

Re: Closing Submissions - Holmfirth Inquiry

Noel Scanlon

Fri 14/01/2022 15:53

To:

Sandra Haigh <Sandra.Haigh@kirklees.gov.uk>;

Cc:

Anthony Gill <AGill@kingschambers.com>;

Phil Champion <Phil.Champion@kirklees.gov.uk>;

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1 attachment

Dear Mrs. Haigh

As promised, please find attached a tracked changes and replies to comments version of the UU. We have included the reference on Local Land Charges, thank you for the prompt.

We know that the money is not necessarily the Council's concern given that we are completely apart on the physical requirements, but this is included based on the highest of our quotes, including VAT and rounded up to the nearest £1,000. The contribution is therefore £12,000.

The quotes are right up to date and provided by local contractors experienced in this kind of work, one of whom has informed us that they regularly have done work for Kirklees Council. The third of our quoting organisations, which also has done work for Kirklees Council, has declined to submit for the simple reason that they have decided the job is not a matter that they would wish to be involved in.

You will see in the next email to Yvonne Parker submitting the Draft UU that the said quotes and HMLR information are provided. The latter will be updated before the day of submission of the final document, after the Inquiry closes.

Should you wish to come back to me on anything technical before the Inquiry reconvenes on the 28th, that would obviously save any time there.

However, the point is noted in advance that we are completely apart on the physical works and the Council has clearly stated its position that it will resist the UU, as well as ultimately submitted that it will not apply any funds provided under the planning obligation to amend the verge.

Although we are still finding the Council's position difficult to comprehend in this respect, it is of course accepted that this is the Council's position and obviously you will instruct Mr. Gill accordingly and represent how you will.

Should the Council elect to change its position in advance of the 28th or has any comments on the attached which will help streamline matters before the 28th, please obviously do get in touch.

Otherwise, we shall leave it with you as to whether or not you wish to respond further. The door is of course open in that respect.

Regards

Noel

Noel Scanlon *Solicitor, BA(Hons), MSc, MCIWM*

Director & Consultant

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From: Noel Scanlon
Sent: 11 January 2022 15:03
To: Sandra Haigh
Cc: Anthony Gill; Phil Champion
Subject: Fw: Closing Submissions - Holmfirth Inquiry

Dear Mrs. Haigh

Thank you for your email, though we do not understand why the tracked changed and commented attached document, which has clearly been ready since 15th December 2021, has only just been sent to us yesterday.

Nevertheless, to clear a couple of things up first and foremost, the specification described is from our Highways Engineer. It is in such a form because it is that simple and entirely in line with what has been recommended by them and following the outcomes of evidence at the Inquiry. The engagement of an "appropriately qualified highways design consultant to assist with this" has been done.

It is clear from your email below and the Delegated Authority dated 15th December 2021 (sent to us on 23rd December 2021) that officers at the Council are uninterested in anything that is not a by-the-book pavement.

Indeed, language from your Highways colleagues such as: *"...this is not standard construction for a pedestrian footway"* and *"...this requires a kerb, as per the Council's standard details"*, departs significantly and even intransigently from the evidence at Inquiry, which is that such a solution would be totally inappropriate and unnecessary in this case, even making the roadway unsafe when it is presently not.

Respectfully, that is not a willingness to engage further, as you have put. That can only be the case whereby the Applicant agrees to a by-the-book pavement, which is against advice and against any evidence from the Inquiry.

Therefore, the Council wants a standard pavement your Highways colleagues are not willing to deviate from this. Officers, PROW and Legal, are seemingly unwilling to challenge such a position with their Highways colleagues.

Accordingly, as we are so far apart on the actual physical works required, then unless officers are able to persuade Highways colleagues to a contrary position (less 'computer says no'; and more pragmatism in dealing with the actual situation and location), then it is clear that there is going to be no movement from the Council's side. As the proposed works are specifically following our own engineering advice and evidence at the Inquiry, we shall burden you no further with this aspect. The Council's position is clear in that respect, in that it is stating that what is proposed is unsuitable and nothing but a by-the-book pavement will suffice.

Of course, we have been waiting on the monetary contribution pending the Council hopefully either suggesting where it would likely see an alternative and/or provide costings in its view. We were wanting a more collaborative approach, particularly as it is the Council or its contractors which will be doing the works. The point is taken that it is not for the Council to come up with a scheme, but obviously, if/where the Council remains concerned about safety in this respect (which we still remain confused about following the Council's confusing evidence to the Inquiry), then where it feels that there is a more appropriate scheme, it was given an opportunity to input. The Council has now obviously given its position (i.e. a by-the-book pavement and nothing else), which we are completely apart on and given our own advice and evidence at the Inquiry, is not going to be agreed.

Accordingly, the final monetary contribution will be submitted in the draft on Friday. I am getting instructions on the final figure that may be included following quotes. This will be in the draft on Friday. Mr. Gill will obviously make representations that his instructions are that the Council requires a by-the-book kerbed pavement. Should you manage to persuade your Highways colleagues to an alternative position in the meantime, then the door is open. Do remember that final submission of the document is two weeks after the Inquiry closes, though there needs to be time to have it finally prepared and executed. You even have time to report to Strategic Planning Committee before then - in fact before the Inquiry reconvenes.

Incidentally, on that note you may wish to consider again that the Huddersfield Area Planning Sub-Committee was not the decision-maker in objecting to this Order. That was of course the higher Strategic Planning Committee. Also, a source of your delegated authority is Councillor Terry Lyons, who on and before the 15th December 2021 was the subject of a Member Standards Complaint from Mr. Butterfield. I can also tell you that this week the outcome of that is going to the Local Government Ombudsman. You may or may not wish to take measures to address that situation.

In the meantime, monetary contribution aside, I shall respond separately on some of the technical points raised in your attached document. Other than that, unless there is movement from the Council's side on the physical works, then it would seem that the Council shall make the representations that it will on the 28th January 2022.

Regards

Noel Scanlon *Solicitor, BA(Hons), MSc, MCIWM*

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From: Sandra Haigh <Sandra.Haigh@kirklees.gov.uk>

Sent: 10 January 2022 12:10

To: Noel Scanlon

Cc: AGill@kingschambers.com; Phil Champion

Subject: FW: Closing Submissions - Holmfirth Inquiry

Dear Mr Scanlon

“Paragraphs 39 to 43 in the Council’s closing submission accurately reflect the Council’s current position on the s.106 Unilateral Undertaking *as currently drafted*. This is as per the delegated decision of the Strategic Director, Environment and Climate Change made on 15 December 2021. A copy of this decision has been provided previously, along with comments from Highways Design on

the proposal as currently drafted. Crucially, insufficient technical detail has been provided and no sum of money has been suggested.

The position taken by the Council on acceptance of monies and carrying out of proposed works is based on the (uncosted) proposal that has been presented to it in December 2021. It was necessary to take a position on this prior to the deadline set by the Inspector for exchange of closing submissions.

Whilst our position is that the initial draft proposal is not something it would be willing to implement, it is still open to you to submit a revised draft s106 Unilateral Undertaking that addresses the numerous issues identified with the initial draft. Highway Design colleagues need additional technical information to be provided. Your client may wish to consider engaging an appropriately qualified highway design consultant to assist with this

It is noted that there is provision in your draft unilateral undertaking for the Council to use money provided to carry out alternative works to the verge to its own design. No sum has been suggested. It would be inappropriate for the Council to commit at this time to accepting and using (unspecified) money for this purpose.

In addition I would draw your attention to the fact that the unilateral has been drafted in parts as if it is a bilateral agreement which the Council is party to. In that this is a unilateral undertaking this will need addressing(see attached commented upon draft)

The undertaking also appears to have omitted the inclusion of the usual reviewing and registration charge that the unilateral is registerable as a land charge.

We are willing to engage but would ask that in that the Public Inquiry is scheduled to resume on Friday 28 January that if you are going to let us see something can you please put it in soon?

Regards

Sandra Haigh

Kirklees Council
Legal Services
High Street Buildings
High Street
Huddersfield
HD1 2ND

From: Noel Scanlon <noel.scanlon@nsconsult.co.uk>

Sent: 04 January 2022 14:49

To: Sandra Haigh <Sandra.Haigh@kirklees.gov.uk>

Cc: Anthony Gill <AGill@kingschambers.com>; Phil Champion <Phil.Champion@kirklees.gov.uk>

Subject: Fw: Closing Submissions - Holmfirth Inquiry

Importance: High

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Dear Mrs. Haigh

Happy New Year to you and all.

Please could we have a response from you this week on this issue.

As it appears that the Inquiry is going to be reconvening later this month or early next, it appears that the Applicant is going to have to submit a substantial draft soon - likely next week.

Therefore, I am sure that you will understand that this matter needs to be dealt with swiftly now. Please could I therefore ask you to take instructions on this issue as a matter of priority.

We obviously hope that in order to assist, you will respond either way on behalf of the Council.

However, Where a definitive response is not received by **noon this Friday 7th January**, then I am sure given the timescales that you will understand that the Applicant shall proceed on the basis that the Council has stated its position and will not wish to engage further on the UU.

In that eventuality, we shall not disturb you any further on the UU.

Regards

Noel

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From: Noel Scanlon

Sent: 27 December 2021 21:26

To: Sandra Haigh

Cc: Anthony Gill; Phil Champion

Subject: Fw: Closing Submissions - Holmfirth Inquiry

Dear Mrs. Haigh

I hope that you had a Merry Christmas. I had Covid-19.

I write in relation to the attached delegated authority document sent regarding the s.106 UU. Three very obvious things seem to stick out:

- 1) 'Engagement' - the Council appears to have decided that it does not wish to engage with this process any longer and, from a Corporate Director, the Council even if monies were paid would not use the monies to improve the verge
- 2) 'Timing' - the second point is that the Council may (and only may) believe that the draft has to be in on 31st December 2021.
- 3) 'Type of Improvement' - the third is that the Council's Engineers are seemingly refusing to engage if the verge is not made up to a 'by-the-book' pavement standard, which we have heard from Mr. Appleton in the Inquiry would be completely unsuitable for this location.

1) Engagement

It would seem first of all that the Council's lack of willingness seems to stem from the fact that no monies have yet been specified. This is because, as stated in multiple previous correspondence, the idea is to get the Council's engineering input and they can provide a steer on what may or may not be acceptable to the Council in such a location.

The idea is that where there can be agreement to the types of work required, then the amount of monies can be established. It is in part in the attached email correspondence.

Where not, then the applicant will progress accordingly on the basis of quotes and include the appropriate figure in the s.106 UU. Why the Council will not seemingly engage on what it has previously considered a safety issue, is unclear. Why the Council would further dismiss monies that are going to potentially be paid to it anyway for such works, is also unclear.

We would also have an issue with the fact that the Corporate Director has taken steer from an elected Member who is a Chairman of the Committee that did not make the decision as to whether to object to this Section 247 Order (Councillor Lyons is the Chairman of the Huddersfield Area sub-Committee, not the relevant Strategic Planning Committee which resolved to object in this case), but who is also a Member that is (or was at the time of the decision) the subject of a Member Standards complaint by the Applicant, which is now going to the Local Government Ombudsman.

This perhaps feeds into the timing issue.

2) Timing

The Council can still take this to the Strategic Planning Committee. There is seemingly plenty of time before the Inquiry reconvenes. As shown in the attached correspondence following the adjournment of the Inquiry from the SoS-Inspector, the substantial draft UU does not need to be sent until two weeks before the Inquiry reconvenes. There is then a discussion on this at the Inquiry, before final submission following its closure.

3) Type of Improvement

It seems that officers are unwilling to engage the engineering staff as to the inclusion of a new harder, but still permeable surface, as promoted. You will note also in the draft, at the end of the relevant Paragraph 3 of the Second Schedule, allows the Council to take the money and put it towards alternative works. It is open-ended in this respect, so that if the Council (as Highway Authority) wants to do something different to the verge, then it may use the monies to do just that.

Is the Council now stating, having argued previously that this is a safety issue, will not want to receive monies for improvements that it has previously stated to a Committee are (in the Council's view; the Council's '*Officer Body's*' view, no less) necessary for safety purposes?

Of course, where the attached delegated authority document is the final position and the Council does not wish to engage any further, then please could you be clear and let us know. We shall on that basis not bother you further. Of course we would have to bring this to the attention of the Inspector and would submit that discussion on this at the re-convened Inquiry on the Council's part must obviously be limited given such a position.

A Unilateral Undertaking is going to be submitted and is going to be discussed at the Inquiry. A final version is going to be submitted within two weeks following the close of the Inquiry.

It is hoped that the Council may have simply been working on the mistaken basis that this work had to be done before 31st December. Where that is the case, we hope that it will take the decision to re-engage.

Whilst we would obviously prefer engagement, because we feel that the Council's present position may in part be based on a misunderstanding, where it does not wish to engage any further, please could you on behalf of the Council be very clear on that. On that basis, we will have no need for further exchanges in this respect.

I shall keep the Applicant's Closing open-ended until noon on Thursday in this particular respect, because we sincerely hope that the Council comes back to the proverbial table. Should I not hear from you by then, we shall work on the basis that the Council does not wish to engage further and update in Closing accordingly.

Regards

Noel

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From: Sandra Haigh <Sandra.Haigh@kirklees.gov.uk>

Sent: 23 December 2021 16:06

To: Noel Scanlon

Subject: FW: Closing Submissions - Holmfirth Inquiry

Dear Mr Scanlon

The closing submissions reflect the council's position on the unilateral submitted.

In my email of the 8 December I said that the council would forward comments by later email.

I attach a copy of the delegated decision together with a copy of the comments of Highway Design.

Regards

Sandra Haigh

Kirklees Council
Legal Services
High Street Buildings
High Street
Huddersfield

HD1 2ND

From: Noel Scanlon <noel.scanlon@nsconsult.co.uk>
Sent: 20 December 2021 09:38
To: Anthony Gill <AGill@kingschambers.com>
Cc: Sandra Haigh <Sandra.Haigh@kirklees.gov.uk>
Subject: Re: Closing Submissions - Holmfirth Inquiry

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Dear Mr. Gill

Profound apologies for the delay, which are noting to do with other work matters and have all been domestic owing to illnesses etc. Please be assured absolutely no discourtesy is intended.

I only have a few comments on factual aspects of your Closing, but it is accepted that this full first draft is late in being with you, so please do feel free to knock this on until Wednesday at noon rather than tomorrow if that assists you. I shall nevertheless still send my comments to you by noon tomorrow as originally arranged.

Dear Mrs. Haigh

Thank you for sending through Mr. Gill's first draft. I wanted to pick up on the comments regarding the Section 106 UU. I am inferring from this that the Council does not wish to be involved any further in the UU if there is an alleged internal decision that it will not use monies even if paid.

The fact is that a UU is going to be submitted anyway, so please could you kindly confirm what the Council's position is, if what is written in Mr. Gill's first draft Closing does not reflect the position.

The reason I ask is that what is written in Mr. Gill's draft Closing appears to be (whether intended or not) a dismissal and unwillingness to engage in the matter.

Please could I ask you as the Council's instructed Legal Officer to be clear, so that decisions and actions can be taken.

Thank you in advance.

Regards

Noel

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From: Anthony Gill <AGill@kingschambers.com>
Sent: 19 December 2021 21:38
To: Noel Scanlon
Subject: Re: Closing Submissions - Holmfirth Inquiry

Mr Scanlon,

I understand Ms Haigh circulated the Council's closing on Friday evening. Do you have the complete draft of the Applicant's closing you said you would be circulating on Friday night? I have not received anything since your email of 1631 on Friday.

Anthony

Anthony Gill

Barrister

Email: AGill@kingschambers.com

Clerk: Gary Smith 03300 580 820 | Mark Ronson 0161 819 8809

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From: Noel Scanlon <noel.scanlon@nsconsult.co.uk>

Sent: 17 December 2021 16:30

To: Anthony Gill <AGill@kingschambers.com>

Subject: Re: Closing Submissions - Holmfirth Inquiry

Dear Mr. Gill

I am afraid that I have had barely a moment from attending to unforeseen domestic duties. All that I have managed to do since my email this morning is add in one paragraph following Yvonne Parker's letter from the Inspector, which I have included in the DMMO part.

I am therefore sending you a mostly completed skeleton draft Closing. The rest is ready to be slotted in but the salient points are in there. As it is not substantially complete, please if you are uncomfortable and would prefer to wait, please do not send me your draft Closing. Nevertheless, the salient bits are mostly included in the attached.

I am not going to be able to pick this up again in reality until after 21:00 tonight. The greater likelihood is that I shall not be able to send you the substantial first draft until this weekend.

Please be assured no discourtesy intended; simply one of those things on one of those days.

Regards

Noel

Noel Scanlon *Solicitor, BA(Hons), MSc, MCIWM*

Director & Consultant

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From: Anthony Gill <AGill@kingschambers.com>

Sent: 17 December 2021 10:11

To: Noel Scanlon

Cc: Sandra Haigh

Subject: Re: Closing Submissions - Holmfirth Inquiry

Mr Scanlon,
That is, of course, fine.

Anthony

Anthony Gill

Barrister

Email: AGill@kingschambers.com

Clerk: Gary Smith 03300 580 820 | Mark Ronson 0161 819 8809

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From: Noel Scanlon <noel.scanlon@nsconsult.co.uk>
Sent: 17 December 2021 10:09
To: Anthony Gill <AGill@kingschambers.com>
Subject: Re: Closing Submissions - Holmfirth Inquiry

Dear Mr. Gill

My apologies in advance, but please could we postpone our exchange today until about 16:30 today? It is just about done, but I am afraid that my son has been taken ill and is at home (it does not appear to be covid-related). I am having to see to him in the background due to my wife unfortunately being unavailable most of today and I don't have family support locally that I can call on. Regardless, I am going to have to spend the next few hours attending to him in the background. I would have suggested knocking into this weekend, but I am conscious that it would be better to at least exchange first drafts today still, so that we can meet the next deadline. Thank you in advance for your understanding. Please do not send your draft by noon as originally planned.
Regards
Noel

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From: Anthony Gill <AGill@kingschambers.com>
Sent: 10 December 2021 12:08
To: yvonneparker@programmeofficers.co.uk; Noel Scanlon
Subject: Re: Closing Submissions - Holmfirth Inquiry

Yvonne,
Thanks for your email. Just to confirm Mr Scanlon's update that we will meet 31/12.

Tony

Anthony Gill
Barrister

Email: AGill@kingschambers.com
Clerk: Gary Smith 03300 580 820 | Mark Ronson 0161 819 8809

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From: yvonneparker@programmeofficers.co.uk <yvonneparker@programmeofficers.co.uk>
Sent: 10 December 2021 11:13
To: 'Noel Scanlon' <noel.scanlon@nsconsult.co.uk>
Cc: Anthony Gill <AGill@kingschambers.com>
Subject: RE: Closing Submissions - Holmfirth Inquiry

Noel

Thank you for your quick response – it is very helpful.
I have no information about a reconvened Inquiry.

Kind regards
Yvonne Parker
01282 450522 / 0781 333 4305
Programme Officer Services Limited
www.programmeofficers.co.uk

From: Noel Scanlon <noel.scanlon@nsconsult.co.uk>
Sent: Friday, December 10, 2021 11:07 AM
To: yvonneparker@programmeofficers.co.uk
Cc: Anthony Gill <AGill@kingschambers.com>
Subject: Re: Closing Submissions - Holmfirth Inquiry

Dear Yvonne

Thank you for the timely reminder. This situation is in hand.

Mr. Gill and I have been acutely aware of the deadline and have several weeks ago agreed a timeline between us for exchanges of drafts, comments, etc., which begins from noon next Friday 17th December. The deadline of 31st December will be met and we hope to be sending you substantial Closing Statements on (or hopefully before) 31st December.

I suspect not in advance, but by any chance are there any proposed dates for the reconvened Inquiry day as yet please?

Kind regards

Noel

Noel Scanlon *Solicitor, BA(Hons), MSc, MCIWM*
Director & Consultant
NSCL
Tel: 07921 385901
Email: noel.scanlon@nsconsult.co.uk

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From: yvonneparker@programmeofficers.co.uk <yvonneparker@programmeofficers.co.uk>
Sent: 10 December 2021 10:29
To: yvonneparker@programmeofficers.co.uk
Subject: Closing Submissions - Holmfirth Inquiry

Dear All

Could you please update me on where you are regarding the attached note. You have until 31 December to respond but it would be helpful for a short reply on how matters are progressing before that date.

Please advise by 5pm on 16 December or earlier if possible.

Many thanks

Kind regards
Yvonne Parker
01282 450522 / 0781 333 4305
Programme Officer Services Limited
www.programmeofficers.co.uk

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