

## FW: Closing Submissions - Holmfirth Inquiry

Sandra Haigh <[Sandra.Haigh@kirklees.gov.uk](mailto:Sandra.Haigh@kirklees.gov.uk)>

Thu 23/12/2021 16:06

**To:**

Noel Scanlon;

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1 attachment

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](mailto:noel.scanlon@nsconsult.co.uk)>

**Sent:** 20 December 2021 09:38

**To:** Anthony Gill <[AGill@kingschambers.com](mailto:AGill@kingschambers.com)>

**Cc:** Sandra Haigh <[Sandra.Haigh@kirklees.gov.uk](mailto: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

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

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**Entries for database - Checklist (template) for officers and delegated decisions**

<p><b>1. Name or title of the decision</b></p>	<p>Holmfirth 60 FP diversion / Wolfstones Road verge improvements – position on s106 Unilateral Undertaking</p>
<p><b>2. Brief description of the reason and why it has been taken <u>and</u> any alternative options that were considered and rejected by officers</b></p>	<p>Kirklees Council to take a position on the acceptability of a proposed Unilateral Undertaking (UU) under s106 Town and Country Planning Act (TCPA) 1990 which would provide monies for specified 'improvements' to the verge of Wolfstones Road. The works have been suggested by the applicant in connection with a draft Order made under s247 TCPA 1990 proposing the diversion of part of public footpath Holmfirth 60, including changing its termination point on Wolfstones Road.</p> <p>The Council is opposed to the proposed diversion and is a statutory objector at an ongoing public local inquiry, currently adjourned until early 2022. Members had previously rejected a similar diversion application under s257 TCPA even with improvement to the verge for pedestrian use.</p> <p>Legal, PROW and Highway Design have considered a draft s106 UU received.</p> <p>It would be appropriate for members to be asked to take a position on the acceptance of the proposal and the carrying out of the specified works. The Council's position would inform the Inspector's consideration of the application and his recommendation to the Secretary of State for Transport regarding whether or not the requested diversion Order should be made.</p> <p>The Inspector at the public inquiry has requested closing statements be submitted by 31 December 2021 with exchange of draft statements by 17 December. The Council will need to decide its position on the acceptability of the proposed UU by that date.</p> <p>Delays in submission of the UU to the Council has meant that has not been possible to report to members prior to the deadline for exchange / submission of closing statements.</p> <p>The decision will be reported to the next Huddersfield Area Planning Sub Committee on 10 February 2022.</p>
<p><b>3. Decision</b></p>	<p>To reject the draft s106 Unilateral Undertaking to carry out the proposed improvements to the verge of Wolfstones Road. The Council would not accept and apply the monies for the proposed purpose bearing in mind advice from officers.</p>
<p><b>4. Wards in Kirklees affected by the decision</b></p>	<p>Holme Valley South</p>

<p><b>5. Please state if this is a key decision and, if so, has it been recorded in the forward plan of key decisions with 28 days notice.</b></p>	<p>No</p>
<p><b>6. Background information</b></p> <p>The decision and info in this form <b>will</b> be a matter of public record</p> <p>Please indicate if the background info that was considered by the officer(s) is based on (i) information that is available to the public, or (ii) private and exempt information i.e., private because it is exempt information within Part 1 of Schedule 12A of the Local Government (Access to Information) Act 1985.</p>	<p>On 27 January 2020 the Council refused an application for a Public Path Diversion Order under s257 Town and Country Planning Act 1990 to divert the route and termination point of part of Public Footpath Holmfirth 60 (HOL/60). An Order would be required to allow approved development affecting the public footpath to be fully implemented. The proposed diversion would have required some users of the footpath to walk along Wolfstones Road, Netherthong, between existing and proposed termination points. Members of the Huddersfield Area Planning Sub-Committee rejected the proposed diversion, even with the proposed condition of first entering into an agreement under s278 Highways Act 1980 for improvements to the verge of Wolfstones Road to make it more suitable for pedestrians.</p> <p>The landowner subsequently applied to the Secretary of State for Transport for a similar diversion order under s247 Town and Country Planning Act 1990. This would have the same effect on the public footpath, but without any provision for improvements to the verge. A Draft Order was published in September 2020. The Strategic Planning Committee subsequently resolved to object to the draft Order, triggering a Public Inquiry.</p> <p>The public Inquiry opened in August 2021, with the Council as a Statutory Objector. The Inquiry overran its allotted four days and was adjourned until early 2022 (date for resumption to be confirmed). It was agreed that both parties should submit closing submissions in writing by the end of December 2021, with drafts to be exchanged in advance to identify any remaining items of dispute. That is due to take place by end of December 2021.</p> <p>During the inquiry the agent for the landowner / applicant proposed that an s106 Unilateral Undertaking (UU) be submitted to the Council. I.e., committing his client to the provision of money to carry out specified 'improvements' to the verge on Wolfstones Road. Any works to be carried by Kirklees Council. This would be a binding planning obligation. This was not something requested by Kirklees. It would be a unilateral undertaking not a bilateral agreement. It would be submitted as part of the Applicant's case to increase the likelihood of the Order being made by the Secretary of State. At the Public Inquiry the Council committed to considering any s106 UU submitted. A final version may be submitted not less than 2 weeks prior to the resumption of the inquiry (date TBC). That is likely to happen regardless of the Council's views on the acceptability of the proposal and whether it would be</p>

prepared to carry out the works proposed. The Inspector would also take into account the Council's position. So, it is necessary to take a position on this prior to exchange / submission of closing statements.

The applicant's agent was advised in early October 2021 that any s106 UU submitted for review, including for feedback from highway engineers, would need to be the drafted document. The document received is incomplete. The work proposed has not been costed and no sum of money to be provided has been stated. Officers, including from the Highway Design team, have considered the contents of the s106 Unilateral Undertaking as drafted and have recommended that it is rejected.

Reasons:

1. The Unilateral Undertaking as presented to the Council lacks vital information. The Highway Design team would require a more comprehensive detailed design package from the client's representative for review prior to making further design comments on the proposal and determining associated costs. Discussions with Asset Management would also be required to ascertain maintenance regimes.
2. The Highway Design team has carried out a preliminary assessment of the limited information provided. Significant concerns were raised about potential for pedestrian vehicle conflict, the lack of clarity about whether proposal is for shared space or a pedestrian footway, the lack of a kerb, and lack of an adequate drainage system (in conflict with the data sheet for the cellular material proposed to be installed). Engineers also highlight a need for a Stage 2 Road Safety Audit, vehicle traffic flow information, and CBR test (California Bearing Ratio) to assess the supporting strength of the subgrade.
3. The wording of parts of the Unilateral Undertaking as drafted appears to officers, including Highways Design and Legal, to be legally deficient or questionable in its current form. Parts of the draft appear to impose obligations upon the Council which is not possible within a unilateral undertaking.
4. Endorsement of the proposed changes to the verge of Wolfstones road, and commitment to implementing proposed works, is directly at odds with the position previously taken by members of the Huddersfield Area Planning Sub-Committee. In January 2020 Members rejected a similar footpath diversion proposal (for an Order under s257 Town and Country Planning Act 1990), even with proposed verge improvements to be

	<p>achieved via an agreement under s278 Highways Act 1980.</p> <p>I have therefore exercised the emergency powers delegated to me by virtue of Part 3 Section F Scheme of Delegation to Officers - Chief Executive (d) to reject the draft s106 Unilateral Undertaking to carry out improvements to the verge of Wolfstones Road, as described at section 3 above.</p> <p>This decision will be reported to the next Huddersfield Area Planning Sub-committee on 10 February 2022.</p> <p>Yes – The information is available to the public.</p>
<b>7. Date when the decision was made</b>	15 December 2021
<b>8. Date when decision will take effect</b>	15 December 2021
<b>9. Officers involved in taking the decision? Please identify key consultees</b>	Colin Parr Strategic Director Environment and Climate Change
<b>10. Please list the names of any councillors who were consulted directly before this decision was taken</b>	<p>Cllr Terry Lyons Chair of Planning (Huddersfield) Sub-Committee</p> <p>- Did any of the Cabinet Members declare a conflict of interest in the topic? Yes or No? N/A</p> <p>- If a conflict of interest was declared, had a written dispensation been granted by the Chief Executive? Yes or No? N/A</p>
<b>11. Contact officer for more information</b>	Phil Champion Public Rights of Way Team
<b>12. Authorised by Chief Executive/ relevant Strategic Director</b>	<p>Name: Colin Parr</p> <p>Date: 15/12/2021</p>

### **S.106 Unilateral Undertaking – proposed ‘improvements’ to the verge on Wolfstones Road, Netherthong.**

Comments from Highway Design following consideration of the information provided:

- Is the client’s representative putting forward a proposal for a shared area for the verge (pedestrians/vehicles) as this is not clear? If it is a shared area, then this has significant safety issues for pedestrians
- If the proposal is for a pedestrian footway, then this requires a kerb, as per the council’s standard details. (consideration to pedestrian safety is of paramount concern)
- The cellular material proposed adjacent to existing carriageway would require a suitable edging/kerbing to keep the cellular material in place. (however, this is not standard construction for a pedestrian footway)
- The client’s representative makes reference to the Cellpave 40 data sheet, which also refers to Dot Type 1 sub-base being used provided that an adequate drainage system is installed. However, the client’s representative has not made reference to any form of drainage to be installed.
- CBR information is required
- Vehicle traffic flow information required
- Stage 2 RSA required to support the proposal
- The Highways design team would require a more comprehensive detailed design package from the client’s representative for review prior to making further design comments on the proposal and determining associated costs.
- Discussion with asset management and Highways registry would also be required to ascertain maintenance regimes and the legalities of the proposal.