

DPI/Z4718/21/6

Draft Order NATTRAN/Y&H/S247/4337

Proposed stopping up of highway at Holmfirth footpath 60, Wolfstones Road, Holmfirth, West Yorkshire, HD9 3UU

Town & Country Planning Act 1990 – section 247

Rebuttal Statement of Kirklees Council

Prepared by Phil Champion, Definitive Map Officer

1. Introduction

- 1.1. This rebuttal statement (“KC rebuttal”) has been prepared in direct response to various points by Noel Scanlon Consultancy Ltd (NSCL) in their Supplementary Statement (CD15.9), and proofs of evidence / statements from various other parties who support the making of the requested Order.
- 1.2. This document will also address various points made by NSCL in letter to the Department for Transport (DFT) dated 2 August 2021, sent immediately prior to the Pre-Inquiry Meeting (PIM).
- 1.3. This rebuttal should be read alongside Kirklees Council’s Statement of Case of 3 August 2021.
- 1.4. In preparing this rebuttal statement Kirklees Council has not addressed every point made in those submissions, however this does not mean that Kirklees Council is in agreement with any points by virtue of omission.

2. Rebuttal of Proof of Evidence of Mr Russell Dickson Earnshaw (CD15.1.2)

- 2.1. It is understood that Mr Earnshaw is an architect and interior designer. He is a Chartered Architect and member of the Royal Institute of British Architects (RIBA). However, he does not appear to be a planning, highways or public rights of way specialist. Although planning is not his specialism, at paras 10 to 12 in his proof Mr Earnshaw describes the

Permissions, including the Non Material Amendments ('NMAs'), noting that the major job of extending the garden area of Wolfstone Heights Farm (WHF) towards Wolfstone Heights (WH) cannot be fully implemented until the relevant part of footpath 60 is stopped up and diverted. However, planning permission is understood not to be required to lawn the driveway.

- 2.2. Although this is not a public rights of way specialist, at para 14 (iv) Mr Earnshaw compares the qualities of the existing and proposed routes. He emphasizes the current legally recorded width of 4ft. That the public rights are confined to that width is disputed. Having investigated evidence regarding the lateral extent of part of Holmfirth 60, the Council is strongly of the view that the existing PROW is of greater width and has made a DMMO to record a width of between 3 and 4m. The width and other qualities of the wider route are what should be compared to the proposed replacement route, not the previously recorded width of approximately 4ft / 1.2m.
- 2.3. At para 15 Mr Earnshaw concedes that comment on highway safety matters is beyond his brief. He is not a highway engineer. He offers a personal view of the impact on safety of moving the termination point on Wolfstones Road. The Council does not agree with Mr Earnshaw's view. It is a simple fact that the proposal would necessitate the use of Wolfstones Road and introduce risk to users from public vehicular traffic where none was previously present. While Mr Earnshaw may not perceive danger, it is apparent that many objectors to the proposed diversion do perceive this requirement as potentially dangerous; this position is reflected in the decision of members regarding the s257 proposal (and confirmed objection to the s247 draft Order). Also, the view taken by the Kirklees Highway Safety in response to the s257 proposal (see comments in CD14.2.7). Anyone wishing to cross the road to or from the path to the trig point (the HVLC land) will still be required to cross the road at the current location, even if Holmfirth 60 is diverted.
- 2.4. At paragraph 22 Mr Earnshaw appears to counter what he describes as 'flippant and misinformed references to the existing legal footpath being ... blocked up.' This appears to be reference to a width of 4ft / 1.2m of the original route having remained available. Again, the Council must emphasise its position that part of path Holmfirth 60 had been obstructed by Mr Butterfield, though action regarding this was "held in abeyance" due to the s247 process. It is recognised that offending fencing has since been removed.

- 2.5. At paragraph 23 it is suggested that the committee report regarding the s257 diversion application came with a “clear officer recommendation to make the relevant stopping up and diversion order”. That is not correct. The report contained not a clear recommendation, but a significantly caveated, “on balance” recommendation, alongside an option for members to refuse, which they did.

3. Rebuttal of Summary Proof / Summary Proof of Eric Appleton (Via Solutions). (CD15.2.1 / CD15.2.2)

- 3.1. Mr Appleton describes at length the various traffic surveys carried out between 2017 and 2021. It is noted that the dates and times of the surveys carried out by Paragon Highways and referred to by Mr Appleton took place at times of year (i.e., autumn / winter months) when pedestrian use of Holmfirth 60 is likely to have been relatively light. Officer experience suggests that countryside walking is generally a less popular activity outside the warmer and drier spring and summer months when days are longer and conditions more clement. The path leads towards an exposed hilltop – the trig point is at around 323m / 1060 feet.
- 3.2. Mr Appleton’s proof, supported by survey data, seeks in part to counter assertions by objectors that Holmfirth 60 is used by a significant number of people wishing to reach the Wolfstones Heights Trig Point and assertions that the route along Wolfstones Road between current and proposed termination points would experience a significant increase in usage. This is described at paras 1.2.3 and 1.24 in his Proof.
- 3.3. In the analysis of the pedestrian flows (described from 2.7 in Mr Appleton’s Proof), reference is made to counts of pedestrians travelling north or south along Wolfstones Road without turning either west towards the trig point or east along Holmfirth 60. These flows are of limited relevance to the question of the level of use of Holmfirth 60 and the direction of travel when Wolfstones Road is reached. At para 2.76 Mr Appleton asserts that taking into account all the survey data over various periods, of the four legs, Holmfirth 60 was the least used by pedestrians compared with Wolfstones Road and the path to the trig point. This is unhelpful as only a proportion of use would be expected to be via Footpath Holmfirth 60 (a minor highway) with the ordinary road expected to have a greater level of traffic.
- 3.4. Comments at paras 2.77 and 2.78

- 3.5. It is understood that that the diversion route had been physically constructed by autumn 2017 and has been available thereafter on an informal permissive basis. Mr Butterfield refers to this at paras. 6 to 7 in his own Proof (CD15.8). More recently permissive footpath signs have been erected at each end. The availability of the route and its promotion as a permissive alternative are likely to have affected counts of numbers of people using Holmfirth 60. At paragraph 2.4 in the Paragon Survey (included in appendices at CD15.2.3). it is noted that the proposed diversion route was observed being used on the surveys up to and including 17th September 2019, but no official data was recorded as it was not part of the original instruction. So it is wholly possible that some pedestrians walking along Wolfstones Road through the junction, or passing along Wolfstones Road north of the current termination point en route to or from the trig point may nonetheless have been using Holmfirth 60 via the proposed diversion route. Pedestrian counts are thus less than reliable for assessing use of path 60 and the proportion of users continuing to or from the trig point.
- 3.6. Counts of people using the proposed diversion route *were* made during the additional surveys in October 2020. Comparative counts of the use of the exist and proposed routes are included in tables at para 6.4 in the Paragon Report (in appendices at CD15.2.3) This was during the Covid-19 pandemic. At that time signage provided by the Council, as per advice from Defra, encouraged use of any permissive alternative routes made available by landowners. An official poster was observed to be in place east of the start of the proposed diversion route at least as late as November 2020. The proposed diversion route had been signed by the landowner as a permissive path and its use encouraged. Part of the previously available width of the existing driveway had also been narrowed to approx. 1.2m by fencing, i.e., to a width not conducive to proper social distancing as per official Covid-19 guidance. Those factors are likely to have affected the relative numbers of people using each route. The conclusions reached by Mr Appleton regarding preferences for one route over another are fundamentally flawed as a result.
- 3.7. The same may be said of conclusions that the majority of users do not access the trig point land. The survey also chose to discount some group use of Holmfirth 60 (and continuing towards and beyond the trig point), due to being as part of a memorial walk.
- 3.8. In addition, descriptions of observations of people accessing the trig point from other routes than via footpath Holmfirth 60 do not take away does from some access being via Holmfirth 60. Land west of the trig point (and by extension the trig point itself) may also

be accessed by two further permissive paths, including a path further along Wolfstones Road. So, it is wholly possible that some users turning south after existing Holmfirth 60 might still be accessing that land via another route.

- 3.9. Peak and Northern Footpaths Society (PNFS) make further comment on / criticism of the pedestrian survey data in their own Statement (CD16.1). The Council is in agreement with that organisation's criticisms of the pedestrian counts / survey.
- 3.10. At para 7 in the summary proof Mr Appleton incorrectly described the replacement route (including the Wolfstones Road part as a '*... gentle traffic free gradient*'. This is incorrect. The route up Wolfstones Road to get to the current terminal point, walking alongside or on the verge, can in no way be described as 'traffic free'. At para 3.2.5 in his proof, he suggests that the route '*continues a traffic free environment over a longer distance*'. That may reflect the overall increased length of the diversion route, but, again, this is disingenuous as the extended route via Wolfstones Road is not itself traffic free.
- 3.11. A focus on the 85th percentile speed of vehicular traffic does not tell the whole story. The qualitative experience of a pedestrian walking up or down a steeply graded country road with a bend may not simply be a matter of raw speed but may also be affected by where the driver positions their vehicle and, how close they pass, and potential reluctance to slow down for vulnerable users lest they are forced to stop / stall or need to change down gears on the hill. It must also be noted that section of road in question has recently been used for a competitive event, marketed as the "Wolfstones Speed Hillclimb" during the recent Yorkshire Motorsport Festival. It is understood that it is hoped that this will become an iconic event and repeated in future. There is a real risk of people being tempted to drive up the hill in a reckless manner at other times. The potential speed of some traffic travelling north may also be excessive. The speed limit of 60mph is very significantly greater than 85th percentile speeds calculated, and this may add to danger. Kirklees Highway Safety also commented on the general issue of motorists travelling faster than ideal on rural roads, resulting in harsh braking when unexpectedly encountering oncoming vehicles. (See first consultee comment in CD14.2.7).
- 3.12. The Council refutes the suggestion (at para 2.2.11 in the proof) that the termination point of the proposed diversion route benefits from better visibility in both directions than exists at the intersection of Holmfirth 60 with the highway. Photos at para 2.1.2 show the visibility at the former point. Visibility is affected to some extent by the bend in

the road, particularly looking in an uphill (southerly) direction. Photograph 1 and 2 in the proofs (described at para 2.25) show the views from the current termination point – including good views in either direction. Mr Appleton notes at para 2.28 that the intersection of the current route with Wolfstones Road is on the outside of a reasonably sharp bend “*which tends to reduce vehicle speeds*”.

- 3.13. Much comment was made by Mr Appleton regarding the status of the Holme Valley Land Charity (HVLC) land at Wolfstone Heights, including the signage recently erected indicating that the land is not *considered* a public right of way. Regardless of the status of the route on to the land, it is land retained by HVLC for the benefit of the community for informal recreation. (See CD14.2.9).
- 3.14. The entrance to the path towards the trig point is directly opposite the current termination point of Holmfirth 60. Mr Appleton correctly notes this is on the inside of a ‘reasonably sharp bend’. However, his observations at para 2.2.16 regarding poor visibility when egressing the route from the trig point are wholly irrelevant, as that route and egress point would remain, even if footpath Holmfirth 60 is diverted. If diverted, walkers intending to continue via Holmfirth 60 towards Netherthong would be obliged to walk in a northerly direction down Wolfstones road rather than immediately exiting the road where there is safe refuge from traffic and proceeding in an easterly direction directly along the driveway.
- 3.15. At para 3.24. Reference is made to ‘highways officers’ commenting that they would not wish to see the verge surfaced due to drainage implications. This is an additional concern further to Kirklees Highway Safety officers’ concerns (see first consultee comment in CD14.2.7). This is dealt with in more detail in the in Kirklees Councils Statement of Case (CD14.1).
- 3.16. Reference is made at para 3.2.12 in the proof to guidance in Manual for Streets (MfS) suggesting where speeds are constrained and traffic volumes low, streets where pedestrians and vehicles share the same road space “will work well”. Paragraph 1.1.3 in the instruction to Manual for Streets stated that “*Manual for Streets (MfS) is expected to be used predominantly for the design, construction, adoption and maintenance of new residential streets, but it is also applicable to existing residential streets subject to re-design...*”. It may not be of particular relevance to an unlit, national speed limit country road. (The introduction to Manual for Streets is appended at **KC12**).

4. Rebuttal of Proof of Evidence / Summary Proof of Mr Greg Cropper (CD15.3.1 / CD15.3.2).

- 4.1. It is noted that Mr Cropper, a builder, is a close associate of Mr Butterfield with whom he has a business relationship. He has carried out work at his property over several decades. It is recognised that Mr Cropper is also long-standing resident of the area who has personally used Holmfirth 60 over many years.
- 4.2. It is evident from paragraph 4 in his summary Proof, Mr Cropper questions the making of the DMMO, referring to the peddling of 'clear untruths'. The DMMO application has been investigated by the Council and an Order made in line with the evidence. Mr Cropper is welcome to formally object that Order if he wishes, citing his grounds for objection, as per the published notice.
- 4.3. Mr Cropper notes (at para 6 of his summary) that he has observed a significant uptake of pedestrian users of the proposed alternative route. This is of no surprise, given the encouragement of use of the alternative during the pandemic, and actions of the landowner in physically narrowing the previously available width and the documented closing of electric gates, apparently with the intention of discouraging use of the existing PROW in Spring 2020.
- 4.4. Mr Cropper refers (at paragraph 2 in his proof) to his previous role as a parish councillor, and (until mid-2019), the Chair of the HVLC. I.e., until just after the time the permissive path notice (described in Mr Appleton's evidence) was erected on the HVLC land. His role as chair appears to have coincided with the period during which Mr Butterfield, , was proposing a diversion of the termination point of Holmfirth 60 away from the continuation towards the trig point over the HVLC land
- 4.5. At para 34 Mr Cropper describes the installation at the trig point, by the HVLC, of the 2012 'Jubilee Seat'. However, he has also downplayed in his evidence the significance of this feature in increasing visits to the trig point land. It is understood that more recently the HVLC has been in contact with Kirklees Council with regard to possible improvements in accessing and using the trig point land.
- 4.6. Reference is made (at para 5 and para 43) to the potential "loss" of the diversion route (should the proposed diversion not be successful). As the route is currently only available

on a permissive basis, there would be no loss of a public highway should the Secretary of State decline to make the requested Order. Several other supporters have also commented in very similar language about the replacement route potentially being 'lost' if the proposal is unsuccessful and the same rebuttal applies.

- 4.7. Mr Cropper has sought to draw comparisons between the current proposal and a previous diversion of public footpath Holmfirth71 which crosses Mr Cropper's property. That path was diverted under powers in the Highways Act 1980, for which the legal tests for making and confirmation of an order are quite different to the current case. For Instance, a diversion Order under s119 of the Highways Act 1980 might be made where it appears to a council as respects a footpath bridleway or restricted byway in their area, that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line should be diverted. So, a path might be diverted in the interests of improving the privacy and security. Whereas in the case of an order under s257 or s247 of the Town and Country Planning Act 1990 that is not directly a factor although these may be factors in the design of the development itself. Mr Cropper has anecdotally described an increase in use of that diverted route. However, there can be little direct comparison between the two cases. A notable difference here is that the proposed diversion in the current case would move the termination point to a different location on an 'ordinary' public vehicular highway. That was not a factor in the case to which Mr Cropper refers. 'Back Lane' referred to by Mr Cropper in para 11 is a public footpath not a vehicular road.
- 4.8. Mr Cropper indicates at para 17 that the 'footpath has never been closed or blocked'. This is not correct. At paragraphs 8 and 9 in his own Proof, Mr Butterfield describes actions, such as closing electric gates during the first lockdown and previously, and the physical narrowing of part of the way in September 2020. (Noting of course Mr Cropper's view that the existing PROW is confined to 1.2m on the northern side of the driveway.)
- 4.9. Moving on to Mr Cropper's view of the qualities of the replacement routes, it must be emphasized that certain elements of the new route, as described, are not within or protected by the Order as drafted. These include the provision and retention of benches alongside the proposed diversion route from which users might stop to appreciate the view. Nor is the view of the wider landscape guaranteed. Recent planting of hedges alongside part of the diversion route might soon block any such views. The boundary features might also be changed to, for example, high walls. (It is noted that many

substantial walls have been built or rebuilt in recent years, including a wall to the south side of the part of Holmfirth60 proposed to be stopped up).

- 4.10. Mr Cropper describes, anecdotally, to hearing comments of other path users regarding the 'discomfort' of walking close to someone's home, with examples of comments mentioned in para 46. However, the current route of Holmfirth 60 does not impinge on any private areas or gardens, at either Wolfstone Heights Farm (WHF) or Wolfstone Heights (WH) and such areas are generally well screened from the public footpath by walls, fencing or planting. The route passes the ends of the dwellings which are not positioned with any main windows fronting on the public footpaths. The existing route does not pass through private garden areas. Users looking up or down Holmfirth 60 would not naturally look directly into house windows or private areas. I do not consider that most users would feel 'discomfort or embarrassment' by passing along the route between the two houses. The situation at Holmfirth 71, Mr Cropper's own diversion, is considerably different, where the public path ran right across and close to the front doors and windows of three properties.
- 4.11. The Council does not accept the descriptions of use of the existing route as a 'rather dingy experience' or the characterisation of the route as a dark tunnel. While there are garden walls alongside parts of the existing route, the experience as the walker passes between them is not one of claustrophobic enclosure. Walls referred to are between 3 and 4 metres apart, and the partial enclosure of the route by buildings largely relates to the gable ends of the two properties, and additions including porches and a windowless boilerhouse along with some parts of a new garage constructed under the Permissions. The word 'dingy', used twice, is far from accurate. This rather uncommon word is used a number of times by supporters.
- 4.12. Reference is also made – e.g., in para 47 - to the existing route being slippery underfoot, particularly when wet (and thus the replacement surface being better). This is not entirely true as it should be noted that there is a sealed surface to the driveway. The current sealed surface of the driveway appears to have been laid by the landowner, without specific consent from the highway authority, replacing a rougher surface.
- 4.13. At para 25 Mr Cropper refers to previous use of the Trig Point Land. It is correct that the land was formerly a quarry, likely awarded as a 'public stone quarry' in the Nether Enclosure Award of 1826. However, it appears to have been exhausted and disused by

the later 19th century (stated to be the case on the HVLC's own website) and apparent from OS maps). This and similar pieces of land appear to have largely been ignored and neglected by the authorities for many years. A triangulation station is shown on the 1890s OS map, in the same location as the current mid-20th century triangulation pillar. There may have been public access to this land for over a century.

- 4.14. Mr Cropper also suggests that footpath Holmfirth 60 came into existence in the mid-20th century. The legal record - the Definitive Map and Statement - only came into existence after the passing of the National Parks and Access to the Countryside Act 1949. However available mapping from the late 1820s suggests the route may have been existence at that time and the depiction of the route is consistent with a minor public highway of some antiquity.

5. Rebuttal of Proof of Evidence of Jim Cunliffe (CD15.3.6)

- 5.1. Mr Cunliffe's evidence, as indicated as para 1.4 and detailed elsewhere, large relates to his particular concern regarding egress from the HVLC (trig point) land back onto Wolfstones Road. As the egress from the trig point land will not change, this concern is largely irrelevant. This point has been considered earlier in this document (e.g., in rebuttal of Mt Appleton's proof. Users existing the land will be *obliged* to walk along Wolfstones Road, whereas they currently have the option of crossing directly on to the public footpath.
- 5.2. In general (and at para 4.4), Mr Cunliffe's evidence suggests a significant danger to pedestrian users locally ('a 'serious and potentially fatal accident waiting to happen'). This contradicts other supporting evidence which has downplayed the risks to pedestrians from traffic on Wolfstones Road in general. And although he questions (at para 5.1) whether high speeds are possible, we again draw attention to the promotion of the road for a speed hillclimb event and the future implications of this The strong focus by a retired highway engineer on the potential danger to pedestrians on Wolfstones Road in general, and his failed attempt to persuade HVLC to move the access point and carry out a full road safety audit, certainly suggests a level of road safety risk on Wolfstones road that is at odds with descriptions elsewhere in the supporting statements.
- 5.3. At para 5.2 Mr Cunliffe refers to verges of up to around 2.5m wide. However, the verge being considered, connecting the current and potential terminal points of Holmfirth 60 is

not anywhere close to 2.5m wide. It may be observed that it is generally less than 1.5m wide and due to the variability of the line of the abutting wall, narrows to less than 1m in places. Photographs showing the verge are appended at **KC13** and **KC14**. Visual mock-ups of a replacement footway (images provided by Mr Butterfield) are appended at **KC15**.

- 5.4. In para 7.3 Mr Cunliffe recognises that the proposed diversion route is less commodious, However, his apparent suggestion that someone accessing the trig point land from the proposed terminal point would be safer than one approaching it from the current terminal point would appear nonsensical. There is no visibility issue from the current terminal point, and the trig point access is close and directly opposite.

6. Rebuttal of Proof of Evidence of Joanne Cronie (CD15.4)

- 6.1. Ms Cronie acknowledges she is the daughter of the landowner and has resided at Wolfstones. She offers opinions on the 'usefulness and functionality' of the current and proposed routes, describing who use of the ways for running and other purposes.
- 6.2. As with a number of other supporters, Ms Cronie focuses (e.g., on [para 8] on the 'loss' of a route should the proposed diversion be unsuccessful. As there is no public right of way, there would be no loss to the public rights of way network. Ms Cronie also refers to the 'dark and dingy' driveway that is 'slippery underfoot' (perhaps due to surfacing changes made by the landowner without Council approval). By contrast, the replacement route is described as having 'far reaching views'. It should be noted that views are not protected and may change. Ms Cronie further notes the improved 'width of manoeuvrability'. In response it is observed by officers that the width of the replacement route is generally less than that of the existing route. Ms Cronie's comments regarding the legal width of the PROW along the driveway and other parts of Holmfirth 60 are also noted, but investigation has concluded that, on balance, public rights do extend over the full previously available width (not just a 1.2m wide strip on the north side) and the Council has made a DMMO to that effect. I would note that the DMMO application was to record the correct legal width of an existing public right of way, not create public rights that do not already exist.

7. Rebuttal of Proof of Evidence of Richard Jeremy Paxman (CD15.5)

- 7.1. Mr Paxman is a resident of Wilshaw who acknowledges that he knows the landowner and his wife.

- 7.2. Mr Paxman compares the 'slippery' and 'dingy' route between houses with the supposedly more open replacement route. He refers to views of the landscape, pond and farm animals, also mentioning benches; none of these elements are protected. There is also an erroneous reference to 'loss' should the diversion be unsuccessful.
- 7.3. Mr Paxman commented on being 'mildly relieved' when using the replacement path that 'he does not have to walk so close and awkwardly past a person's property, impeding on their privacy'. The Council reiterates its view that comments in general regarding such feelings of awkwardness may not be shared by most users. It is noted that in Mr Paxman's case this relief felt is only '*mild*', suggesting this is not a very significant factor. While the diversion may improve the occupants' sense of privacy, the grounds under s247 relate to planning matters and this matter is not consideration of a diversion under s119 of the Highways Act 1980, such benefit to the owners or occupiers may be of more relevance.
- 7.4. In para 16 Mr Paxman refers to the 'level of support' for the diversion is more than double the level of objection. However, it is not about the relative numbers of supporters and objectors, but an assessment of the content of such submissions in light of the 'necessity' and 'merits' tests, as described in more detail in the Kirklees Council's Statement of Case.

8. Rebuttal of Proof of Evidence of Susan Wimpenny (CD15.6)

- 8.1. Mrs Wimpenny is a walker with family roots in the Wolfstones area. She indicates that she knows the Butterfields.
- 8.2. In paragraph 9 and 12 of her Proof, Mrs Wimpenny described the existing route as 'slippery' and a 'dark and dingy' tunnel. She also expresses 'discomfort' at walking so close to someone's private residence. she describes this as 'embarrassing and awkward'. In my opinion these are all descriptions that do not appear match the reality of the physical character of the existing route or the impact of the proximity of dwellings.
- 8.3. Mrs Wimpenny describes (at para 10) the benches - which would *not* be secured by the proposed Order. She also mentions the recently planted hawthorn hedges. These might quickly grow to obscure the views from the path, the view from which can never be guaranteed. In another scenario the hedges, which she appreciates so much, might not retained in the long term, or be replaced by other boundary features should the

landowner wish this. As with other supporters, she also refers to the potential 'loss' of the diversion route should the proposal be unsuccessful.

9. Rebuttal of Statement / Proof of Evidence of Richard Howard Butterfield (CD15.8)

- 9.1. Mr Butterfield is at pains to point out that he had not closed the original route and that the legal footpath has always been left open. Disregarding the question of width and position of the existing public right of way, and whether it was obstructed by fencing in September 2020, action has been commenced by the Council on a number of occasions regarding the existence and closing of electric gates. Most recently in Spring 2020, after Mr Butterfield closed his gates to deter use of the public right of way during the first lockdown. He also incorrectly refers to previously having left his gates open as 'gesture'. This was not a 'gesture' but rather was agreed following service of notice on the Council by PNFS to secure the removal of an obstruction. If Mr Butterfield had not agreed to this the Council would have had to consider further legal action.
- 9.2. Mr Butterfield also refers to a 'Corporate Director' of the Council stating in writing that the gates could remain closed. That correspondence was in the context of the early part of the pandemic. It became quickly apparent that the advice offered was not legally correct and there was no legal basis for closure or obstruction of the PROW during the pandemic, after which to the Council sought to secure the reopening of the gates (or at least one leaf). The Director concerned is no longer with Kirklees Council.
- 9.3. In paragraph 12 Mr Butterfield described an intention to 'take the diversion route away if his proposed diversion is unsuccessful. However, as the route has been constructed at his own risk, and is currently only permissive, there would be no loss to the PROW network. This statement is intent is of no relevance to the merits of the proposed diversion.
- 9.4. The report to committee regarding the s257 application was from the 'officer body' not simply the PROW officers. The recommendation was heavily caveated, clearly explained the basis for potential refusal and indicated that it was clearly an option for members to refuse the application. The reason for rejection suggested by Mr Butterfield (volume of representations) is not agreed by the Council.

- 9.5. Mr Butterfield's comments regarding the potential provision of a footway are also incorrect. This element was plainly a consideration for the committee when considering the s257 proposal. It was a key plank in the heavily caveated recommendation in the report (See paragraph 9 in the report at CD9.1) The officer body was clear that the diversion was not acceptable without the footway provision – members voted 11 to 0 (with one abstention) that it was not acceptable even with the footway.
- 9.6. The highway engineers mentioned (from Strategy and Design) raised concerns about drainage – this would be an additional requirement if the footway was constructed, not a reason not to build what was previously identified as required.
- 9.7. If the Inspector is minded to recommend a s247 Order is made, (to which the Council objects), then the Council would ask that such an Order not come into force until a footway is secured and provided by the applicant to the Highway Authority's satisfaction between the two path 60 terminal points, in line with the committee report recommendation.

10. Rebuttal of Supplementary Supporting Statement / Statement of Reasons (CD15.9)

- 10.1. At para 1.2 in the Supplementary Statement, reference is made to the level of support for the diversion being double the level of objection. However, the numbers involved is irrelevant to the merits of the application measured against the legal tests. The nature of the contents and the points raised, is of greater importance than the number of people who have commented on either side of the matter.
- 10.2. The assertion that it is beyond doubt that the assertion that the majority of users of Holmfirth 60 access and egress the trig point is 'baseless and without foundation' is simply not accepted.
- 10.3. Comments regarding the increased use of the proposed diversion route are of little relevance, as discussed above. Such use has been heavily promoted by the landowner's actions, and guidance encouraging use of provided alternatives during the pandemic. The claim that the legal public footpath is confined to 1.2m on one side of the driveway are not proven, but rather subject to a Definitive Map Modification Order.

- 10.4. Para 3.2 in the Supplementary Statement selectively quotes from guidance in Defra Rights of Way Circular 1/09. Para 7.15 in Circular 1/09 includes advice to a local planning authority, but the paragraph selectively quoted from appears equally applicable to the Secretary of State for Transport in respect of draft / final Orders under made under s247. The guidance states that:

“The local planning authority should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.”

- 10.5. In this case it is clear that the Council does have good reasons to justify the decision to both oppose the making / confirmation of an Order under s257 and opposing the Secretary of State making an Order under s247. Much more information has been received since the planning application stage to inform and support the Council’s current position, as detailed in its Statement of Case and this document.

11. Comments on Letter from NSCL to DfT National Casework Team. Dated 2 August 2021. (CD11.2)

- 11.1. The response of 2 August is a response to the DfT further to Kirklees Council’s letter dated 13 July 2021 (CD11). The Council feels obliged to respond to unwarranted assertions made by Mr Scanlon and in respect of the applicant’s motivation for making the application.
- 11.2. Kirklees Council notes that the motivation of the applicant in making a DMMO application is not a matter for the Secretary of State for Transport. However, the description of the application as ‘vexatious’ is unwarranted. The DMMO application was supported by evidence and immediately proceeded the physical narrowing of part of the allegedly

previously available width to 1.2m, thus bringing into question a PROW over the greater width.

- 11.3. Mr Scanlon refers a 'refusal' by the Council to disclose evidence to the landowner. This appears to relate to an FOI / EIR request in late 2020. The user evidence was not supplied at that time as it contains personal data that would not have been lawful to disclose at that point in the process. The recommendation to make a DMMO took into account all available evidence.

12. Conclusion

- 12.1. The Council does not support the making of a s247 Order. For the reasons described in the Statement of Case, and in light of the additional comments in this Rebuttal Statement questioning various aspect of the case being presented in support of the Order, the Council considers that the Order would not meet the legal tests in every respect. In particular a failure to meet the "merits" test described in further details in Kirklees Council's Statement of Case.
- 12.2. The Council would therefore respectfully that the section 247 Order not be made. In any case the Council would ask that no Order for the stopping up of footpath 60 be made until the matter of the associated relevant DMMO is determined. Further, in the event that the Secretary of State is minded to make a s247 Order to move the terminal point of Holmfirth footpath 60, as shown in the draft s247, then the Council would request that no such Order would come into effect until such time as a footway is provided as described in para 6.5 of its Statement of Case. The land carrying the verge is not within the red line boundary of the application, and proposals considered in the January 2020 report to committee were that such a footway would be subject of a required separate agreement, e.g., under s278, Highways Act 1980.

Appendices

KC12 Introduction to Manual for Streets

KC13 Photographs of Wolfstones Road showing the verge (2019)

KC14 Photographs of verge to Wolfstones Road (2020)

KC15 Mock of visuals of footway provided by Mr Butterfield