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National Transport Casework Team
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By email only:

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Cc.: yvonneparker@programmeofficers.co.uk

2nd August 2021

Dear Madam

References: NATTRAN/Y&H/S247/4337 and DPI/Z4718/21/6
Public Inquiry re Proposed Stopping Up and Diversion of Part of Holmfirth Footpath 60
Pre-Inquiry Meeting Scheduled for 10:00 on Tuesday 3rd August 2021

We write further to Kirklees's Council's letter to Mrs. Moody dated 13th July 2021 (sent to us by email by Mrs. Parker on 20th July 2021). We have considered the contents and we respond as follows.

The DMMO Application

We assert and maintain that this application by the Peak and Northern Footpaths Society ('PNFS') is vexatious, and its motivation is only to muddy the proverbial waters of this application under Section 247 TCPA to the Secretary of State to stop up and divert part of the footpath. Although motivation is not a relevant factor for the Inspector, we set out the following to assist the Inspector.

The Inspector should be aware that the evidence submitted with the PNFS' DMMO application has not been disclosed to the landowners or anyone outside the Council. The Council has refused to share the evidence received in the DMMO application with the landowner, even following an FOI request, yet has reported to its relevant Committee.

We have significant evidence of our own which very strongly rebuts what is alleged and shows that what is allegedly stated (and we obviously do not know the full details as the Council has kept these from us).

We would also wish to identify that the PNFS representative, Mr. Leader, is an ex-employee of the Council that used to be a close colleague and whatever else to existing Rights of Way Officers, which will form part of an imminent wider complaint.

This is perhaps brought into perspective when considering that the Council has moved this DMMO application matter from 112th on the Council's DMMO Priority Matrix for determination to the top of

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this list, simply because of this Section 247 Application. We would surmise that this would otherwise have equated to a timescale of between two and three further years.

Legal Challenge to the DMMO and complaint

The Council's Planning Sub-Committee (Huddersfield Area) did indeed sit on 17th June 2021 and resolved to make the DMMO in relation to Footpath 60, so far as it only affects our client's land and a small part of a neighbouring property and not the rest of Footpath 60, which is a mischief and perhaps reflects what this DMMO application is really about. We were provided with notice of a made order on 13th July 2021.

The Inspector should be aware that our client has grounds and wishes to challenge the made DMMO by way of Judicial Review following Committee proceedings. This concerns legal error in reporting and advice to Committee, including the taking into account of irrelevant items; procedural impropriety (the Council has actually acknowledged to us in writing that it is in breach of the vital requirements of Paragraph 2 of Schedule 14 of the Wildlife & Countryside Act 1981 ('WCA') but has decided to progress with the application in any event); as well as probity issues, insofar as the Chairman of the Committee has clearly demonstrated pre-determinative behaviour and influenced the outcome of proceedings during this item at Committee.

The Council has informed us that it has taken external legal advice and is confident it could defend a claim for Judicial Review. As the WCA does not fall to be under the 'Planning Acts' for the purposes of the Civil Procedure Rules and our client has more time to file such a claim (though our client must still do so 'promptly'), we have requested sight of the instruction and advice received, in the hope of being able to dispense with formal complaint and challenge.

The Council has (as is its right) not yet refused to provide this information but has elected to administrate it as a Freedom of Information ('FOI') request. At the time of writing, this process has not concluded. It would obviously assist all parties, including possibly the Inspector here, if this purported instruction and external legal advice was provided. Perhaps the Council may wish to take a view on bypassing the FOI process to assist, or the Inspector may request that the Council releases this into the public domain if he believes that it is material.

Aside from a wider complaint against general officer conduct and performance, a direct 'Member Standards' complaint against the Chairman of the Committee, Councillor Terry Lyons, is imminent.

'Weight' to be given to the DMMO Application in the Section 247 Inquiry

Notwithstanding in our view the vexatiousness of the DMMO application, potential challenge, complaint, and the general mischief of the DMMO application, the Secretary of State Inspector will give the DMMO application the weight that they will providing it is lawful. That is obviously a matter for the Inspector as the duly appointed decision-maker, though obviously we submit that the weight to be attributed is negligible, or very little at best.

The fact is that according to the present Definitive Map and Statement, the primacy of which we do not need to go into here given we are addressing such versed recipients in this letter, the legal width of Footpath 60 is 1.2m (120cm, or four feet). That is a simple matter of legal fact and will remain so until legal events dictate otherwise, the outcome for which is still some considerable way away, if indeed it continues.

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The Council's Misunderstanding

Further, the Council has made a considerable error in its letter of 13th July to yourselves.

This is where it states that if the Section 247 order is made and subsequently the DMMO is confirmed later, then in the Council's submission, the *"balance of the width would remain along its driveway through to Wolfstones [...Road]."*

This is incorrect in its application of the law and in fact is a departure from simplicity.

Where the Section 247 order is finally made, then the stopped-up westernmost part of Footpath 60 is no longer a legal footpath, because by law it no longer exists as such. **The simplicity is that a "balance of the width..." cannot exist on a footpath which no longer legally exists.**

The Council may mistakenly believe that it is administering a new Footpath directly adjacent to and running directly in parallel with and right next to the current Footpath 60. Aside from the fact that this would be perverse here, the DMMO application is attempting to widen the existing Footpath 60, not create a new footpath.

In a scenario whereby a subsequent DMMO concerning width would be confirmed, if in fact the PNFS would wish to continue with the DMMO (though the Council may still be under a duty to determine the application notwithstanding withdrawal), then this could only apply to the remainder of Footpath 60 on the same line. In this case, it would be from the neighbouring property owned by a Mr. Roebuck (who our client does not know and he/his representatives have not had any contact with) moving westwards to the point of the proposed stopping up and diversion, being to the line of Point 'A' on the present Draft Section 247 Order Plan. When Footpath 60 is stopped up and diverted, then the DMMO so far as it applies to that part of Footpath 60 would be a nullity.

We are surprised that the Council would write this and may wish to reflect on the content of its letter, though we keep an open mind as to whether this may be a deliberate though rather poor attempt at subterfuge, with a view to vacating this impending Section 247 TCPA Public Inquiry. It is either deliberate mistake, or a mistake resulting from misunderstanding.

The Council's Legal Functions

We would remind the Inspector of the Council's respective legal administrative functions here.

In respect of this Section 247 TCPO Application and impending Public Inquiry, the Council is a **statutory consultee** and has duly raised an objection in relation to the safety of the public (and the alleged volume of objections to a previous application, which is irrelevant), which it will defend. In respect of the DMMO, the Council is an **Order Making Authority** ('OMA').

The two functions are of course different, but the Council seems to be attempting to conflate and amalgamate such functions, seemingly with a view to sabotaging the impending Public Inquiry, which must in our submission not be allowed to occur.

We are sure that the Secretary of State Inspector will continue to see through this position and maintain its current line that the Public Inquiry should take place, because there is certainly no reason to postpone it.

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It does seem unusual (though given the above, perhaps not) that the Council would move this not with the motivation as a statutory consultee, but seemingly as a facilitative vessel for the PNFS, whose representative used to be a close colleague of existing rights of way officers. Evidence perhaps that the Council is here not acting as statutory consultee in relation to the Section 247 application, or OMA in relation to the DMMO, but is rather an attempted amalgamated capacity, possibly (but only possibly) more motivated in facilitating and being a vessel to achieve a particular outcome, which would also bring its position as OMA into legitimate and reasonable question.

The Council may wish to reflect on its position and consider the clear *blurring* of its different functions in this respect. The Secretary of State Inspector is invited to see this position as he will.

Further information and conclusion

In addition to the above, the Inspector should be aware that the Council's Public Rights of Way Officers and others are about to be subject to an imminent complaint about their conduct and treatment of my client during this matter. This is almost completed in final draft form and subject to instructions this is to land with the Council this week.

For information, our client is the Chairman of a Global branding business, which is based in Huddersfield but has 22 offices throughout the world. Our client was assisting the Council free of charge providing advice on the Council's regeneration strategy for Huddersfield, but this relationship appears to have deteriorated and clearly there is no longer a relationship at corporate levels with the Council. Events and conduct by the Council may or may not be connected.

Away from the strange and murky waters of the above, the Council has requested that the impending stopping up and diversion Inquiry commencing on 24th August 2021 should be postponed. This in our view is nothing more than an attempt to sabotage the Section 247 application by conflating issues, which means that the Council is not operating within the respective parameters of its separate functions as statutory consultee in the S.247 application and OMA in relation to the DMMO.

Aside from the above, the reasons that the Council promotes for postponing the impending Public Inquiry commencing on 24th August are underpinned by the clear misunderstanding or deliberate mistake that half a width of footpath would be left in place.

The stopping up and diversion Inquiry is separate from the DMMO application. To postpone the impending Inquiry is not in any way necessary and would be profoundly unfair to our client. The SoS-Inspector is in no way hindered or constrained such that he would not to be able to progress this Section 247 TCPA Inquiry and make the decision that he will following this.

We are happy to provide any further information or elaborate at the PIM tomorrow if necessary.

Yours faithfully

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