

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

Noel Scanlon

Tue 25/01/2022 12:59

To:

yvonneparker@programmeofficers.co.uk;

Cc:

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

Anthony Gill <AGill@kingschambers.com>;

This message was sent with high importance.

1 attachment

Dear Yvonne

Thank you for your email dated 5th January 2022 at 11:28hrs, to Mr. Gill of Counsel, copying myself and Mrs. Haigh of the Council. Please could this email be passed to the Inspector at the earliest opportunity, as it raises another important procedural issue. It is intended that this email can (and in our view should) be added to the Document Library.

I have had to take instructions before sending this communication, because this email enquiry (which is underpinned with the uncertainty of the implications of the position because of a one-line email, leaving the position open-ended and open to interpretation on all sides) is unlikely to endear the Applicant to the Inspector and may in fact also be of no consideration. Nevertheless, following Inquiry Note 3 (CD13.12), this does need to be raised and concerns of the Applicant brought to the attention of the Inspector prior to the 28th January 2022. This is because it does appear again, whether intended or not, that the Inspector appears be indulging the Council, an objector in this Inquiry, at the expense of the Applicant, which is supposed to have the final 'shot' (i.e. comment) in proceedings. Mr. Gill uses the more sporting analogy of final 'kick' to mean the same thing.

What we say on behalf of the Applicant in the following, is submitted with all due deference and with the very greatest of respect to Inspector and his office. In summary, a further short allocation of time on Friday 28th January is requested before respective reading of final Closing Statements, which should amount to no more than about 15 minutes of final day Inquiry time prior to formal reading of Closings.

It is again openly accepted that the email of 5th January 2022 may mean nothing and be of absolutely no relevance whatsoever. However, 'Inquiry Note 3' and my response to this yesterday (attached by way of reminder) on behalf of the Applicant, leads to a conclusion or at least strongly suggests that this is a matter which needs to be briefly addressed in public open session.

In more 'normal' Inquiry proceedings in more 'normal' times, where there would often be no exchange and 'agreement' of Closings, the Applicant (which is supposed to have the last comment in Inquiry proceedings), would ordinarily *break script* briefly and respond to anything said in Closing by the Council (in this case) immediately beforehand. Where the Inspector had wished to manage (indeed, *micro-manage*) exchanges or the specifics of what actually ends up in a final Closing Statement, or set restrictions as to what may or may not be included, then respectfully he would have set this out clearly in Inquiry Note 1.

What the Inspector may or may not have intended after the event on 5th January 2022 or even now, is we submit of no relevance whatsoever here. Where the Inspector had intended a "narrow" approach (which incidentally we still do not fully understand), this was certainly not referenced in Inquiry Note 1; not even implicitly or indirectly. Nevertheless, the Applicant respectfully cannot take seriously or consider reasonably a

position that the Inspector would have intended to specify what is and is not included in a party's Closing Statement, or manage specifically how Closings may have been concluded.

Although Mr. Gill may not directly wish to misrepresent my position on behalf of the Applicant, what Mr. Gill on behalf of the Council is suggesting, is that there is that there has been something underhand on the part of the Applicant in exchange of draft Closings, which is far from the case. All correspondence can be provided swiftly and without difficulty, should the Inspector wish it. However, the fact is that Mr. Gill on the part of the Council has actually adjusted his own Closing in response to the Applicant's Draft Closing, following draft exchanges over the festive period, including his unsaved "Post Script" section that remains in tracked changes font; an unusual strategy if deliberate, as we have said elsewhere.

In this respect, Mr. Gill in his Closing Statement, has on behalf of the Council ironically done precisely what he has complained of. Contrary to conventional procedure, the Council in this respect, an objector, has arguably had the last comment in his "Post Script", even though his Closing is read before the Applicant's Closing. That may seem and read as being bizarre, but it is nevertheless factually correct.

That would of course be contrary to any conventional management of an Inquiry, or even natural justice. Though we are not 'dying in the proverbial ditch' over this here, it is an important procedural point.

Following this, the one line email below is compounded and is concerning when considering the above, which appears to be reinforced when the Inspector states in Inquiry Note 3 that he does "*not envisage allowing*" any verbal comments at the Inquiry on each other's respective closing submissions. Such language, whether intended or not, respectfully appears to suggest that the proverbial door is open to add to closing submissions. The Applicant does need to be able to have the final comment in that eventuality.

A short discussion on the subject of this email and subsequent parameters set by the Inspector in open session, immediately prior to reading of respective Closings, would we suggest provide clear boundaries for both parties prior to Closing Statements. Again, that would likely only take about fifteen minutes of time, if that.

Of course, where the Inspector believes and would report that this (the email below of 5th January 2022) is of no effect and of no consideration of any kind to his reporting and the Secretary of State's final decision, then he is respectfully and with all due deference invited to state so now, so that all parties know where they stand prior to reading Closing Statements on the 28th January . Such a communication may alleviate the need for any such time for discussion prior to the respective reading of Closing Statements on the final sitting day, or would certainly offer the benefit of streamlining proceedings.

Thank you again in advance and thank you to the Inspector for consideration of this important item. Please be assured again that this communication is sent with all due deference and the greatest of respect to the Inspector and his office. We hope and trust that the Inspector will again understand the legitimate and proper reasons for such communications and requests. No discourtesy or disrespect of any kind is or ever would be intended.

Kind regards
Noel

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

Director & Consultant

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From: yvonneparker@programmeofficers.co.uk <yvonneparker@programmeofficers.co.uk>
Sent: 05 January 2022 11:28
To: 'Anthony Gill'
Cc: Noel Scanlon; 'Sandra Haigh'
Subject: RE: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Tony

The Inspector has confirmed that he intended a “narrow” approach to be adopted.

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

From: Anthony Gill <AGill@kingschambers.com>
Sent: Friday, December 31, 2021 4:52 PM
To: yvonneparker@programmeofficers.co.uk
Cc: noel.scanlon@nsconsult.co.uk; Sandra Haigh <Sandra.Haigh@kirklees.gov.uk>
Subject: NATTRAN/Y&H/ S247/4337 - Closing Statement - Stopping Up and Diversion of part of Holmfirth Footpath 60

Dear Yvonne,

I hope you have had a good Christmas and that you have a lovely evening tonight.

Attached is the Council’s closing and 2 case reports. The Applicant’s advocate has seen three drafts of the Council’s closing. There is also a combined comments document wherein in a table each party has highlighted paragraphs of the other’s closing it disagrees with and the other has responded. Four attachments in total. You have received 2-4 already from the Applicant.

There is an issue that the Council would appreciate the Inspector’s clarification upon. The Council has sought to only comment where it disagrees as to what occurred in the inquiry, the evidence given. In doing so the Council considers it was following para.3 of the Inspector’s note of 31st August 2021:

‘3. Consequently, in advance of the resumption of the Inquiry, I am requiring the Applicant and Council to exchange written copies of their closing submissions with the aim of reaching agreement over their accuracy. These parties are, of course, unlikely to agree on the merits of the Stopping-Up and Diversion Order; however, **I expect them to make every effort to reach agreement that the closing submissions accurately reflect what was said and happened at the Inquiry.** Once agreement has been reached both parties should advise me

of this in writing via the Programme Officer, attaching the agreed submissions'.
Arrangements will then be put in place to resume the Inquiry as soon as possible.
(**emphasis** added)

The Council has therefore avoided providing commentary on the various disagreements it has with the Applicant's case.

However, as the Inspector will see, the Applicant's closing proceeds on a broader basis than the Closings process prescribed by the Inspector allowed for drafting in response to the other side's submissions. I do not intend to be partial in this so will simply say that the parties therefore disagree on what was intended by this process.

Can the Inspector please clarify whether the process was to be narrow (in the sense the Council means) or broad (as per the Applicant's approach).

In the iterative process that has followed over the last two weeks the Applicant has made clear that it will object to any commentary made beyond the texts submitted today, ie the Council commenting on the Applicant's new case law arguments which have been made in closing.

Despite the Council understanding that this is not the correct process it has been necessary under the Applicant's threat to briefly address this point and highlight outstanding gaps which make full submissions impossible on others (covered in the Post Script to the Council's closing).

I am sorry that this email is so long and that it has been necessary to raise this query with the Inspector.

My best wishes, as always,

Tony

Anthony Gill

Barrister

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