

TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 247

PROPOSED STOPPING UP AND DIVERSION OF FOOTPATH 60 HOLMFIRTH

(Public Inquiry scheduled 24th August 2021)

Proof of Evidence

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**TOWN AND COUNTRY PLANNING ('TCPA') 1990 - SECTION 247
PROPOSED STOPPING UP AND DIVERSION OF PART OF FOOTPATH 60
HOLMFIRTH**

1. I am **Russell Dickson Earnshaw**. I am a Chartered Architect (ARB number: 041160D and RIBA number: 3029407) and have been so for 50 years. I am an owner, director and architect at ADP Architecture and Design Ltd of The Old Police Station, 16 Bridge Lane, Holmfirth, West Yorkshire HD9 7AN. My contact details are supplied.
2. I have been the appointed architect on matters concerning Wolfstones Heights Farm ('WHF') and the adjacent Wolfstone Heights ('WH')¹ since 1995 and have managed several planning applications on behalf of Mr. Butterfield. Mr. Butterfield owns both WHF and the WH building and land. I believe that HM Land Registry information is provided already to the DfT.
3. For completeness, I am attaching a schedule of planning applications and permissions for the last 10 years across this overall site at **Exhibit RDE1**. Obviously not all have been implemented. I have in particular highlighted those relating or potentially involving the diversion of Footpath 60. I have also included at **Exhibit RDE2 and Exhibit RDE3** where the Public Rights of Way (PROW) Officer, Mr. Giles Cheetham, has responded as consultee. Note two things here. The first is that Exhibit RDE1 shows the relevant descriptions of the planning applications/permissions as clearly affecting works to a PROW; it is not as if that this is something that has been hidden from the world! The second is that on no occasion does Mr. Cheetham state his opposition to the proposals. It should also be noted in particular that the design of the diversion route is to some extent influenced by Mr. Cheetham's consultation response to 2014/92814, which was very helpful at the time I recall, in which he states:

"I would prefer to see a design at the northern end of the proposed path which gives a clean swept line for the path, removing sharp turns and opening up the path to make it very clear and obvious to users from the roadside, rather than hidden, off to one side, next to the "relocated" gates".

I return to the rationale for the footpath design further below.

4. I do also note an important statement from Mr. Cheetham in the same consultation response in **Exhibit RDE2**, in which he states:

"I would note that moving the terminus of path 60 to the north will take it away from the existing access to Wolfstones Height, by over 100 metres, however that access is not currently recognised as public and this rural road has a serviceable verge for walking" (my emphasis).

I am therefore surprised that Mr. Butterfield has found himself where he has and with such opposition from the Council in this respect.

5. This is further compounded when considering that there were a number of meetings with various officers of the Council and at least one site meeting with Mr. Cheetham

¹ The residential building, not the 'Wolfstone Heights' viewing point across the road owned by the Holme Valley Land Charity and Holme Valley Parish Council of the same name

himself in attendance. None of what has occurred across this site has been done without significant dialogue with officers and even elected Members of the Council.

6. There are two permissions being implemented presently, which sit alongside each other and meet at the point of the relevant part of Footpath 60 in its present form. The relevant permissions are Kirklees Council Local Planning Authority ('LPA') references: 2014/92814 and 2017/91374 (the '**Planning Permissions**' or '**Permissions**') (there is also for completeness a direct corresponding Listed Building Consent 2017/91375, as WH is a listed building and part of the demolitions and works were associated with WH and not WHF, though they are right next to each other).
7. The developments have lawfully commenced pursuant to the Permissions. We did make an earlier application to the Council to divert the relevant part of the footpath under Section 257 TCPA 1990. However, we withdrew it knowing that slight modifications to the build were required for various reasons.
8. Following due consideration, as well as dialogue with the Kirklees planning case officer (William Simcock), who eventually encouraged us to apply for the relevant Non-Material Amendments ('NMA's), we duly applied for NMA's of the Permissions under Section 96A TCPA. These were allocated with respective LPA references: 2018/93302 (amending 2014/92814) and 2018/93277 (amending 2017/91374). I believe that all plans and Decision Notices are supplied already, which I am happy to refer if required.
9. I briefly wish to outline and say why the NMA permissions were required.
10. The two Planning Permissions meet each other on the north/north-western side of the line of the current PROW that is footpath 60, at its easternmost section. As per the application, the extent of the changes to 2014/92814 and 2017/91374 under the NMA's are:
 - Alteration to levels and the parking area adjacent to the lower garage area
 - New retaining wall with a drystone face to better match the existing materials, which then feed into a retaining wall and slim raised bed adjacent to the part of Wolfstone Heights Farm housing the boiler
 - The intended small retaining wall that divides the driveway and the existing footpath 60 moved back towards the farmhouse will preserve and better protect the newer part of WHF housing the boiler (where the fire started several years ago).
 - Creation of a further parking area in from the lower garage
 - Stone steps from the proposed extended lawn area on the current permission 2014/92814, which is in part supported by the new retaining wall – the idea is that the steps will then meet the lower garage roof-terrace type area currently being built under permission 2017/91374
 - Additional landscaping including tree planting around the lower garage area and driveway, which will better screen the lower garage and the terrace being constructed from the intended diversion footpath
11. Basically, the NMAs were required so that the two Permissions would sit better together, more seamlessly where they meet, from an architectural, functional and general visual/landscape perspective.

12. However, the Permissions, particularly the NMA works described above, but also the major job of extending the garden area on WHF towards WH under the original 2014/92814, cannot be fully implemented until the relevant part of footpath 60 is stopped up and diverted.
13. Where this diversion application is not successful, then quite simply, the works can never be lawfully completed. The Planning Permissions could never be fully implemented.
14. I would like to clarify why the diversion route is in the location that it is. I shall very briefly break this down into the five following headline reasons, which are in no particular order:
 - (i) Briefly, the topography of the land is steep. To have diverted the footpath effectively through or immediately adjacent to the main curtilage of WH could not be done given the extent of engineering and infrastructure interference requirements. Aside from that though, at the time of the 2014 Planning Permission, I recall that Mr. Butterfield did not yet own WH (that occurred I think around 2017), so this would not have been possible anyway, but either way the engineering and infrastructure restrictions mean this would not have been possible anyway.
 - (ii) Following the above, this is compounded by the fact that WH is a listed building. Such interference to the extent required would very likely have meant that neither Listed Building Consent nor Permission 2017/91374 would have been granted at all given the extent of works required and harmful impact on the setting of the building(s). We were actually very swiftly steered away from that the Council's officers.
 - (iii) Importantly but seemingly lost on many, is that whilst Mr. Butterfield owns a substantial amount of land associated with WHF and WH, he does not own all of it. In particular, adjacent to WH driveway to its immediate north is a large area of trees which are protected by a surrounding wall and fencing. This large swathe of land is NOT owned by Mr. Butterfield. Also, speaking frankly, to be destroying what look like (to me) high value trees contributing significantly to the vernacular of the area would have been unbecoming on this occasion, as well as would have crossed the new driveway, creating a potential vehicle/pedestrian conflict, though a lower risk one than the present Footpath 60 route to be stopped up.
 - (iv) We designed the diversion route to represent a better and more open route, fitting seamlessly within the contours of the landscape, being wider than the existing route (which is legally actually only four feet in width; a point very often forgotten), with a more gentle gradient and better surface for use in all weathers, allowing far-reaching panoramic views, against the more immediate backdrop of a tidy rural semi-farmland setting, which is completely open, peacefully and respectful of such a setting. Footpath 60 is a leisure route, not a functional route. However, what is in place represents a far better leisure route and is a far greater functional and safer route, compared with what exists presently, especially if travelling to or from the Moor Lane side.

- (v) The terminus on the diversion route as it meets/comes off Wolfstones Road is a far safer location for pedestrians egressing on to Wolfstones Road.
15. Although I concede beyond my brief, I cannot understand that people would promote that the small stretch of Wolfstones Road from the diversion terminus up the hill to the existing footpath 60 terminus, is somehow dangerous. People walk up and down that road every day (many not even on the verge) and I have walked it myself over a period of many years. There is no question that the terminus of the diversion route on Wolfstones Road (which is unmarked on the order plan but I am calling Point 'C') represents a far safer exit/access onto Wolfstones Road, with clear and greater intervisibility between pedestrians and vehicle users in both directions, compared with the current termination point.
 16. It is in my view more dangerous over the brow of the hill going towards Upperthong, or crossing the road to/from Wolfstones Heights, as the *Thongs and Wolfstones Heights Walk* surprisingly promotes. Nevertheless, I stop myself there, because that is certainly beyond this brief and of course beyond my expertise. Others will hopefully cover that in more detail.
 17. There is no question that functionally, aesthetically, and architecturally, the diversion footpath is a far superior route, compared with the area which is the subject of the stopping up. There is no question to my mind that the diversion route is in the right place, hence why I have never deviated from it in all iterations of planning applications on this site.
 18. When/if this diversion is allowed, then when the development is finished and the associated landscaping is in place and has taken hold, I envisage this will be one of the best bits of footpath in the area. I personally would hate to see it lost where this diversion is not granted. I simply do not believe that we could have achieved a better result where the diversion is concerned. For some to state that this benefits only Mr. Butterfield I find considerably narrow-minded.
 19. I wish to comment briefly on allegations that Mr. Butterfield has apparently been 'brazen', 'entitled' or even 'arrogant' in installing this diversion route without having been through the diversion process. I have acted for Mr. Butterfield and his family for over 30 years. I can say that these are not character traits that you would associate with Mr. Butterfield or members of his family, which I am sure many others will attest to.
 20. Mr. and Mrs. Butterfield have always known that to be able to fully implement their planning permissions, the relevant part of footpath 60 was always going to have to be stopped up and diverted, through a separate legal process. Mr. Butterfield has always been clear and appreciated that the diversion route has been implemented 'on risk'.
 21. The fact is, the Permissions have allowed Mr. Butterfield to progress and in the process of associated (and quite lawful) implementation of the Permissions, as contractors were available, this element of the works that are clearly envisaged has been programmed in. It really is as simple as that; contractors were available, planning permission was granted, and the work was done. Apart from the proposed surface finish to be completed on (hopefully) the grant of the diversion by the SoS, I don't think that anyone could reasonably argue that the diversion route is not well done and does not sit well in the landscape.

22. I have seen many flippant and misinformed references to the existing legal footpath having been or being blocked up, simply because the line and fencing of the diversion path had been put in on risk, in accordance with the Permissions. This is incorrect. Even following a serious fire to the north-easternmost corner of the house, where significant scaffolding and structural stability works had to be done adjacent to the footpath, Mr. and Mrs. Butterfield were very clear to all concerned that the 120cm width of footpath on the northernmost side of the driveway had to be left open and passable.
23. Following receipt of grant of the NMA applications, we duly made an application to the Council under Section 257 to divert the relevant part of the footpath. The application went before the Council's relevant Committee, with a clear officer recommendation to make the relevant stopping up and diversion order. That was declined by the Committee for reasons apparently relating to public safety, which I personally was very surprised about, particularly given that the PROW section had supported the planning applications and recommended the making of the relevant order.
24. Unless we were prepared to wait approximately another two years for the Council to determine an application, this application under Section 247 of the TCPA 1990 has been made directly to the Secretary of State.
25. I urge the SoS Inspector to grant this application and make the final Order. A comparison of the existing section of footpath 60 and the proposed diversion route alone should indicate that the final Order should be made in my view. My professional opinion is that in several years, when this fabulous development will be complete and the landscaping works will have fully taken hold, people will come to wonder why this was not done years ago.
26. Planning Permissions have been granted and cannot be fully implemented without this diversion. There is not in my view a good reason not to make this final order.
27. I am happy to answer any questions in relation to this Proof at the impending Public Inquiry.