leaving the northernmost gate leaf open does not block the legal footpath width, which deals with the situation in advance, should any person or organisation serve the Council with a new Section 130A Notice. However, it is now unlikely given the applicant's proactive voluntary actions with the endorsement of the Council.

- 8.12.4 What this has in fact identified and reinforced, and which the Council accepts, is that all that can be enforced is in fact four feet, or just 120cm (1.2m) width of Footpath. The driveway which shares the width of the Footpath can be restricted physically as well as legally to only four feet in width on the northernmost side of the driveway at any time. This is likely to be done shortly, when the new driveway to Wolfstone Heights Farm, to the immediate western/northwestern side of part of the Diversion, is further advanced in its construction and engineering, being more conducive to accepting vehicles.

- 8.12.5 By contrast, as already identified at paragraph 2.11, above, the Diversion is considerably wider than the 120cm of the current Footpath. Therefore, the diverted line of the path has the advantage of preserving the far-reaching views on this recreational route, avoiding the increasingly enclosing and dark 'pinch point' as described above. In addition, it is guaranteed that the diverted line will be consistently wider than the current line is required to be along its entire length. Therefore, the recreational route and overall walking experience is in fact enhanced as a result of the Diversion, when compared with the current Footpath 60 route. Paragraph 2.11 describes that the Diversion is consistently at least twice as wide as the current Footpath 60 route, save for the entrance/termination point at point C on the Plan, but this entrance in itself is still 40% wider than the current Footpath 60 overall.

8.13 **Recreational Improvement Opportunity**

- 8.13.1 It is noted again that the Footpath is not likely used for commuting. It is instead used for leisure purposes. The Survey has identified that the Diversion will see only a slight increase in journey times for walkers/pedestrians who are travelling south (up the hill) on Wolfstones Road towards Upperthong and the Charity Land path entrance, straight opposite the current westerly termination

**Noel Scanlon Consultancy Ltd ('NSCL')**

**NSCL is registered in England with company regn no.: 10092591**

**Company registered office: Hollinwood Business Centre, Albert Street, Oldham OL8 3QL and**

**Correspondence Address: 3 Dryden Way, Lindley, Huddersfield, West Yorkshire HD3 3YF**

**VAT Registration Number: 237709683**



point of the Footpath at point A on the Plan. The Survey reports that the additional distance to travel for those affected by the changes is approximately 400 metres (it is in fact less), which is no more than an additional 5-minute walk. In fact, paragraphs 2.10 and 2.11 above describe this as being 344 metres, but in fact given the realist that the Diversion runs parallel for approximately 75-77 metres with the current Footpath 60, the reality is an additional distance of 267 metres, which is considerably less than the approximate 400 metres promoted.

This of course works on the basis, or rather in this case baseless assumption, that the majority of users will walk south (up the hill) from point C back to point A on the Plan. The Survey has identified that the reality and frequency of this is shown to be considerably different on actual evidence.

- 8.13.2 However, walking north towards Moor Lane and the village of Wilshaw and possibly Honley will see a decrease in distance and journey times for current Footpath users. Therefore, in terms of time and distance, any detriment or advantage/improvement is slight, depending on the walkers' direction of travel. This could therefore be classed as neutral.

The evidence in fact could on this basis more than reasonably be equally well deployed as part of an application for a diversion pursuant to (as one example only) Section 119 Highways Act 1980. Insofar as the diverted footpath would still connect to the same highway, being Wolfstones Road, and we know are able to demonstrate that it would not be substantially less convenient to the public. This is obviously moot and, in any event, not relevant here, but is provided for comparative purposes only.

- 8.13.3 Nevertheless, added to the neutral position on distance and journey time, which is dependent on the user desired direction of travel, all of the above has identified that the Diversion is a far more pleasant walking experience, allowing users to take in open far reaching views, rather than being sandwiched between an increasing number of buildings being constructed in accordance with the Permissions. In addition, in more rudimentary terms, where recreational walkers/pedestrians need to walk a further few minutes, this is hardly likely to be considered a major disadvantage, with some possibly even viewing this extra time to the contrary, as it is to be enjoyed. This is particularly the case as the Rights of Way Section has confirmed in its consultation response to the Permissions that the verge on the outside (eastern side) of Wolfstones Road is serviceable and perfectly useable for walking.

- 8.13.4 It is in fact shown in the Survey that the Wolfstones Road, at the verge described and otherwise, is frequently used for walking in any event, in both directions, without incident or complaint of any kind. It should also be noted that south of point A on the Plan, such walking verges are not in existence, or certainly not to the same extent as between point A and point C on the Plan. However, pedestrian users are frequently observed walking to and from Upperthong on the rural roads.

As identified above, more recently (May/June 2020), the Council has commissioned significant resurfacing works on and around Wolfstones Road, likely in preparation for a motorsport event scheduled to now take place in 2021; it was due to take place in Summer 2020 but the Covid-19 situation has caused it to be postponed. However, it is noted that despite these significant



resurfacing works, the grassed walking verges between point A and point C on the Plan have not been touched.

The photos below are provided for illustration and by way of example.



#### 8.14 **Access to the Charity Land/Trig Point**

- 8.14.1 The previous informal consultations and the original application made to the Council pursuant to Section 257 TCPA highlighted that a key concern (albeit with only anecdotal and no other evidence) in relation to the previous iterations of the application, as well as subsequent pre-application dialogue on this application, has identified that the loss of seemingly linear/straight access to the Charity Land as a key concern. However, it has been established by the Survey that this is a concern of objecting parties based on anecdotal evidence and not fact.
- 8.14.2 The Survey has in fact shown that the Footpath is reasonably well used but not currently as well used as assumed and nowhere near all users of the Footpath are using it to access the Charity Land. In fact, more pedestrians are generally accessing the Charity Land following walking either north or south on Wolfstones Road. The Survey has also shown that only a negligible amount of pedestrians egressing the Charity Land actually use the Footpath, instead turning south towards Upperthong, or north towards Moor Lane, walking on Wolfstones Road.
- 8.14.3 It is again important to remember that the Charity Land is NOT a PROW and may be closed at any time. The alleged connection from the Footpath to the path to the trig point on the Charity Land is perhaps overstated. There is in fact no evidence available outside of the Survey.
- 8.14.4 However, given the opportunity for 360-degree views at the trig point, regardless of whether this is a PROW and not even a formal permissive or other right of way, it is arguably an important local feature popular with recreational walkers.
- 8.14.5 As identified, the diverted route is a far more pleasant user experience, on a wider, unenclosed path allowing the continuation of far reaching views. In order to access the trig point on the Charity Land,

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**Company registered office: Hollinwood Business Centre, Albert Street, Oldham OL8 3QL and**

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**VAT Registration Number: 237709683**



recreational walkers/pedestrian users will need to walk slightly further, starting at point B on the Plan, through the new termination point at point C on the Plan, to the current westerly termination at point A on the Plan. This is hardly likely to be considered a major disadvantage, with some possibly viewing this to the contrary, given the increased length, increased exercise and recreation opportunity, allowing the continuation of far-reaching views. The Council's Rights of Way Section has confirmed in its consultation response to the Permissions that the verge on the outside (eastern side) of Wolfstones Road is serviceable and perfectly useable for walking in either direction. The Survey also identifies the verge is being used for walking in both directions in any event.

8.14.6 It is in fact shown from the Survey that Wolfstones Road, at the verge described and otherwise, is frequently and seamlessly used for walking in any event, without any incident; literally no incident is on record. The alleged disadvantage of not being able to access the Charity Land from east to west is noted, but we would submit based on the Survey is overstated, which is compounded when considering that the Charity Land is NOT a PROW and may be closed at any time. It is clearly shown that not every pedestrian user is (i) using the Footpath for the purpose of accessing the Charity Land, or (ii) in fact using the Footpath at all. Whilst as a result of the Diversion there would be an additional maximum of five minutes to walk if walking toward Upperthong or the Charity Land, this is neutralised by the fact that the distance and time walking towards Moor Lane, Oldfield, Honley or perhaps Wilshaw to the north, is in fact reduced.

8.15 **Improved Safety**

8.15.1 This application has described the potential for increased security for the landowner and his family, as a result of the Diversion. However, it has also described the access difficulties faced previously in getting fire engines and similar appliances down the driveway which in part accommodates the part of the Footpath to be diverted.

8.15.2 Aside from the obvious increase in security and safety for the applicant resulting from the diversion of the Footpath, as well as the opportunity to fully implement the Permissions, having its own safety implications in terms of engineering and security against the boilerhouse, the diversion will avoid conflict between vehicle users and pedestrians using the Footpath, which at present forms part of the driveway.

8.15.3 Much has been made in representation and to some extent in pre-application dialogue with various stakeholders, that there is a concern that the Diversion will result in a significant increase in walkers using the road. This is predicated mainly on the mistaken inference that most or all are using the Footpath to walk westwards and following termination at point A on the Plan, accessing the Charity Land. We now know that this is rebuttable and evidence has shown may in fact be attributed to less than 20% of overall users. The assumption that a majority of users are using the Footpath to walk westwards and access the trig point on the Charity Land, is not founded. It is in fact not even remotely borne out in actual evidence.

The evidence submitted with this application demonstrates a position to the contrary of the assumption. In addition, it is apparent from the Survey that more pedestrians may walk on the road than use the Footpath in any event.



8.15.4 More specifically, the Survey demonstrates that far from being unsafe, the new termination point on the diverted path, identified at point C on the Plan, compared with the current termination point 'A', is preferable. In fact, as identified in the conclusion of the Survey (paragraph 7.2 of Appendix D):

*"The visibility for pedestrians egressing the new footpath location of oncoming traffic on Wolfstones Road is considerably improved from the existing situation. Intervisibility for drivers travelling along the major road of pedestrians stepping onto the carriageway or verge is also to a high standard. Taking into account the frequency of vehicle movements along Wolfstones Road, the low speed of those vehicles, together with the frequency of pedestrian activity, the proposed relocation of the footpath entry point onto Wolfstones Road can only further reduce the potential for accidents."*

8.15.5 The information obtained would also confirm that the local highway network operates safely and slight the increase in pedestrian journey length along a short section of the Wolfstones Road "...should not result in any significant conflict with existing users...", adding that the Diversion will only result in "...a slight increase in pedestrian trips over a relatively short distance...". This is because again, the assumption that all users will turn left out of point C and travel south up the hill in order to access the Charity Land, is simply not founded in evidence.

8.15.6 Mr. Walker, the Highways Safety Engineer, as stated in Appendix One of the Supporting Statement in the original Section 257 TCPA application to the Council (see **Appendix C**), has identified that inter-visibility at the new termination point will in fact be better than that which exists at present at point A, given point C is at a wider visibility splay in both directions.

8.15.7 From a highway safety perspective, there is on balance no question at all of any resulting disadvantage to public pedestrian users on the diversion of the current line of the Footpath to the Diversion route. The situation, as evidenced and opined in the Survey, as well as by the Council's Highways Safety Engineer, is in fact that the Diversion termination point (point 'C') is more desirable in highway safety terms compared with the current termination point.

8.15.8 Whilst there is a natural caution maintained on an alleged increase in the number of users walking on Wolfstones Road as a result of the diversion (which is anecdotal and again not borne out of actual evidence), to a large extent assuming travel upwards towards the Charity Land (which we now know is not founded), the Survey has concluded that the Diversion would result in only a slight increase in pedestrian trips on Wolfstones Road, if in fact any increase at all. It is apparent that Wolfstones Road is well-used by walkers now in any event, in both directions.

8.15.9 The SoS is encouraged to read the Survey and in particular the conclusions. This establishes that allegations of an adverse impact on public safety are profoundly incorrect and are not in any way supported by any meaningful evidence from any party, including the Council.

8.15.10 We therefore submit that in safety terms, which obviously must weigh significantly and accordingly, far from being a disadvantage, the Diversion results in a considerable advantage to the public, in the case of both pedestrians and vehicle users.

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8.16 **Architectural and Historic Interest**

8.16.1 Several, including the Holmfirth Harriers Athletics Club, had represented previously that users enjoy viewing buildings of architectural and historic interest. This is notwithstanding the fact that it does seem moderately strange that members of a running club would have time to pay attention to such detailing during their pursuit.

8.16.2 Whilst this is of course credible generally, it is important to note that the north elevation of Wolfstones Heights Farm (thereby on the south side of the Footpath) has been relatively recently re-built and is not a listed building. Further, on the immediate north side of this part of the Footpath, part-newly-constructed garage buildings increasingly impose on the Footpath and its enjoyment at the pinch point described above.

8.16.3 Of course, it is important to acknowledge that the building known as Wolfstone Heights (NB. not Wolfstone Heights Farm) is a listed building. However, this is undergoing major renovation and alteration at present. It is only possible to see part of the southerly elevation of the Wolfstone Heights building from the Footpath. From the diverted line of the footpath, all buildings, including new buildings, can be viewed and appreciated in their setting, with the addition of some improved soft landscaping. However, the greater proximate views of the Wolfstone Heights listed building are observed from Wolfstones Road, particularly from the verge on the eastern side of Wolfstones Road, which would be used if walking south from point C up the hill towards Upperthong, or walking north down the hill from point A down the hill towards point C.

**9.0 Conclusion**

9.1 This application is now able to demonstrate that many objectors' concerns are unfounded, and in some cases, the result of misunderstanding. In particular, the Council's position that the original application to the Council pursuant to Section 257 TCPA was declined primarily due to public safety are completely unfounded and are in fact baseless. Aside from there being no such evidence, the evidence submitted with this application describes a position to the contrary because of the Diversion.

9.2 The Permissions were granted following the due applications. This application for the Diversion is not and never was/is an opportunity to re-run and consider the merits or otherwise of the Permissions. This application must be viewed through the prism that the Permissions exist, and it has been described that the Secretary of State must have a very good reason not to support the making of an order under Section 247 TCPA, which is necessary to fully implement the Permissions.

We submit that such a reason to not support the making of an order does not exist.

9.3 There is no question that the *necessity test*, as described in this application, is and will be surpassed. Quite simply, the Permissions cannot be fully implemented unless the relevant part of the Footpath is diverted.





9.4 It is also submitted that the *merits test* is surpassed. The advantages of making the order, have been shown to clearly outweigh any perceived disadvantages in this application, not least in terms of highway and public safety, but also the fact that certain concerns are simply not founded here.

9.5 This application has shown that there are no significant disadvantages or losses to the public as a result of this diversion. In fact, this application has shown that there can be considerable advantages, not least in relation to safety and improved access by width, lack of enclosure, improving far-reaching views and improved recreational experiences, on what is a recreational route. This is alongside an improvement in journey time and distance where the desire is to move northwards or from the north towards Netherthong village.

9.6 It would seem that this needs to be weighed against the discernible disadvantage, being an additional distance, in real terms, of 267 metres and journey times of less five minutes, but only where and if users wished to walk from the new termination point C back to point A, south towards Upperthong.

It is however important to recognise that this is a leisure/recreational route and not a functional commuting route. Furthermore, it is now clear that there will be nothing more than a slight increase in pedestrian movement on Wolfstones Road, which is already well-used by walkers in both directions in any event.

9.7 The balance of the advantage clearly lies heavily and overwhelmingly in favour of making and supporting an order, which we are confident will result following the examination of any issues should any objections to an order be received.

9.8 Accordingly, there is seemingly and respectfully no good reason for the Secretary of State not to make an order to divert this part of Footpath 60. It is clearly necessary for this part of the Footpath to be diverted in order that the Permissions can be fully implemented. This application has shown that the advantages of this application far outweigh any perceived disadvantages; and it is submitted that evidently, they are in the majority part, only perceived disadvantages and not actual.












9.9 The applicant reserves his position on costs in the event of objections resulting in a Public Inquiry, which is necessarily preferred as the method of examination by the applicant.

We shall obviously be happy to provide any requested points of clarification by the Secretary of State. Otherwise, we look forward to an order under Section 247 TCPA being made by the Secretary of State.

**Noel Scanlon**  
**Director & Consultant, NSCL**  
**Tel: 07921 385901**  
**Email: [noel.scanlon@nsconsult.co.uk](mailto:noel.scanlon@nsconsult.co.uk)**



## APPENDIX A Decision Notices and Associated Plans

 APPENDIX A(1) Decision Notice 2014.	 APPENDIX A(2) Location Plan 1 Footp	 APPENDIX A(3) Loc Plan 2 and Site Plan a: 2014.92814 NMA Dec	 APPENDIX A(4) 2014.92814 NMA Proc	 APPENDIX A(5) 2014.92814 NMA Proc
 APPENDIX A(6) Decision Notice 2017.	 APPENDIX A(7) Location Plan 2017.91	 APPENDIX A(8) Proposed Site Plan 20	 APPENDIX A(9) Proposed Gen Arrang	 APPENDIX A(10) 2017.91374 NMA Dec
 APPENDIX A(11) 2017.91374 NMA Proc				

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## APPENDIX B Plan

 APPENDIX B - PLAN 13072D-200-P14-Foc
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## APPENDIX C Kirklees Council Rights of Way Officer Report to Committee recommending making an Order pursuant to Section 257 TCPA

 APPENDIX C - Holmfirth Footpath 6C
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## APPENDIX D Highways Survey Report Oct 2019 – Paragon Highways

 APPENDIX D - Highways Survey - Pa
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