

From: [Giles Cheetham](#)
To: [Noel Scanlon](#)
Cc: [Karl Battersby](#); [Rob Dalby](#)
Subject: RE: Objection to proposed stopping up and diversion of Holmfirth Footpath 60 (NATTRAN/Y&H/S247/4337)
Date: 16 October 2020 18:15:00
Attachments: [image003.png](#)
[image004.png](#)
[image005.jpg](#)

Hello Noel,

Thank you for your email of 15:19 today, 16 October.

I do not appear to have had an email from you from 9 October.

Considering the nature of your overall message, perhaps you would provide us with copies of all representations and comments to the DfT draft order.

Regards,

Giles

Giles Cheetham

PROW

From: Noel Scanlon <noel.scanlon@nsconsult.co.uk>
Sent: 16 October 2020 15:19
To: Giles Cheetham <Giles.Cheetham@kirklees.gov.uk>
Cc: Karl Battersby <Karl.Battersby@kirklees.gov.uk>; Rob Dalby <Rob.Dalby@kirklees.gov.uk>
Subject: Re: Objection to proposed stopping up and diversion of Holmfirth Footpath 60 (NATTRAN/Y&H/S247/4337)

Dear Giles

My email this afternoon on the DMMO application by the PNFS has jogged my memory in relation to the Council's position on this matter.

Please could you come back to me as soon as possible on my emails below, so that we can establish where we are.

Many thanks.

Kind regards

Noel

Sent from my iPhone

From: Noel Scanlon
Sent: 09 October 2020 14:58
To: Giles Cheetham
Cc: Karl Battersby; Rob Dalby
Subject: Re: Objection to proposed stopping up and diversion of Holmfirth Footpath 60 (NATTRAN/Y&H/S247/4337)

Giles

Thank you for this and apologies to only just respond.

I shall not be providing anything else at this time, I simply need a response to my email below in order to establish for the DfT that we are in correspondence and discussing how/whether there is a possibility of the Council withdrawing its current objection.

It is accepted that this is merely side information and is not directly relevant to Kirklees Council, although not directly relevant to the Council, you might be interested to know that following closure of the official consultation on the 29th September, the final position was the submitted level support has comfortably more than doubled the level of objections. Several individuals have also withdrawn their objections following dialogue with us.

In addition, the Holme Valley Parish Council, as the only remaining statutory consultee objector apart from the Council, is now taking advice and asking its Full Council (as opposed to its Planning Committee) whether the objection should be sustained or now withdrawn on the back of newly received information, with the general desire not to incur the Parish Council's sparse time, money or resources substantiating and defending its objection.

It is accepted that all of that may be of no consequence or effect, but it may be useful to understand that Kirklees Council may be the only remaining statutory objector, with members of the Committee having previously believed that objection outstrips support, which is now very evidently not the case following the Secretary of State formal legal Consultation.

In any event, we look forward to receiving a response to my email below on behalf of the Council, in the hope that there might be a possibility of the Council being comforted or otherwise being prepared to withdraw its current objection to the Secretary of State against the diversion. It is important that we at least exhaust enquiries for the DfT.

Kind regards

Noel

Noel Scanlon *Solicitor, BA(Hons), MSc, MC1WM*
Director & Consultant
NSCL
Tel: 07921 385901
Email: noel.scanlon@nsconsult.co.uk



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From: Giles Cheetham <Giles.Cheetham@kirklees.gov.uk>
Sent: 01 October 2020 18:42
To: Noel Scanlon
Cc: Karl Battersby; Rob Dalby
Subject: RE: Objection to proposed stopping up and diversion of Holmfirth Footpath 60 (NATTRAN/Y&H/S247/4337)

Hello Noel,

Thank you for the email, the contents are noted.

I continue to deal with the s247 matter, so I'd recommend that you forward any relevant correspondence that you would like to be taken into account to me.

I will revert in due course.

Regards,

Giles

PROW

From: Noel Scanlon <noel.scanlon@nsconsult.co.uk>
Sent: 01 October 2020 17:42
To: Giles Cheetham <Giles.Cheetham@kirklees.gov.uk>
Cc: Karl Battersby <Karl.Battersby@kirklees.gov.uk>; Rob Dalby <Rob.Dalby@kirklees.gov.uk>
Subject: Fw: Objection to proposed stopping up and diversion of Holmfirth Footpath 60 (NATTRAN/Y&H/S247/4337)

Dear Giles

I think that you are the correct person to contact, but please forgive me if not and I have cc'd Rob Dalby and Karl Battersby just in case.

The DfT has asked us to reach out to the Council to establish parameters (on what is in fairness to it a vague objection) and see if there is any possibility of the Council withdrawing its objection to this application, in the hope of avoiding a Public Inquiry, which the DfT has yesterday informed us is now "likely". The Council's objection, as one from a main statutory consultee, is very obviously persuasive.

Now that the formal consultation period has ended, I am reaching out to see if there is any reasonable possibility of any solution resulting in the Council withdrawing its objection.

The Council's Strategic Planning Committee, by which officers are bound, has given Karl Battersby and his delegates, presumably including you, three clear reasons for its objection. These were/are that the application fails to meet the relevant '*merits test*' for the following reasons:

(1) that the proposed diversion is **unnecessary**;

and (directly following the decision of an earlier Sub-Committee decision in relation to the earlier application to the Council under Section 257 TCPA on 30th January 2020)

(2) the **volume of 'representations'** received in relation to the non-statutory consultation on the earlier Section 257 Order; and

(3) the alleged effect on **public safety**.

This information has been conveyed to the DfT, which is aware of your reporting and the relevant webcast evidence. We don't understand why you have not provided this when questioned by the DfT below, but that is a matter for the Council.

Numbers 1 and 2 are not in any way sustainable or even arguable here.

Necessity for the diversion is clearly established. That is beyond any doubt due to the need to divert in order to fully implement the planning permissions. The volume of 'representations' (in fairness, it was you at the Huddersfield Area Planning Sub-Committee on 30th January that attempted to convey that 'representations' did not necessarily mean 'objections', but Committee resolved as it did) on a previous Section 257 TCPA application to the Council, is of no relevance to the Secretary of State determining a Section 247 TCPA application. In fact the resolution on volume of representations was not even relevant to the Planning Sub-Committee in January, but Mr. Butterfield elected not to challenge this for wider reasons, which have been conveyed to Karl Battersby.

However, notwithstanding our profound disagreement, the Council's objection on the basis of an alleged effect on public safety is a valid objection. Accordingly, it would appear that this would have to form the basis for any engagement as to whether the Council can feasibly consider withdrawing its objection to the Secretary of State.

Discussions previously took place in relation to providing a verge with a hard surface, which your Highways Safety officer had been on board with, but his Highways Engineering colleagues strongly advised against for several reasons, but mainly due to an adverse impact on drainage.

I am struggling to see how this position could be rectified, given the position of the Council's Engineers and a resolution from the Council's highest Planning Committee. Nevertheless, I am reaching out to the Council see if there is any way a reasonable solution could be found which could result in the Council withdrawing its objection.

Where it does not, then obviously it would be expected that the Council would at least put Mr. Walker (or one of his appropriate colleagues) to the Inquiry for cross-examination, given that Highway Safety is the only realistically sustainable objection of the three reasons delegated to officers by the Strategic Planning Committee.

Should the Council not wish to engage, this is understood and it is completely accepted that numerous discussions took place during the course of and even after the earlier Section 257 TCPA application on the proposed diversion. It is again fully accepted that officers are bound by the Strategic Planning Committee's recent decision. However, we do hope that a solution can be found whereby the Council may be able to withdraw its objection.

Yours

Noel

Noel Scanlon *Solicitor, BA(Hons), MSc, MCIWM*
Director & Consultant
NSCL
Tel: 07921 385901
Email: noel.scanlon@nsconsult.co.uk



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From: NATIONALCASEWORK <NATIONALCASEWORK@dft.gov.uk>

Sent: 18 September 2020 08:23

To: Giles Cheetham

Cc: Deborah Wilkes; Highways Registry

Subject: Objection to proposed stopping up and diversion of Holmfirth Footpath 60 (NATTRAN/Y&H/S247/4337)

Hi Giles

Thank you for the further clarification.

The Secretary of State is not obliged to accept any objection to the stopping up proposals, but considers each one on its own merit. This ensures the grounds of objection relate to matters within his power to consider, particularly the consequences of the stopping up/diversion of the highway. When the stopping up application was received and processed, it was considered that it was appropriate for processing under section 247. Your initial email did not provide sufficient information about why you felt section 247 was not appropriate and therefore we could not assess whether the objection was valid.

As your objection has now been accepted, your email has now been passed to the applicant's agent, Noel Scanlon Consultancy Ltd, and they or the applicant will no doubt be in touch with you directly to discuss. I would be grateful if you could keep us informed of all correspondence, and if matters are resolved to your satisfaction, please could you confirm to us that you no longer object.

Please also be aware that if a diversion Order becomes the subject of a Public Inquiry (PI), all correspondence is copied to the PI Inspector and kept in the PI Library, where it is publicly available.

Kind regards,

Claire



Mrs Claire Moody
Casework Manager, National Transport Casework Team
Tyneside House, Skinnerburn Road, Newcastle Upon Tyne NE4 7AR
Please contact us by email where possible: nationalcasework@dft.gov.uk
PLEASE NOTE: My working pattern is Wednesday – Friday.

From: Giles Cheetham [<mailto:Giles.Cheetham@kirklees.gov.uk>]

Sent: 17 September 2020 16:29

To: NATIONALCASEWORK <NATIONALCASEWORK@dft.gov.uk>

Cc: Deborah Wilkes <Deborah.Wilkes@kirklees.gov.uk>; Highways Registry <Highways.Registry@kirklees.gov.uk>

Subject: RE: Kirklees Council objection to Draft Order Y&H/4337 - PROPOSED STOPPING UP AND DIVERSION AT HOLMFIRTH FOOTPATH 60, WOLFSTONES ROAD, HOLMFIRTH, WEST YORKSHIRE HD9 3UU

Hello Claire,

I'm surprised to see you refer to a "potential" objection by the Council.

In the context of a s247 draft order, what degree of additional information does the DfT consider is required at this stage for the DfT to accept the Council's formal objection to the draft order as an objection?

Hopefully the following will assist you: at least, and without prejudice to any other consideration, the DfT draft order proposal is considered to fail the "merits" test, when considering the relative advantages or otherwise of the development and the effect the order would have on the public. *Vasiliou v Secretary of State for Transport, (1991) 61 P. & C.R. 507 (1990)*. The Council has much information regarding the negative effect of the proposal on the public path and its users, which was not known at the time of the grant of planning consent.

When dealing with public path orders, an objection sent to the Council, as order-maker, would generally state that it is an objection and state the grounds. That would clearly be enough to be a duly-made objection, no matter what grounds were stated, where the Council has no powers to consider objections.

The Council is quite clear that it has objected to the draft order and would oppose it in the SoS's determination, however should the SoS be minded not to pursue the draft order and would wish the Council to elaborate on its case, then please let me know.

Regards,

Giles

PROW

From: NATIONALCASEWORK <NATIONALCASEWORK@dft.gov.uk>

Sent: 16 September 2020 16:26

To: PublicRightsofWay <publicrightsofway@kirklees.gov.uk>

Cc: Highways Registry <Highways.Registry@kirklees.gov.uk>; Deborah Wilkes <Deborah.Wilkes@kirklees.gov.uk>; Giles Cheetham <Giles.Cheetham@kirklees.gov.uk>

Subject: Potential objection to Draft Order Y&H/4337 - PROPOSED STOPPING UP AND DIVERSION AT HOLMFIRTH FOOTPATH 60, WOLFSTONES ROAD, HOLMFIRTH, WEST YORKSHIRE HD9 3UU

Importance: High

Hi Giles

Thank you for your email submitting Kirklees Council's objection to these diversion proposals.

Before we are able to accept your objection, we would be grateful if you could provide further detail of your grounds and why you believe the current application does not satisfy the relevant criteria under section 247 please? We will then be able to consider this further.

Kind regards,

Claire



Mrs Claire Moody

Casework Manager, National Transport Casework Team

Tyneside House, Skinnerburn Road, Newcastle Upon Tyne NE4 7AR

Please contact us by email where possible: nationalcasework@dft.gov.uk

PLEASE NOTE: My working pattern is Wednesday – Friday.

From: PublicRightsofWay [<mailto:publicrightsofway@kirklees.gov.uk>]

Sent: 16 September 2020 14:06

To: NATIONALCASEWORK <NATIONALCASEWORK@dft.gov.uk>

Cc: Highways Registry <Highways.Registry@kirklees.gov.uk>; Deborah Wilkes <Deborah.Wilkes@kirklees.gov.uk>; Giles Cheetham <Giles.Cheetham@kirklees.gov.uk>

Subject: Kirklees Council objection - RE: DRAFT ORDER: Y&H/4337 - PROPOSED STOPPING UP OF HIGHWAY AT HOLMFIRTH FOOTPATH 60, WOLFSTONES ROAD, HOLMFIRTH, WEST YORKSHIRE HD9 3UU

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 247

PROPOSED STOPPING UP OF HIGHWAY AT HOLMFIRTH FOOTPATH 60, WOLFSTONES ROAD, HOLMFIRTH, WEST YORKSHIRE HD9 3UU

OS GRID REFERENCE: E:412697, N:409111

Your ref: NATTRAN/Y&H/S247/4337

Hello Claire,

[Kirklees Council objection](#)

Thank you for the correspondence on this matter.

Kirklees Council objects to the above section 247 draft order relating to public footpath Holmfirth 60, on the grounds that it does not satisfy the relevant criteria for the making of an order under section 247.

The Council's responses to section 247 orders are in the Council's scheme of officer delegation, however officers sought a member view on the Council's stance. The Strategic Committee of the Council this afternoon considered an officer report regarding the Council's stance on the DfT's draft order and members unanimously approved the officer recommendation, which was for the Council to object to the DfT's draft order and oppose it in the SoS's determination.

Of course, the Council would look to expand on its objection at the appropriate time, and I understand that, under section 252 of the 1990 Act, a public inquiry would have to be called if it is intended to progress the applicant's proposal. We look forward to receiving further details in due course.

Please acknowledge this objection from Kirklees Council.

Regards,

Giles

Giles Cheetham

Authorised officer

Definitive Map Officer – Public Rights of Way

Streetscene & Housing Service

Kirklees Council, Flint Street, Fartown, Huddersfield, HD1 6LG

Tel: 01484 221000 – ask for Giles Cheetham

✉ giles.cheetham@kirklees.gov.uk

W www.kirklees.gov.uk/

o Public rights of way: local authority responsibilities <https://www.gov.uk/public-rights-of-way-local-authority-responsibilities>

o Public rights of way: landowner responsibilities <https://www.gov.uk/public-rights-of-way-landowner-responsibilities>

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From: NATIONALCASEWORK <NATIONALCASEWORK@dft.gov.uk>

Sent: 19 August 2020 07:18

To: NATIONALCASEWORK <NATIONALCASEWORK@dft.gov.uk>

Subject: DRAFT ORDER: Y&H/4337 - PROPOSED STOPPING UP OF HIGHWAY AT HOLMFIRTH FOOTPATH 60, WOLFSTONES ROAD, HOLMFIRTH, WEST YORKSHIRE HD9 3UU

National Transport Casework Team

20380_DfT-logo-black[1]



Tyneside House
Skinnerburn Road
Newcastle Business Park
Newcastle upon Tyne
NE4 7AR
www.gov.uk
nationalcasework@df.gov.uk

Dear Sir / Madam

Our ref: NATTRAN/Y&H/S247/4337

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 247

PROPOSED STOPPING UP OF HIGHWAY AT HOLMFIRTH FOOTPATH 60, WOLFSTONES ROAD, HOLMFIRTH, WEST YORKSHIRE HD9 3JU

OS GRID REFERENCE: E:412697, N:409111

Please find attached a copy of a draft order proposed under the provisions of the above Act together with a copy of the related plan.

If you do not have any issue with this proposal you do not need to respond to this email, and if we do not hear from you within the 28-day objection period as specified in the public notice, (a copy of which is also attached) we will conclude that you do not have any issue with this proposal.

If however you do have issues surrounding this proposal, we should be pleased to receive your comments and / or objections that you may have, before the end of the 28-day objection period specified in the public notice. If possible, objections should be sent via e-mail to nationalcasework@df.gov.uk, stating clearly that **you object**.

Kind regards

National Transport Casework Team



Mr Graeme Stickings
Case Worker, National Transport Casework Team
Newcastle, Tyneside House
Skinnerburn Road
Newcastle Business Park, Newcastle Upon Tyne, NE4 7AR
07812 482555

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