

# Re: Footpath 60 Section 247 Public Inquiry - Section 106 Unilateral Undertaking for Proposed Works to the Verge on Wolfstones Road

Noel Scanlon

Fri 17/09/2021 15:18

To:

John Chapman <John.Chapman@kirklees.gov.uk>;

Cc:

phil.champion@kirklees.gov.uk;

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Dear Mr. Chapman

Thank you for the confirmation to deal with you on this. Your instructing client officer is Phil Chapman, who is copied. I believe that his colleague Giles Cheetham is on indefinite leave presently.

The Council's position on this matter is confusing, because on the one hand it says it wants verge improvements to come forward, but on the other hand states that they are not necessary and has formally removed this request in its submissions to the Secretary of State.

Nevertheless, to simplify matters, the landowner is going to be submitting a unilateral undertaking pursuant to s.106 of the Town and Country Planning Act 1990 ('s.106 UU'), which will provide a sum of money for improvements to the grass verge on Wolfstones Road.

The position is, however, from seemingly all sides, that although the improvements to the verge are evidently not necessary from a highways safety perspective, more generally it would 'do no harm' where a final Order is made.

## **The theory behind the s.106 UU**

Any requirement to refurbish/replace the verge surfaces will not form part of the final Order. Instead, as it is promised through a planning obligation, it becomes a consideration for the Secretary of State, but with a knowledge that the monies will be given to the Council to effect the changes, because the s.106 UU will mean that Mr. Butterfield will provide the monies to the Council on trust (in a legal sense) for doing those works, where a final order is made.

The only real decision for the Council is whether, on receipt of the monies from Mr. Butterfield as a result of the s.106 UU, it will or will not make the verge improvements following the position that the final order is made.

We did have costings done a couple of years ago which from memory were only a couple of thousand apart. Nevertheless, we are obviously in a different world now. We shall therefore try and establish some costings for the s.106 UU, with the idea that an average or even the highest of the costs, which would be index-linked, would be the amount of money that would be provided to the Council. In the alternative, the Council can start by its engineers providing a justified figure.

The Council, having received the money via the s.106 UU, would then decide whether or not it wished to carry out the works within a specified period. Where it decides not to, then as with the traditional trust situation concerning s.106 planning obligations involving monetary sums, this would be returned.

It seems that on this basis, the only decision for the Council, is whether or not it is going to use the monies to do the works to the verges. The monies established in the s.106 UU for the subject works will be provided in any event. The s.106 UU means that the landowner is undertaking to provide the monies to the Council, subject to certain safeguards and conditions.

The draft form of s.106 UU shall be submitted for your consideration next week.

### **The proposed surface works**

In the meantime, we would ask that you please liaise with your Highways Engineers. Ayoob Akhtar and Elizabeth Twitchett were the last officers that I dealt with and I have met Mr. Akhtar on site previously. However Mr. Akhtar has previously stated that outside of formal instruction to the contrary, they would only consider a by-the-book footway. This is inappropriate for this area and for this matter.

It has now been clearly established that a full *by-the-book* pavement footway is not necessary, may cause issues further down the road with drainage and may in fact serve to detract from road safety, because it has the potential to narrow a rural road. Apart from anything else, such a *by-the-book* footway is not required or in any event suitable in this location. This is not in dispute from your RoW colleagues.

We have taken further advice on this issue prior to my sending this email to you. What is proposed as a result, is a surface that will replace the current verge in a like-for-like width, which will offer a sturdier surface underfoot, but will not impact adversely on drainage, which was a concern of Highways Engineers in the case of a full footway.

We are open-minded about what does come forward, but what is proposed at present is a digging down of the verges to between 200mm to 300mm and applying a compacted sub-base material which is more robust than the present grass verges, but is still permeable and will not cause drainage issues. In the alternative, we can look at a type of 'grasscrete' 80-100mm in depth backfilled with a stone sub-base, which again would be permeable, but solid enough underfoot. The following link is also an example of a robust but permeable surface solution, though I am informed this tends to be used on more commercial, car park construction applications: [CellPave 40 – Cellular Paving Grid – Groundtrax](#)

The Council may have another idea.

Please could you therefore take instructions from your Highways Engineers on the above. The form of draft s.106 will follow for your consideration next week. Obviously the works proposals will form part of the Schedule for that s.106 UU.

### **Co-operation and Input**

The Council needs to ideally approve three headline items here:

- (i) the form of s.106 UU;
- (ii) the associated works to the verge; and
- (iii) the amount of monies required.

However, it is understood in advance that for its own reasons, the Council may not wish to engage in this matter and leave the situation entirely to the SoS-Inspector.

Where the Council does not wish to engage for any reason, then please could you let us know immediately and, ideally, please explain why for the purposes of the Inquiry to be reconvened for this matter and closing submissions in due course. On that basis, we shall simply submit a form of s.106 UU with appropriate money undertakings for works and explain that the Council has not wished to engage in the process of its compilation or content.

Yours  
Noel

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**From:** John Chapman <John.Chapman@kirklees.gov.uk>  
**Sent:** 06 September 2021 13:54  
**To:** Noel Scanlon  
**Cc:** Julie Muscroft  
**Subject:** RE: Footpath 60 Section 247 Public Inquiry Proceedings - Examination-in-Chief and Inspector Questioning of Phil Champion - Friday 27th August 2021

Dear Mr Scanlon

Ms Haigh is on leave , for the time being you can correspond with regarding this matter .

Yours sincerely

John Chapman

**From:** Noel Scanlon [mailto:noel.scanlon@nsconsult.co.uk]  
**Sent:** 06 September 2021 13:52  
**To:** John Chapman <John.Chapman@kirklees.gov.uk>  
**Cc:** Julie Muscroft <Julie.Muscroft@kirklees.gov.uk>  
**Subject:** Re: Footpath 60 Section 247 Public Inquiry Proceedings - Examination-in-Chief and Inspector Questioning of Phil Champion - Friday 27th August 2021

Dear Mr. Chapman

It is appreciated that you may still be looking into this matter.

However, whilst I know that you will wish to issue a full response, we are ready to move on the various items as required/guided by the SoS-Inspector.

Please could you in the interim let me know whether I should contact Sandra Haigh, or another solicitor/legal officer given the situation? Thank you.

Should I not hear from you by 10:00 tomorrow morning (Tuesday 7th). I shall contact Ms. Haigh and copy you until provided with an alternative contact.

Yours sincerely

Noel

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