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Ms. Yvonne Parker, Programme Officer for Public Inquiry on Holmfirth Footpath 60

By email only: yvonneparker@programmeofficers.co.uk

9th January 2022

Dear Yvonne

Application under Section 247 Town and Country Planning Act 1990 ('TCPA') for Stopping Up and Diversion of Part of Holmfirth Footpath 60 - Public Inquiry Closing Submissions

I write specifically in response to the letter submitted by Mrs. Haigh on behalf of the Council dated 5th January 2022 (Council ref: PLA/SJH/GDM -G114-163), which you have now added as CD13.8.

We don't understand why the Council would send this now and/or how it assists. Nevertheless, particularly as this has been made public, after the Inspector's deadline for Closing submissions, it could not be reasonably expected that the Applicant would not respond.

We would therefore ask you to pass this letter to the Inspector immediately and similarly add this letter to the library in direct response to CD13.8.

We are confused as to why the Council would or could raise this as an issue following the deadline for submission of Closing Statements, but it has. We are further confused as to why the Council would resist Mr. Earnshaw's letter dated 28th December 2021 (now CD13.5), when the Council has clearly had sight of this from the 28th December 2021 (i.e. prior to submission of Closing Statements) and has already referred to and commented specifically on this in its submitted Closing Statement and 'Final Submissions on Respective Closings' ('Final Submissions') document. The fact that it has done it "Post Script" and in tracked changes form (an unusual strategy, if deliberate) does not make it somehow less of a part of the Council's final Closing Statement.

Following that, we must ask how it could then be possible for the Council to resist the inclusion of Mr. Earnshaw's correspondence and state that it is "completely inappropriate", when the Council has directly dealt with the matter already in its own Closings? Furthermore, we must ask how can correspondence from a professional witness responding to what they see as untrue allegations, submitted before Closings, which clearly assists the Inspector and the Inquiry, be considered inappropriate?

The simple fact is that the Council has seen Mr. Earnshaw's correspondence prior to the deadline for submission of Closings, specifically referring to and providing commentary on it in its final Closing Statement. Then it has sent a letter after the deadline for Closing saying that it is "completely inappropriate". The Council respectfully cannot have it both ways.

In addition, the Council attempts to present Mr. Earnshaw's letter and enclosures as a simple submission of an amended plan. This is of course far from the reality of what Mr. Earnshaw's letter actually says.

Mr. Earnshaw, as he states, has written his letter based on allegations from the Council. He has also to an extent written in response to the Inspector's 'Inquiry Note 2' (CD13.4), where the Inspector has raised an

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issue on 'alignment' but did not examine this any further at the adjourned Inquiry. The simplicity is that as an issue has been raised, Mr. Earnshaw, a professional witness, has written to the Inspector, because he feels that the Council is "mischief-making" (his words) and attempting to misrepresent his evidence to the Inquiry.

Mr. Earnshaw's letter goes on to state that: "...any perceived distortion is down to one thing only: **"scale"**. Mr. Earnshaw has gone on to describe that scale is entirely and permanently problematic, going on to provide specific details. As he states in his letter of the 28th December 2021 (CD13.5), despite his "misgivings", he has provided an updated plan "for consideration", but acknowledged that, due to scale realities, there are compromises whichever way one approaches this issue of scale on any OS plan.

Mr. Earnshaw's letter clearly states:

"I personally see no need to replace the present plan for reasons explained (i.e., 'scale' realities), but my own view is that either plan will suffice, because the scale tolerances address any queries in both cases. They are simply a reality that we can do nothing about."

Mr. Earnshaw then goes on, towards the closing of his letter:

"My own view again is that given scale considerations and realities, I really do not see any need for this [i.e. a new plan], but I shall be guided by the Inspector here. Either plan is fine because scale tolerances must be accepted."

Therefore, Mr. Earnshaw has very much assisted the Inquiry by the submission of his letter and its enclosures, leaving the matter entirely to the Inspector, but bringing home the clear realities as described at the Inquiry, which are impossible to ignore. To not take Mr. Earnshaw's letter into account assists no one and would be unjust, as well as potentially prejudicial, given the Council's allegations. The Inspector could not reasonably now just 'unsee' CD13.5 and ignore such important information, especially when the Council has raised it during its own Closings and then again after the deadline.

Mr. Earnshaw has correctly gone on to offer himself for further examination on this point, as one would reasonably expect. The Inspector can allow this where he feels it is necessary or otherwise required, because the Inquiry is still open. At present, the Inspector has communicated that "at this stage" he "does not consider there to be a need for any re-examination" on this point following receipt of Mr. Earnshaw's letter (Yvonne Parker's email to Mr. Earnshaw dated 5th January 2022 at 16:47hrs).

However, there are two very important and interesting headline observations that are apparent from Mrs. Haigh's letter on behalf of the Council (now CD13.8).

The first observation is that the Council does not wish to re-examine Mr. Earnshaw on the contents of his letter dated 28th December 2021. The reason for this is obvious. This is because the second headline observation is that the Council takes issue (unjustifiably) only with the submission of Mr. Earnshaw's letter and enclosures, but not with the content and facts within it.

The Council has, albeit inadvertently, demonstrated that it has no reason to dispute the actual content and facts in Mr. Earnshaw's letter and enclosures. Otherwise, Mr. Gill would have stated so in his Closing Statement and the Final Comments document, amongst or instead of the present references on this matter in his Closing Statement (paragraphs 8, 9, 10, 48 and 49).

Mr. Gill has in exchanges with me prior to submission of Closing Statements, and specifically in paragraph 48 of his final Closing Statement, attempted to rely on an alleged inability to obtain instructions. As stated by us in the agreed 'Final Submissions' document, the Council and Mr. Gill had known about the deadline of 31st December 2021 since the end of August 2021; some four months.

Where the Council, a large organisation with multiple officer representatives, has not made contingency for Mr. Gill to obtain instructions, this is neither the problem of the Applicant nor the problem of the Secretary of State Inspector. That is simply mismanagement by the Council, or Mr. Gill, or both. Either way, it is entirely unreasonable to rely on such a position to attempt to provide further input after the clear and imposed deadline for submission of Closing Statements.

However, notwithstanding all the above, the clear irony is that Mr. Gill has submitted comment in relation to Mr. Earnshaw's letter in his final Closing Statement and 'Final Submissions' document on behalf of the Council. This means that Mr. Gill either did manage to obtain instructions or has acted without instructions. Either way, this is not a matter for the Applicant or the Secretary of State Inspector.

This is nothing but a distraction; seemingly an attempt to add to its Closing Statement and/or discredit Mr. Earnshaw or indeed the Applicant's Closing, after the deadline for submission of Closing Statements. For that reason, there was no choice other than for the Applicant to respond.

It is submitted that by its letter of 5th January 2022, the Council is attempting to dress Mr. Earnshaw's letter as nothing more than the Applicant attempting to submit an updated plan, which is clearly a misrepresentation of the correspondence, as well as the evidence before the Inquiry. The Council then seemingly attempts to mask the fact that it does not actually dispute what is in Mr. Earnshaw's letter.

Mr. Earnshaw's letter does nothing but assist the Inspector and the Inquiry. In not wishing to challenge its actual content, in its Closing Statement or through at least requesting re-examination of Mr. Earnshaw, the Council clearly accepts that its content and facts stated are accurate and indisputable.

However, we return to the point that the Council has referred to Mr. Earnshaw's correspondence being "completely inappropriate", after having addressed it directly in its Closing Statement and the Final Submissions document already.

Again, the Council cannot have it both ways. On the one hand saying Mr. Earnshaw's letter is "completely inappropriate" after the deadline for submission of Closing Statements, but on the other having already addressed it in Closing Statements and the 'Final Submissions' document.

We ask that this letter is given due weight by the Inspector and reported accordingly to the Secretary of State, in response to what we submit are clearly baseless allegations made by the Council. The Council's letter (CD13.8) has been submitted to the Inspector after Closing Statements. Moreover, the Council has already provided full commentary on the issue as part of its Closing Statement, but importantly has not disagreed with any of the facts stated in Mr. Earnshaw's letter and associated enclosures (CD13.5).

Please could this letter now be added to the document library, in direct response to CD13.8. Thank you.

Yours sincerely

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