

Fw: Closing Submissions - Holmfirth Inquiry

Noel Scanlon

Tue 11/01/2022 15:03

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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This message was sent with high importance.

You replied on 14/01/2022 15:53.

1 attachment

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*

Director & Consultant

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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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