

From: [Noel Scanlon](#)
To: yvonneparker@programmeofficers.co.uk
Cc: claire.moody@dft.gov.uk; nationalcasework@dft.gov.uk; [Richard Butterfield](#)
Subject: Re: Recent submissions and Note from the Inspector
Date: 18 August 2021 17:48:51
Attachments: [Letter to Yvonne Parker Inquires Programme Officer 18 Aug 2021.pdf](#)

Dear Yvonne

Please find attached a letter in response to your email below, for the attention of yourself and the Inspector.

This also concerns matters of timings, which I know that you are working on presently.

We are very well-aware of and sensitive to the position of the Inspector, but felt that we must write in response to communications received today in order to assist. Absolutely no discourtesy is intended and the attached letter is provided with wholly due deference and respect, bringing important matters to yours and the Inspector's attention prior to next week.

Kind regards

Noel



Ms. Yvonne Parker, Programme Officer

By Email Only: yvonne.parker@programmeofficers.co.uk

Cc: Claire Moody, DfT: claire.moody@dft.gov.uk; nationalcasework@dft.gov.uk
Richard Butterfield, Applicant and Landowner:

18 August 2021

Dear Ms. Parker

Section 247 Town and Country Planning Act 1990 – Holmfirth Footpath 60, Wolfstone Heights and Wolfstone Heights Farm, off Wolfstones Road, Uppertong

Your ref: Ref: NATTRAN/Y&H/S247/4337 and DPI/Z4718/21/6; Public Inquiry 24th to 27th August 2021

I write following receipt of the Council's Rebuttal Evidence compiled by Mr. Champion, but also the clear Pre-Inquiry Note from the Inspector, sent with your email of 15:23 today.

I shall say before going any further, that the Inspector's position here is completely understood and we are very sensitive to his situation. May I finally convey that this is not a letter that we wanted to write and hopefully the Inspector will receive it as it is intended.

Nevertheless, given what has appeared in Rebuttal Evidence from the Council, we feel that regretfully we must, with the very highest of due deference and respect to his office, have to disagree with the Inspector where he believes that it is not part of his role to *"investigate or police this particular matter, which would appropriately be one for the relevant Court to determine"*.

Unfortunately, we do need to point out that "the relevant Court" in this case could and likely would be the High Court, because any person aggrieved, be they objector, supporter, applicant, etc., may challenge the Secretary of State's decision, whatever it might be.

We raised the matter of Council officers potentially straying from their authorised parameters to the DfT in my letter of 27th January 2021. The DfT had also raised issues regarding a vague unspecified objection to it from Mr. Cheetham of the Council (correspondence from Ms. Moody 16 September 2020).

In our letter of 27th January 2021, we have provided specific evidence, with appropriate webcast references of the parameters of the Council's objection. Officers have clearly strayed beyond this.

On receiving sight of our letter and indeed in September 2020 having had queries from the DfT, officers could have taken the matter back to the relevant Strategic Planning Committee for clarification.

This could have been done last week by convening emergency quorate Strategic Planning Committee for officers to clarify the objection parameters of the Council, but officers, under advisement from their own Legal Services colleagues that have had this information for almost three weeks now, have again not done so. Much as though it is very late in the day, this could still occur; the Council has and always has had the legal powers to convene emergency Committee, but again there has been no action of any kind, unhelpfully in our view leaving the matter entirely to the Inspector.

The Inspector in this case, with whom again we sympathise and are trying to assist, is respectfully allowing evidence to be put by the Council as statutory objector, with knowledge that Council officer authority and thereby Inquiry evidence, which has been called into question, with specific and in our view clear and irrefutable submissions provided to the DfT many months ago.

In more simple terms, we anticipated that officers may look to stray beyond the parameters of their authority from its respective Strategic Planning Committee. We communicated this to the DfT before the involvement of the Inspector. What we anticipated, has clearly come to pass.

Whilst we completely agree it should not be the duly appointed Secretary of State Inspector's job to investigate and police this particular situation, we must again, with all due deference and respect, identify that it is within the Inspector's purview to prevent and in his words in the Pre-Inquiry Note today, "curtail evidence" from a statutory objector (or any other party) being presented, when it is the case that there is (in our view and submission) overwhelming evidence, including webcast recording of proceedings, that representatives are acting beyond the parameters of the authority given to them by the Committee of duly elected Members, establishing what the Council's objection actually is.

Having now seen the Rebuttal Evidence of the Council, which as well as clearly demonstrating that officers are acting beyond their authority, has also introduced (again beyond its authority) a position that the 'necessity' test is challenged, despite reporting to its Committee and to its earlier Committee that this was not the case. As raised in our own rebuttal evidence, due to the ambiguity here, we again ask for clarification on this, which the Council could easily provide.

We are conscious that you are carrying out the difficult task of timings for the Inquiry next week. For this reason, following the Council's evidence and Rebuttal Evidence, we must now put yourself and the Inspector on notice that where the Council's evidence is not curtailed to its authorised parameters (i.e. number of objectors previously and public safety), then cross-examination of the Council's one witness is itself likely to take up a significant amount of time at the Inquiry next week. As an estimate, we anticipate that such cross examination may take up to two days as proceedings are presently proposed. Given what we would need to examine and convey, there is at present no prospect that this could be achieved in one day of cross-examination. This will obviously entail taking longer in Examination-in-Chief of the Applicant's own witnesses, such that my email to you of last night will have to be revisited.

We therefore very respectfully ask again for the Inspector to revisit his position as regards evidence of the Council as a statutory objector, including if necessary, revisiting our letter of 27th January 2021 and reviewing the said webcast evidence referred to. As well as legal, procedural, and other risks, there is a very high risk that the fullest extent of examination may not be completed within the present scheduled Inquiry timescale, which I am sure the Inspector and all parties would wish to avoid.

Please could this letter be placed on record. We shall make no further reference to this specific matter, which is now entirely for the Inspector.

Yours sincerely

Noel Scanlon

Noel Scanlon *Solicitor, BA(Hons), MSc, MCIWM*
Director & Consultant
for and on behalf of NSCL