

Re: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Noel Scanlon

Mon 24/01/2022 17:57

To:

yvonneparker@programmeofficers.co.uk;

Cc:

'Anthony Gill' <AGill@kingschambers.com>;

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

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

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1 attachment

Dear Yvonne

Thank you for your email, attaching what is now "Inquiry Note 3" (CD13.12). I have today sent the attached email correspondence to the Council, which the Applicant requests is similarly added to the Document Library, as should this email.

My reason for writing is that the Applicant must, with all due deference, respectfully but firmly state that it cannot accept the Inspector's position in Inquiry Note 3. Put simply and whether intended or not, it reads that there is going to be no further exchange and discussion on the Draft UU because there is greater disagreement between the parties than the Inspector had anticipated and for that reason he will not hear exchanges in open session. That could even be read as meaning in more crude language: 'can't be bothered' or similar, which is absolutely not what the Inspector would have meant or intended.

The Council's position on the UU is inconsistent to the point of perversity. On the one hand, the Council is stating that it wants to implement a by-the-book sealed 2m-width pavement in place of the verges and nothing else will be considered, despite the fact that its own Engineers have previously warned against this as it will impact on drainage further down the road, but moreover this is completely contrary to evidence at the Inquiry which was not challenged and is not disputed. On the other hand, the Council is stating that it will not accept and apply the monies in any event. This cannot go unchallenged by the Applicant, or we would submit the Secretary of State Inspector prior to his reporting.

Where this does not take place, then the Inspector is, whether inadvertently or not, allowing the Council as an objector to the Application the final word and not allowing the Applicant to respond. The Council in this respect, an objector, has the last 'shot'. That we respectfully submit would be a procedural impropriety, a perverse position and even unfair, given that the Applicant, which is executing a UU and will be potentially (depending on outcomes) paying not insignificant monies to the Council, is not allowed to respond to the Council's assertions and the Inspector has not considered or examined this.

Whilst it is perhaps understood what the Inspector was/is trying to do in managing and streamlining proceedings for the final day of the Inquiry, the Applicant submits that there needs to be an open discussion about the substantial Draft UU and the Council's position. Moreover, the Council has raised some technical issues, which must be responded to and which the Inspector would need to understand in context before reporting.

Therefore, please could this email be passed to the Inspector and added to the Document Library.

We have begun the process by the attached correspondence to Mrs. Haigh today, asking the Council to assist by answering questions designed to assist the Inspector. The Council is of course not compelled to answer, but where the Inspector holds public session as requested, then this would assist in establishing a clear position, how the UU will be finalised and where this sits in relation to the Inspector's reporting and Secretary of State's decision.

The Council responding to the questions set out in the letter submitted with the attached correspondence would also considerably assist in reducing the amount of time needed on Friday, though this is not envisaged as being high anyway. Nevertheless, as the Inquiry is scheduled for a full day, there is clearly room within the timetable to incorporate an open session on the UU.

Given the timescales that are upon us, I am sorry again to impose, but please could the Inspector respond to this email as a matter of priority. Thank you in advance and thank you to the Inspector for consideration of this important item.

Kind regards

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

Director & Consultant

NSCL

Tel: [07921 385901](tel:07921385901)

Email: noel.scanlon@nsconsult.co.uk

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From: yvonneparker@programmeofficers.co.uk <yvonneparker@programmeofficers.co.uk>

Sent: 24 January 2022 11:09

To: Noel Scanlon; 'Sandra Haigh'

Cc: 'Anthony Gill'; 'Phil Champion'

Subject: RE: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Dear All

The Inspector had hoped that a brief discussion of the draft UU at the resumed Inquiry would suffice, although it now appears that there is even greater disagreement than originally anticipated. He therefore proposes that there will be no substantive discussion of the UU at the Inquiry. The Council has already submitted written comments on the UU and, in line with Inquiry Note 1, the Applicant should now submit an executed version of the undertaking by **12 noon on Friday 11 February 2022 together with any written response to the Council's comments he wishes to make.**

The Programme for the Inquiry will therefore be:

10:00 - Friday 28 January 2022 (by MS Teams)

- Inquiry Resumption - opening comments by the Inspector
- Closing Submissions on behalf of the Council
- Closing Submissions on behalf of the Applicant
- Arrangements for any costs applications (***although the Inspector emphasises that these are not being invited***)
- Closing comments by the Inspector (it is likely that the Inquiry will be adjourned to be subsequently closed in writing following receipt of the executed UU)

For the avoidance of doubt:

- The “Final Comments on Respective Closing Submissions” document is to be taken as read and will not be read out in whole or in part at the inquiry
- The Inspector does not envisage allowing any verbal comments at the Inquiry (or any other written submissions thereafter) from the Council or the Applicant in respect of each other’s closing submissions

Mr Scanlon should submit the response to the Inspector’s request for clarification by 5pm on Wednesday 26 January.

Kind regards

Yvonne Parker

01282 450522 / 0781 333 4305

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

Sent: Friday, January 21, 2022 5:16 PM

To: yvonneparker@programmeofficers.co.uk; 'Sandra Haigh' <Sandra.Haigh@kirklees.gov.uk>

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

Subject: Re: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Dear Yvonne

Thank you and to confirm, I have received your email earlier today regarding clarification on the Closing Statement. I shall respond by Wednesday.

In the meantime, and apologies to keep pressing, but I am becoming slightly unclear as to the format of the final day. My understanding was that the first session in the morning of the 28th would discuss the Draft UU,

with the afternoon for the reading out of Final Closings and formalities regarding the submission of the final UU, etc., before Closing subject to the submission of a final UU within two weeks of Closing.
Is this correct, or does the Inspector now have an alternative format? Where that is the case, please could you let us all know, so that all parties can know and understand the format for the final day.

Thank you in advance.

Kind regards

Noel

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

Director & Consultant

NSCL

Tel: [07921 385901](tel:07921385901)

Email: noel.scanlon@nsconsult.co.uk

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From: yvonneparker@programmeofficers.co.uk <yvonneparker@programmeofficers.co.uk>

Sent: 21 January 2022 15:46

To: Noel Scanlon; 'Sandra Haigh'

Cc: 'Anthony Gill'; 'Phil Champion'

Subject: RE: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Noel

I don't think the inspector is expecting anything else from you on the UU – only the council which I have now received.

I have sent you an email earlier today where he asks for clarification on the closing statements by Wednesday.

Kind regards

Yvonne Parker

01282 450522 / 0781 333 4305

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

Sent: Friday, January 21, 2022 3:38 PM

To: yvonneparker@programmeofficers.co.uk; 'Sandra Haigh' <Sandra.Haigh@kirklees.gov.uk>

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

Subject: Re: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Dear Mrs. Haigh
Thank you and received.

Dear Yvonne

Please can I be clear here. Am I expected to respond to this prior to next Friday when the Inquiry reconvenes, or wait until the 28th and respond in open session?

Apologies, but I am not quite sure what was meant by: "...at the same time as on Mr Scanlon's email;" in your email below.

Please forgive me if I have not understood.

Also, is there a timetable or agenda for next week's session?

Kind regards

Noel

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From: yvonneparker@programmeofficers.co.uk <yvonneparker@programmeofficers.co.uk>

Sent: 21 January 2022 15:23

To: 'Sandra Haigh'

Cc: Noel Scanlon; 'Anthony Gill'; 'Phil Champion'

Subject: RE: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Thank you.

Kind regards

Yvonne Parker

01282 450522 / 0781 333 4305

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

Sent: Friday, January 21, 2022 1:56 PM

To: yvonneparker@programmeofficers.co.uk

Cc: Noel Scanlon <noel.scanlon@nsconsult.co.uk>; Anthony Gill <AGill@kingschambers.com>; Phil Champion <Phil.Champion@kirklees.gov.uk>

Subject: RE: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Dear Yvonne

As requested I am attaching the Council's written comments on the U/U.

Kind regards

Sandra Haigh

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

From: yvonneparker@programmeofficers.co.uk <yvonneparker@programmeofficers.co.uk>
Sent: 18 January 2022 15:11
To: 'Noel Scanlon' <noel.scanlon@nsconsult.co.uk>
Cc: 'Anthony Gill' <AGill@kingschambers.com>; Sandra Haigh <Sandra.Haigh@kirklees.gov.uk>
Subject: RE: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60
Importance: High

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Good afternoon

The Inspector would like the Council's written comments on the UU as soon as possible and their comments at the same time as on Mr Scanlon's email; the latter to be submitted only if the Council believe this to be strictly relevant to my recommendation on the Order.

The Inspector does not then envisage accepting any more written evidence and anything further on the UU can be raised at the resumed 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, January 14, 2022 4:00 PM
To: yvonneparker@programmeofficers.co.uk
Cc: 'Anthony Gill' <AGill@kingschambers.com>; Sandra Haigh <Sandra.Haigh@kirklees.gov.uk>
Subject: Re: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Dear Yvonne

As has been requested, please find attached a Draft s.106 Unilateral Undertaking, with:

- Two written and up to date quotations for the proposed verge works - the proposed Verge Works Contribution of being based on the higher quote, inclusive of VAT, rounded up to the nearest £1,000
- HMLR Office Copy Entries, though the plan is showing the HMLR 'MapSearch' area only, as the plan is far too large - we are making arrangements to be able to email this when final documents are submitted, as will the Register
- Appendix 1 Plan of the Verge areas relative to the owner's land
- Appendix 2 Draft Order Plan for reference in the UU

Please note that we have also sent a tracked changes version to the Council following earlier exchanges, but the Council has now informed that it will be resisting the works and not applying the sum proposed under the UU. The Inspector should note that copies of all correspondence between NSCL and the Council representatives can be issued without difficulty.

Please could I ask you to kindly acknowledge receipt of this email and its attachments.
Thank you in advance.
Kind regards

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

Director & Consultant

NSCL

Tel: [07921 385901](tel:07921385901)

Email: noel.scanlon@nsconsult.co.uk

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From: yvonneparker@programmeofficers.co.uk <yvonneparker@programmeofficers.co.uk>

Sent: 05 January 2022 12:09

To: Noel Scanlon; 'Anthony Gill'

Subject: RE: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Noel/Tony

Please submit the UU by 5pm on Friday 14 January 2022.

Many thanks

Kind regards

Yvonne Parker

01282 450522 / 0781 333 4305

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

Sent: Tuesday, January 4, 2022 2:26 PM

To: yvonneparker@programmeofficers.co.uk

Subject: Re: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Hello Yvonne

Yes there is. In accordance with the Inspector's request in Inquiry Note 1, we are submitting that in substantial draft form two weeks before the Inquiry reconvenes for one day.

As we have put in Closing, the Council has said that they are not going to engage with the UU and will not be accepting it, but we are just giving it a chance to change its mind this week, because it is possible that the draft UU has been completely dismissed based on a misunderstanding as to when it had to be submitted to the Inspector. I am chasing the Council for a response this week.

I have received your separate email on the proposed dates for that and have responded separately.

Kind regards

Noel

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

Director & Consultant

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Email: noel.scanlon@nsconsult.co.uk

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From: yvonneparker@programmeofficers.co.uk <yvonneparker@programmeofficers.co.uk>

Sent: 04 January 2022 13:39

To: Noel Scanlon

Subject: RE: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Noel

Is there a UU to be submitted?

Thanks

Kind regards

Yvonne Parker

01282 450522 / 0781 333 4305

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From: Noel Scanlon <noel.scanlon@nsconsult.co.uk>
Sent: Friday, December 31, 2021 4:25 PM
To: yvonneparker@programmeofficers.co.uk
Cc: Anthony Gill <AGill@kingschambers.com>; Noel Scanlon <noel.scanlon@nsconsult.co.uk>; nationalcasework@dft.gov.uk
Subject: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60
Importance: High

Dear Yvonne
Please find attached:

1. Final Closing statement on behalf of the Applicant
2. Case reports for Judgments referred to in Applicant Closing, being:
 - *R (ex p Network Rail Infrastructure Ltd) v Secretary of State for the Environment, Food and Rural Affairs [2017] EWHC 2259 (Admin)*; (**NB.** also attached for completeness the subsequent affirming Court of Appeal case: *[2018] EWCA Civ 2069*)
 - *Scottish Widows plc v Cherwell DC [2013] EWHC 3968 (Admin)*
 - *R (ex p BeeBee) v Poole BC [1990] 12 WLUK 320* (**NB.** summary only available)
3. Kirklees Council Delegated Authority Report dated 15 Dec 2021, concerning the Section 106 Unilateral Undertaking
4. 'Final Comment on Respective Closing Submissions' agreed between myself and Mr. Gill outlining outstanding disagreement with each other's Closings (as requested by the Inspector in Inquiry Note 1)

I thought that it was better to have the areas of outstanding disagreement as one document, for ease of reference by the Inspector. Mr. Gill has completed this with me and the document is agreed between us, which I am sure he will confirm.

Although shared with and seen already by me, in the interests of propriety, Mr. Gill (cc'd) will send you his final Closing for the Council separately.

I would be grateful if you could please kindly acknowledge receipt.

Other than this, have a very good New Year's Eve.

Kind regards
Noel

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

Director & Consultant

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Email: noel.scanlon@nsconsult.co.uk

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