

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

<p>1. Name or title of the decision</p>	<p>Holmfirth 60 FP diversion / Wolfstones Road verge improvements – position on Final Draft of s106 Unilateral Undertaking</p>
<p>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</p>	<p>Kirklees Council to take a position on the acceptability of the final draft 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, scheduled to resume on 28 January 2022 to hear closing submissions. Members had previously rejected a similar diversion application under s257 TCPA even with improvement to the verge for pedestrian use.</p> <p>A draft s106 UU was received. An Emergency Delegated Decision was made on 15 December 2021 to reject the draft UU.</p> <p>The Inspector required submission of any final draft S106 UU no later than 2 weeks prior to the resumption of the Public Inquiry. A final draft UU was submitted, with various changes made in light of the rejection of the previous draft and feedback from the Council.</p> <p>It would be appropriate for members to be asked to take a position on the acceptance of the proposal, as described in the final draft s106 UU, 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 Council will need to decide its position on the acceptability of the final draft UU before resumption of the Public Inquiry on 28 January 2022.</p> <p>It will not be possible to report to members prior to the resumption of the Public Inquiry.</p> <p>The decision, along with the previous decision regarding the first draft UU, will be reported to the next Huddersfield Area Planning Sub Committee on 10 February 2022.</p>

<p>3. Decision</p>	<p>To reject the final 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>4. Wards in Kirklees affected by the decision</p>	<p>Holme Valley South</p>
<p>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.</p>	<p>No</p>
<p>6. Background information</p> <p>The decision and info in this form will 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. The Inquiry will resume on 28 January 2022 to hear closing submissions.</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 out 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 first draft was</p>

considered and rejected in December 2021. A final draft was submitted on 14 January 2022, 2 weeks prior to the date set for resumption of the Public Inquiry, as required by the Inspector. The Inspector will take into account the Council's position. It is necessary for the Council to take a position on the final draft prior to the resumption of the Inquiry.

The applicant's agent was advised on the Council's position on the first draft UU and the specific issues raised by Highway Design. Feedback was also offered by Legal regarding various other issues with the wording of the document. The final draft document indicates £12,000 will be offered to the Council for it to carry out the proposed verge works, or such 'alternative verge works' 'as the Council's Highways Engineers shall in their reasonable professional opinion consider necessary or appropriate in the circumstances'. This was supported by two quotations from contractors, the sum offered being greater than the higher of these. No changes had been made to the specifications of the proposed verge improvement works and no additional documentation provided other than land ownership information. Limited other changes were made to the wording of the document.

Officers - including from the Highway Design team, Legal Services and the Public Rights of Way team - have considered the contents of the final draft s106 Unilateral Undertaking as drafted and have recommended that it is rejected.


Reasons:

1. Although a sum of money has been stated (£12,000), the Final Draft Unilateral Undertaking as presented to the Council still lacks the vital information missing from the first draft, including the more comprehensive design package required by Highway Design. The requirements are described in detail in the emergency delegated decision regarding the first draft UU, made on 15 Dec 2021.

2. The Highway Design team has commented that

"Based upon the submission of the S106 final draft and the lack of detail submitted we stand by our initial comments, therefore there is no change in our position regarding the acceptability of this scheme.

The sum of £12,000.00 does not reflect the cost of a footway designed and installed to Kirklees Highway Standards. Cellpave - 40 is not standard construction for a pedestrian footway."

	<p>3. Although a number of amendments have been made to the wording, Legal Services still has concerns regarding the validity of the document.</p> <p>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 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 final draft s106 Unilateral Undertaking to carry out improvements to the verge of Wolfstones Road, as described at section 3 above.</p> <p>This decision, along with the previous decision of 15 December 2021, 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>
<p>7. Date when the decision was made</p>	<p>25 January 2022</p>
<p>8. Date when decision will take effect</p>	<p>25 January 2022</p>
<p>9. Officers involved in taking the decision? Please identify key consultees</p>	<p>Colin Parr Strategic Director Environment and Climate Change</p>
<p>10. Please list the names of any councillors who were consulted directly before this decision was taken</p>	<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>
<p>11. Contact officer for more information</p>	<p>Phil Champion, Public Rights of Way Team</p>
<p>12. Authorised by Chief Executive / relevant Strategic Director</p>	<p>Name: Colin Parr</p> <p>Date: 25/01/2022 </p>