
Report to the Secretary of State for Transport

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an Inspector appointed by the Secretary of State for Transport

Date: 1 March 2022

TOWN AND COUNTRY PLANNING ACT 1990

**THE DIVERSION OF HIGHWAY (YORKSHIRE AND THE HUMBER) (No.)
ORDER 20..**

Date of Inquiry: 24, 25, 26 and 27 August 2021 and 28 January 2022

Ref: NATTRAN/Y&H/S247/4337

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CASE DETAILS

- The Order is drafted under section 247 of the Town and Country Planning Act 1990.
- The draft Order proposes to stop-up and divert a length of Footpath Holmfirth 60 at Wolfstones Heights Farm. The section to be stopped up is from grid reference E:412850 N:409113 extending in a westerly direction for a distance of 151 metres to Wolfstones Road. It has a maximum width of 1.2m. The new (diverted) footpath commences from the same grid reference extending overall in a general north westerly direction for a distance of 226m. It has a varying width between 2.4m and 3m.
- Application for the Order was made by Mr Richard Howard Butterfield on 23 June 2020.
- 36 letters of objection (CD6.1 – CD6.35 and CD6.37) were submitted in response to the formal notice advertising the Order. Six of the objectors appeared at the Inquiry and three of these submitted further written statements/proofs of evidence.
- 75 letters in support of the Order (CD7.1 – CD7.75) were submitted in response to the formal notice advertising the Order. Six of the supporters appeared at the Inquiry, five of them as witnesses for the Applicant, each of whom submitted a Proof of Evidence.

Summary of Recommendation:**I recommend that the Order is not made.****1. PREAMBLE**

- 1.1 On 24 August 2021 I opened a Local Inquiry, held 'virtually' by MS Teams, to hear representations and objections concerning the proposal by the Secretary of State to make The Diversion of Highway (Yorkshire and the Humber) (No.) Order 20.. The Inquiry sat for five days. Six witness appeared for the Applicant and one for Kirklees Metropolitan Borough Council (KMBC). Six other individuals/organisations spoke at the Inquiry, one in support of the Order and five in objection to it.
- 1.2 At the Inquiry the Applicant confirmed that he had complied with all necessary statutory formalities in connection with the promotion of the Order.
- 1.3 I made unaccompanied visits to the affected footpath/proposed diversion, the nearby roads and the surrounding area before the Inquiry on the morning of Friday 23 July 2021 and after the Inquiry on the afternoon of Sunday 12 September 2021. During these visits I also walked footpath 60 from Wolfstones Heights Farm to Netherthong and back and to and from the Trig Point at Wolfstones Heights via the permissive footpath.

1.4 This report contains a description of the site and its surroundings and the effect of the Order, the gist of the evidence presented and my conclusions and recommendation. Lists of appearances and documents are attached. Included in the list of documents are the proofs and other statements of evidence submitted by the parties subject, however, to the proviso that these may have been added to or otherwise amended at the Inquiry.

2. **THE SITE, ITS SURROUNDINGS AND THE ORDER**

Description of the Site and its Surroundings

2.1 Holmfirth Footpath 60 links the village of Netherthong, near Holmfirth, with Wolfstones Heights, a local hilltop with a 'Trig Point' and extensive panoramic views across attractive countryside. Between Netherthong and Wolfstones Heights the route crosses only one road – Wolfstones Road. The footpath mostly passes through fields but at its westernmost end it utilises a 100m or so length of tarmacked lane/drive, which provides access to Wolfstones Heights Farm. The Order plan shows the footpath broadly in the centre of this lane/drive, although the written evidence of the Applicant states that it is on the northernmost side of the lane/drive. I deal with this discrepancy towards the end of this report.

2.2 At its western end the footpath terminates at Wolfstones Road, a rural lane without footways and walkers can then proceed either northwards or southwards along Wolfstones Road or can cross the road and use a permissive path to reach the Wolfstones Heights Trig Point.

Effect of the Order

2.3 The Order would stop-up the section of footpath between points A and B on the Order Plan (CD3.1.2), the part of the path which passes close by, and provides access to, Wolfstones Heights Farm. Footpath 60 would be diverted to a new alignment (C on the Order Plan), running initially parallel with the original footpath and then heading in a north-westerly direction to terminate on Wolfstones Road around 118m north of the junction of the existing footpath with this road.

Purpose of the Order

2.4 The Applicant describes the Order as being necessary to enable full implementation of planning permissions 2014/92814 and 2017/91374 which are for a range of construction and improvement works to and at Wolfstones Heights Farm.

Objections to the Order

2.5 36 written objections to the Order have been received and six objectors appeared at the Inquiry. The main reasons for the objections are that the diversion would inconvenience and present an increased road safety risk to many users of the footpath and that this outweighs any advantages which would be conferred by the Order.

3. PROCEDURAL MATTERS

- 3.1 Whilst the main issues on which I have reached my recommendation in this case are relatively straight forward ones, the Inquiry proved to be a highly fractious event. There have been numerous, mostly procedural, disagreements between the parties (in particular the Applicant and KMBC) reported to me and on which I have been asked to rule in the lead up to the Inquiry, during it and in the period between the adjournment of the Inquiry and its resumption. In this regard I wish to particularly note the professional and patient way in which Yvonne Parker, the Programme Officer, assisted me in dealing with these disagreements.
- 3.2 Most of the disagreements relate to the nature and extent of evidence which should be taken into account in determining whether or not the Order should be made. However, the majority of these arguments have not been of significance to my recommendation. In essence, aside from evidence relating directly to the separate Definitive Map Modification Order which I consider should not be taken into account for the reasons detailed in the following paragraphs, my recommendation on the Order would be the same if I were to take account of all the disputed evidence, none of the disputed evidence or any combination of evidence between these two extremes.
- 3.3 Consequently, in reporting the parties' cases, which in the case of the Applicant and KMBC are long (bearing in mind the relatively straight-forward issues the Order raises) and in detailing my conclusions on them, I have focussed on the gist of the parties' main arguments, rather than detailing and addressing the numerous detailed points of who said what and when. However, I have appended to this report (Appendices 3-5) the Applicant's and KMBC's written closing submissions and the written statements of the Applicant and KMBC on the accuracy of each other's closing submissions, in order that the Secretary of State can read these in full should he consider that to be necessary in reaching a decision on the Order. This and all other written evidence put before the Inquiry (some of which is specifically referenced in this report) is available at:

<https://programmeofficers.co.uk/Holmfirth/CD25Feb22.pdf>

The Definitive Map Modification Order

- 3.4 Subject to confirmation, KMBC has made a Definitive Map Modification Order (DMMO) which would record on the Definitive Map a greater width for footpath 60 than that currently recorded and referred to in the Stopping-Up/Diversion Order which is the subject of this report. Anticipating objections to the DMMO, the Council wrote to the Department for Transport [Doc CD.11] requesting that the Inquiry for the Stopping-Up/Diversion Order be postponed and held concurrently with any Inquiry to be held in connection with the DMMO. The Department for Transport did not accede to this request but indicated that the matter would be considered by me at the Pre-Inquiry Meeting.
- 3.5 At the Pre-Inquiry Meeting I heard arguments for and against

postponement of the Stopping-up/Diversion Order Inquiry. I then determined that the Inquiry should proceed as planned, concluding that it would not be appropriate to postpone it for an unknown period of time to be held concurrently with another Inquiry which may or may not ever happen. Nonetheless, KMBC and the Peak and Northern Footpath Society referred to the DMMO in some detail in their written evidence for the Inquiry.

- 3.6 Understandably the Applicant wished to cross-examine the witnesses for KMBC and Peak and Northern Footpath Society on this evidence at the Inquiry. However, for him to have done so would have been inappropriate; the DMMO is not, as I see it, directly relevant to the determination of the Stopping-up/Diversion Order and might inappropriately prejudice parties' positions at any future Inquiry concerning the DMMO. Consequently, I advised the Inquiry (verbally and subsequently in Inquiry Note 2 (CD13.4)) that I would not be taking account of any evidence relating to the DMMO submitted or raised at the Inquiry in connection with the Stopping-up/Diversion Order.

Examination in Chief of KMBC's Witness

- 3.7 KMBC's witness was heard on 27 August 2021. Following his 'evidence in chief', but prior to cross-examination of him by the Applicant, I asked him a preliminary question concerning the content of the evidence he had just given, in comparison with that set out in the Council's written Statement of Case. After a few moments of the witness appearing to struggle to answer the question, an unknown person was seen on the witness's MS Teams screen handing him a piece of paper or a document. I immediately raised concern about this and it was stated that another KMBC officer was simply providing the witness with a paper copy of the Council's Statement of Case, which I had referred to in my question.
- 3.8 Being able to trust all parties to Public Inquiries to behave honourably is of fundamental importance to confidence in the recommendations and decisions subsequently made. That parties' behaviour both is, and is seen to be, beyond reproach is of particular importance in virtual Inquiries where the participants are not all in the same room. I have no reason to doubt KMBC's assertion that the action was entirely innocent and that the witness was not being given inappropriate assistance in answering my question. However, very unfortunately, it had the potential to be seen as being otherwise and the Applicant therefore argues that this witness's evidence in chief should not be taken into account.
- 3.9 I had intended to distinctly identify in this report the evidence given during KMBC's witness's evidence in chief, in order that the Secretary of State could decide whether or not he wished to take account of it. However, in reality, it is almost impossible to separate out points made in the witness's evidence in chief from those set out in the Council's written Statement of Case or which emerged in its cross-examination of the Applicant's witnesses. Nonetheless, given my conclusions detailed below in relation to arguments about the legality of the Council's evidence overall, my recommendation on the order would be the same whatever

evidence of KMBC I do or do not have regard to.

Closing Submissions

- 3.10 Due in part to the shorter than normal sitting days necessary because of the virtual format of the event, the Inquiry was not completed in the originally allotted four days. I therefore adjourned the Inquiry on 27 August 2021 with a future date to be set to hear closing submissions.
- 3.11 Anticipating that there would be numerous disagreements between the Applicant and KMBC over the extent to which the closing submissions accurately reflected what was said and happened at the Inquiry, I asked (Inquiry Note 1 (CD13.2)) these two parties to exchange their written closing submissions with the aim of agreeing their accuracy. However, despite allowing three months for this process, the two were unable to reach agreement. Therefore, in addition to the closing submissions the Applicant and KMBC have submitted some 28 pages of detailed written comments on the accuracy/appropriateness of points made in each other's closing submissions (CD13.25)

Legality of the Council's Evidence Overall

- 3.12 The Applicant argues that the evidence put before the Inquiry by KMBC extends beyond the authorised brief of the relevant Council Committee (letter to the Department of Transport in January 2021 (CD15.8.4) and letter to me in August 2021 (CD19.2)). The Council has strongly rebutted this argument as detailed in paragraphs 1.3 and 1.4 of its Statement of Case (CD14.1).
- 3.13 This is a legal matter and is not one on which I feel able to advise. The Secretary of State may therefore consider it appropriate to seek specialist legal advice. Ultimately, however, none of the Council's evidence has been determinative in my recommendation. Indeed, had the Council not participated in the Inquiry at all, nor even objected to the Order, the evidence of all other parties unchanged, my recommendation would be no different.

4. THE CASE FOR THE APPLICANT

The material points are:

Tests to be applied

- 4.1 It is agreed between the Applicant and KMBC that the tests to be applied under s247 were considered in Vasiliou and (in relation to the equivalent test under s257) in Network Rail judgements. There is a two stage test in considering whether to make a final order – the 'necessity' test and the 'merits' test. It is common ground amongst everyone except the Holmfirth Harriers Athletic Club (and their witness Mr Sizer conceded that he did not know the legal position on the point) that the 'necessity' test is met.
- 4.2 However, the power for the Secretary of State to decline to make the

order is not absolute; it is discretionary and there is an exercise he is obliged to carry out in exercising his discretion. There are essentially two parts to the 'merits' test.

- 4.3 Firstly, in exercise of that discretion the Secretary of State is obliged to take into account any significant disadvantages or losses flowing directly from the stopping-up order which have been raised, either for the public generally or for those individuals whose actionable rights of access would be extinguished by the order. Secondly, in such a case the Secretary of State must also take into account any countervailing advantages to the public or those individuals, along with the planning benefits of, and the degree of importance attaching to, the development. He must then decide whether any such disadvantages or losses are of such significance or seriousness that he should refuse to make the order.
- 4.4 We therefore need to consider the words "significant" and "seriousness" or the state of being "serious". "Significant" means very important or being sufficiently great to be worthy of attention in a particular situation. "Serious" means characterised by careful consideration of the gravity of a situation; not trivial; not remote; not far-fetched; applicable to the objective gravity of a situation.
- 4.5 The evidence has shown that there are no significant disadvantages and losses. There are in fact significant advantages, so even in the hypothetical case where significant disadvantage and losses would be founded, it is plainly not the case what they would be of such significance or seriousness that it should not be recommended to the Secretary of State that he makes the Order. In short there is no good reason not to make the Order; whilst objections have not been ignored or dismissed they are based around myths. Moreover, the weight to be given to the Parish Council's objection must be limited by their refusal to take part in the Inquiry and put themselves up for cross-examination. Furthermore, in the absence of documents to demonstrate that the evidence of Mr Payne and Mi Sizer represents the formal view of Holmfirth Walkers Are Welcome and Holmfirth Harriers respectively, their evidence should be treated as that of individuals.

Myth 1 – why the diversion route was constructed

- 4.6 It is profoundly wrong to assume that that the diversion route was constructed, in advance of the stopping-up Order being made, out of arrogance, entitlement or brazenness. It is in place because planning permissions were granted, contractors were available and the landowner decided to put this in completely at risk. The landowner did not need to let people use the diversion path in advance of the Order being made but nonetheless did so.

Myth 2 – the landowner had closed the current legal route

- 4.7 It is profoundly wrong to say that the landowner closed the legal route when the diversion was put in. The Applicant has always been highly cognisant of the need to keep the footpath open.

Myth 3 – there is overwhelming objection to the proposal

- 4.8 Contrary to the assertion that there is overwhelming objection to the proposal the diversion route is very popular and, indeed, people are concerned at its possible loss. It would be a brilliant addition and enhancement to the public rights of way network in the area. The level of support for the application is more than double the level of objection to it

Myth 4 – Wolfstones Road is dangerous

- 4.9 No objectors have provided any discernible evidence of Wolfstones Road being dangerous; indeed the Council's position is so confusing that the Applicant remains at a loss to understand its position on safety. However, we find it beyond comprehension that the Council, with the resources available to it and a previously-involved Highway Safety Engineer, would not put this officer up for examination or at least provide data to reinforce its position.
- 4.10 The Applicant's Highways Witness, Mr Appleton, was clear that there is absolutely no reason to decline to make this Order on the basis of safety concerns and the Council elicited no contrary response despite its lengthy cross-examination of him.
- 4.11 The evidence demonstrates that traffic speeds are low and that the average surveyed traffic flows is around 180 vehicles per day – 23 vehicles per hour which Mr Appleton described as a "very low volume" Even the highest recorded traffic volume of 230 per day (29 vehicles per hour) is still very low.
- 4.12 The fact that this is the only basis for KMBC for objecting to the Order adds considerable weight. And the fact that other statutory objectors, being the Parish Council and the Peak and Northern Footpaths Society, reference safety without evidence (and in the case of the Parish Council does not even offer itself for examination) only goes to reinforce this already clearly established position.
- 4.13 The Applicant submits that it would be impossible to justify not making the Order on the basis of highway safety; to do so would be irrational.

Myth 5 – all or a majority of users are accessing the Trig Point or walking south

- 4.14 There is no evidence for the assertion that the diversion route is defective because everybody, or at least a vast majority, using the diversion route has to turn left on reaching Wolfstones Road to head south towards the Trig Point or Upperthong. As the Applicant's Highways witness pointed out, even including the date of what he considered an anomaly of a 38-strong memorial walking group, 42% of all users would use the current route to access the Trig Point land. Otherwise, Mr Appleton's analysis shows only a third of users actually use the current route to access the Trig Point. [Inspector's Note: in closing submissions the Applicant's advocate verbally confirmed that the "42%" and "a third" figures are the proportion of people using the permissive path to the Trig

Point who walked to/from there via the section of footpath proposed to be stopped up. This is not the same as the proportion of users of the footpath to be stopped-up who were heading to/from the Trig Point.]

4.15 We also heard that out of choice, Mrs Waldrom uses the diversion route even if heading to the Trig Point land. The surveys clearly establish that movements to and from the Trig Point are nowhere near to the extent envisaged in any objections.

4.16 Mr Appleton clearly identified that only one out of eight surveys carried out by Paragon Highways showed a large walking group and that such a large group was likely a one-off in itself. However, Mr Appleton added at the Inquiry that even if a group of such a size is allowed for in the data, this does not mean any material change to the average pedestrian flows in any direction over the whole of a day and did not alter his conclusions on the proposals. No objector has any date or even information contrary to the Applicant's surveys of pedestrian movements.

4.17 The conclusion is simple: the users of Footpath 60 are not all accessing or egressing the Trig Point; far from it.

Myth 6 – the Trig Point land is held in perpetuity for the benefit of the public

4.18 Any view that although access to the Trig Point land is only permissive it is almost as good as a public right of way is profoundly wrong. The Holme Valley Land Charity has taken measures in recent years to ensure that the land is safeguarded from being a public right of way and Mr Cropper (for the Applicant) indicated that there is no question that the charity, like all good trustees, must look after and manage the land as an asset. The permanence of the Trig Point land is undoubtedly called into question; it is a matter of legal fact that this is not publicly owned and it is also not land that has to or necessarily will be open to public access in the future. The importance of the Trig Point land is in this sense considerably diluted.

Myth 7 – the main problem is that the diversion route breaks the direct access to the Trig Point land

4.19 In cross-examination KMBC and the Peak and Northern Footpath Society were clear that that current line of Footpath 60, along the section of it proposed to be stopped-up to Wolfstones Road opposite the permissive path to the Trig Point, could be broken. They were not wedded to a position. Mr Leader (witness for the Peak and Northern Footpath Society) acknowledged that "a" diversion of the footpath (as opposed to the diversion proposed) would even be supported. Indeed in cross examination both Mr Leader and Mr Champion for the Council identified the proposal as having a neutral effect on the public rights of way network. [Inspector's Note – I recall Mr Leader indicating that there might (as opposed to would) be a proposal for diversion of this footpath which would be acceptable to the Society. Moreover, whether or not Mr Leader used the word "neutral" in cross-examination, he made clear

overall his view that the Order would have an adverse effect on public rights of way in the area.]

- 4.20 However, Mr Earnshaw (for the Applicant) clearly explained that the reason for the chosen termination point of the diversion footpath on Wolfstones Road (point C on the Order Plan) is due to land ownership and engineering related issues. The reality is that point C could only have been designed to be at the place where it was, and now is. Accordingly, the line of direct access to the Trig Point can be "broken" and the alleged direct character and ancient route clearly diluted as a result, very significantly we would submit.

Myth 8 – the current Footpath 60 is part of an historic and "ancient" public route

- 4.21 There is no evidence at all for the assertion that that Footpath 60 is part of an historic and "ancient" public route; there is only supposition which the Applicant submits is unfounded following cross-examination of Mr Leader for the Peak and Northern Footpath Society. Mr Leader's acknowledgement in cross-examination that the footpath has only been a public route since the 1950s and that the Trig Point land was, at this point, a disused/end of working life quarry, says it all. [Inspector's Note – I recall Mr Leader accepting that the footpath had probably only been a formal public right of way, shown on the definitive map, since the 1950s (which was shortly after the requirement for local authorities to produce definitive maps of public rights of way was introduced) but that this does not mean it had not been a public route for much longer.]

- 4.22 The alleged historic and even "ancient" basis for the route has been overstated and is quite simply not borne out of any credible evidence.

Myth 9 – that the diversion, or in fact the whole scheme, has been designed and constructed without forethought

- 4.23 Contrary to this assertion the Applicant has evidenced that the design of the scheme was heavily influenced by KMBC's lead Rights of Way and Planning officers. Mr Cheetham of the Rights of Way section had heavily influenced the start and end points of the diversion. Although Mr Earnshaw (for the Applicant) had to acknowledge that there was no choice in the location of the end point C, the location of point A was heavily influenced by dialogue with Mr Cheetham and his colleague Mr Franklin. Mr Earnshaw described a previous iteration that would have seen that point located further westwards before Mr Cheetham's helpful input to move it eastwards.

Myth 10 – the diversion, and thereby the diversion route, is "unnecessary"

- 4.24 As the Applicant detailed in his application for the Order, it has through the Inquiry been established beyond any doubt that the 'necessity' test is met and there appears to be consensus on this.

Myth 11 – there are no advantage or “public/societal” benefits to the proposal

- 4.25 In addition to enabling the Applicant to fully implement his planning permissions there are considerable advantages to users from or going to the north (including to Honley and Wilshaw) in using the diversion which results in a shorter journey time and less time on the road. The diversion route has been described as less steep and kinder underfoot than the original path, particularly during inclement weather. There are also descriptions of the diversion being generally more pleasant and a far superior amenity which must form a clear advantage.
- 4.26 The Applicant’s witnesses also state that the diversion has a safer egress point on to Wolfstones Road (Point C) than does the original path (Point B) in terms of visibility in both directions. Whilst users heading to the Trig Point or southwards will spend slightly more time on Wolfstones Road (specifically the verge) the same would apply to anyone heading northwards if the Order were not made.
- 4.27 Mr Cropper (for the Applicant) and others also raised “Great British awkwardness” (ie feeling that users on the original path may be imposing on people’s privacy) which is avoided with the diversion footpath; a form of “cultural advantage” which cannot be ignored.
- 4.28 There are clear advantages to this proposal: private, public, societal and otherwise.

Conclusions

- 4.29 There is consensus that the ‘necessity’ test is met. The question therefore is whether there are any significant disadvantages or losses flowing directly from the Order. The answer is “no”. Given the evidence in cross examination of the Peak and Northern Footpath Society and Council in particular, it cannot in the Applicant’s submission be reasonably concluded that significant disadvantages would exist as a result of this proposal. However, in the unlikely event that the Inspector were to identify significant disadvantages then the Inspector would also identify countervailing advantages. These have been drawn out in evidence by the Applicant’s witnesses and other supporters of the Order.
- 4.30 The benefits of and degree of importance attaching to the development is obviously more subjective. Nevertheless, even in the case where the Inspector would find that there are significant disadvantages or losses and there are no countervailing advantages (which is impossible in the Applicant’s submission) and that in considering the benefits and degree of importance attaching to the development (which includes the diversion route itself) then the Inspector must go on to assess whether such disadvantage or losses would be of such significance or seriousness as to justify recommending that the Order is not made. Clearly on the evidence the answer is “No”.
- 4.31 By way of additional encouragement a Unilateral Undertaking will be

submitted providing a mechanism for the Council to receive monies to make improvements to the verge of Wolfstones Road between Points C and B. This leans into the narrative that, although not necessary, it would "do no harm". The Inspector's report and Secretary of State's final decision will hopefully provide their opinion and/or modest guidance in this respect.

- 4.32 DEFRA Circular 01/09 (in respect of the similar s257) indicates that a decision maker would need to have a good reason not to make the final order where planning permissions have been granted. On the evidence and applying the correct legal tests, the Applicant submits beyond any doubt that in view of the planning permissions there is no good reason not to make the final Order. We respectfully invite the Secretary of State to do so without further delay.

5. **THE CASES FOR THE SUPPORTERS OF THE ORDER**

The material points are:

Helen Waldrom, Local Resident

- 5.1 I walk the footpath regularly, at least once a week, and always use the diversion rather than the original footpath. I was anxious using the original footpath when meeting vehicles and it is also steep and slippery in icy conditions. There is a clearer view of the traffic when emerging on to Wolfstones Road from the diverted footpath than from the original.
- 5.2 The diversion is much more scenic than the original and more relaxing to use – the panoramic views, the benches and the duckpond make it a much more pleasant walking experience than the original footpath with high walls and no view. I've heard objectors to the Order admit that the diversion is a nice route but that it means they don't get to see what they are doing at the big house.

Letters of Support

- 5.3 75 letters of support for the Order were submitted in response to the consultation on it (six of which are from people who appeared at the Inquiry, five of them as witnesses for the Applicant). Many of the letters make similar comments, the material points of which are:
- The stopping-up/diversion is justified on the basis of giving the Applicant privacy and security. An intruder has, in the past, entered the adjoining property from the footpath.
 - The diversion means that footpath users don't feel uncomfortable passing very close to private property.
 - The proposal would be an extremely satisfactory resolution to an unsatisfactory existing situation.
 - The "exit" of the diverted footpath on to Wolfstones Road has better visibility and is safer than that of the existing footpath.

- The diversion is only a short distance longer than the original footpath and is more convenient if heading to/from Netherthong.
- The diversion provides a wider and better walking surface than the original footpath which can be dangerous when wet or icy. The steepness of the original route can be tiring.
- The diversion is more tranquil and offers more attractive views than the original footpath, of both the new duckpond and surrounding countryside, and offers seating for a rest. The original footpath is squashed between buildings, which can act as a wind tunnel.
- The diversion is safer than original footpath which has to be shared with vehicles.
- The diversion keeps people away from private property which is particularly important during the Covid-19 pandemic.
- The diversion is already well used and is preferable to the original footpath. It would be a retrograde step if people were forced to use the original path again.
- All the objections to the Order seem to be from people who are not local. There also appears to be political motive against the Order.
- Kirklees Council granted planning permission for the stopping-up and diversion of the footpath and associated development and its officers recommended making a s257 Order to facilitate the development.

6. THE CASES FOR THE OBJECTORS TO THE ORDER

The material points are:

Kirklees Metropolitan Borough Council (KMBC)

Tests to be Applied

- 6.1 It is for the Applicant to demonstrate that the legal tests for the making of a s247 order are satisfied and the Council submits that they are not met. Moreover, as detailed in its opening statement (and in CD14.1) the Council refutes the Applicant's contention that in terms of the scope of its objection its officers have in some way acted beyond authority.
- 6.2 The test to be applied under s247 was considered in *Vasiliou v Secretary of State for Transport* [1991] and has recently been confirmed by the Court of Appeal [Holgate J; Network Rail judgement] in relation to the equivalent test under s257. In brief, there is a 'necessity' test under which a planning permission must exist for development for which it is necessary to stop-up or divert the public right of way and a 'merits' test. Even if the 'necessity' test is passed the Secretary of State has discretion as to whether or not to make the Order.

- 6.3 In the exercise of that discretion the Secretary of State is obliged to take into account any significant disadvantages or losses flowing directly from the stopping-up order which have been raised, either for the public generally or for those individuals whose actionable rights of access would be extinguished by the order. In such a case the Secretary of State must also take into account any countervailing advantages to the public or those individuals, along with the planning benefits of, and the degree of importance attaching to, the development. He must then decide whether any such disadvantage or losses are of such significance or seriousness that he should refuse to make the order.
- 6.4 The Applicant's case (albeit not mentioned until the Closing Submissions) is that "significant disadvantages" (as referenced by Holgate J in the Network Rail judgement) has a definition of the synonym "very important". However, judgements are not to be read and every word parsed as if one was reading statute. And in any event there are a number of synonyms for "significant" including "not insignificant" and "worthy of attention" (the latter mentioned in the Applicant's Closing Submissions).
- 6.5 The judgment of Holgate J does not require some tilted balance where the disadvantages of the order outweigh the advantages by an enhanced margin. This is a case in which neither the disadvantages nor the advantages are dramatic. However, the disadvantages are significant and though not "matters of life and death" they do outweigh the claimed advantages.

The Order Plan

- 6.6 The Inspector highlighted at the Inquiry that the Order Plan (CD 3.1.2), as originally drawn for the Applicant by Mr Earnshaw, places the line of Footpath 60 to be stopped-up in the middle of the lane/drive that runs through Wolfstones Heights Farm buildings. However, the Applicant has made clear in other submissions that he considers the line of the footpath to be on the northern side of the lane/drive, flush to the building line of Wolfstones Heights.
- 6.7 The Council understands that Mr Earnshaw submitted a written representation and a plan to the Department of Transport and the Inquiry Programme Officer on 28 December 2021. [Inspector's Note – the plan (contained in CD13.5) is an amendment of the Order Plan showing the line of the footpath on the northern side of the lane/drive, consistent with the Applicant's written and verbal submissions on its location]. KMBC's advocate was not able to take instructions on the written representation prior to the deadline for the submission of the closing submissions. However, at this stage the recently submitted plan cannot remedy the problem facing the Applicant in respect of the Order Plan – in essence that the Order Plan which has been the subject of advertisement and consultation and by which the Secretary of State would make the applied-for Order, does not reflect the Applicant's case.

Planning Benefits

- 6.8 The Inspector explored in detail with Mr Earnshaw the parts of the relevant permissions which conflict with the footpath. Frankly, the benefits are paltry.
- 6.9 According to Mr Earnshaw the diversion of the footpath will allow for the excavation of the garage, the creation of two parking spaces, the erection of a retaining wall and the building of a second staircase to the Applicant's terrace above the garage, a terrace which already has an access. Mr Earnshaw noted that the footpath diversion would eliminate the risk to its pedestrian users of interactions with domestic traffic, including horse and race car trailers. However, the manoeuvring of traffic within a domestic curtilage cannot be equated to interaction with free flowing traffic on the public highway. Mr Appleton also noted that the diversion would eliminate vehicle/pedestrian conflict in the Applicant's 'complex', but when asked what data for such conflict he relied on he laughed at the idea of gathering such data. If the point does not merit gathering data then the point does not merit much consideration.
- 6.10 The development is of a purely private benefit, relating to one dwelling and does not provide a wider public or societal benefit. The Applicant has made much of the benefit of the diversion footpath in terms of its benches, quaint fencing, surface and created view. However, the Council has repeatedly noted that these features are not subject of the Order and are no way guaranteed by it. Furthermore, whilst some witnesses have spoken of the diversion as pleasant, Mr Leader (Peak and Northern Footpaths Society) commented that it is somewhat of a confection; an out of place walking experience in this locality.
- 6.11 Whilst the Council accepts that the risks arising from the stopping-up/diversion would be low, it is not considered that the disbenefits to footpath users would be slight. Moreover, even if the Secretary of State were to consider that the disbenefits are slight they must be weighed against the very limited development impaired by the footpath.

Applicant's Highways Evidence.

- 6.12 The Council does not contend that substantial highway risk arises from the proposed diversion of the footpath and it accepts the accident data compiled by the Applicant. The Council simply contends that the increased interaction of footpath users with traffic on Wolfstones Road by the addition of 118m of roadside walking on two out of the three routes is a disbenefit and a sources of risk to user safety. Mr Greenwood [an objector] was clear that he would want to avoid walking on Wolfstones Road with children and valued the footpath's current line for only requiring a short crossing of the road to reach the Trig Point. On the current footpath line the user has a potential conflict of say 4-6m in crossing Wolfstones Road to reach the Trig Point. With the diversion that potential for conflict is 124m; a distance 20 times greater. Despite Mr Scanlon's attempts to have Mr Appleton (the Applicant's highways witness) characterise the overall safety effects of the Order as

“advantageous”, Mr Appleton settled on a “neutral” impact in response to the Inspector’s question about the overall safety impact.

- 6.13 The Applicant’s approach to the data submitted is less than comprehensive. As the Inspector noted in questioning Mr Appleton, the survey carried out in September indicated a greater level of use of the footpath than captured in the winter surveys. With the coming of the pandemic in 2020 Mr Appleton considered that surveys would be affected. How the pandemic would skew results is unclear; if use patterns have changed then they have changed. Mr Appleton maintained that the season of surveys would not affect the vehicle speed data gathered. However, as noted in cross-examination, the speed data was gathered on at least one day with the risk of ice (31/11/17) and one day with snow (17/3/19). Furthermore, by the time of the last survey (October 2020) the road had been resurfaced and there was a concomitant increase in speeds observed over the earlier surveys. It had also eluded Mr Appleton until raised by the Council in cross examination that there is only one streetlight on this section of road and that is where the current footpath meets Wolfstones Road.
- 6.14 Mr Appleton believes that the main advantage of the diverted route is that visibility for pedestrians where the diversion meets Wolfstones Road is significantly improved over the point where the original footpath meets the road. However, there are no plans, drawings or illustrations to demonstrate the point; It was simply asserted on the back of a ‘Google’ (verb). The Council believes that the visibility point is not, in itself, a significant one, but does point to the Applicant’s unconvincing approach. If it is the “main advantage” then the Applicant should prove it not simply assert it out of thin air. Moreover, there is a lack of evidence on driver visibility and there are no swept path analyses for vehicle to demonstrate that vehicles would not need to overrun the verge on which some diverted footpath users would need to walk.

Walking Groups

- 6.15 There is clear evidence of a culture of walking groups in the area as referred to by a number of witnesses including Mr Payne for Holmfirth Walkers Are Welcome and Mrs Wimpenny for the Applicant. Nonetheless, the Applicant’s highways team chose to ignore such a group in their surveys of usage of the footpath, on the basis of it being a memorial walk and thus a one-off event. Mr Appleton confirmed that his contention that only a third of surveyed walkers went to the Trig Point was based on the exclusion of this group [Inspector’s Note – the “third” of walkers refers to the proportion all those surveyed on footpaths and roads in the area who went to/from the Trig Point, not just of those using the section of footpath proposed to be stopped-up.]
- 6.16 The surveys of usage are also limited in the times of day they were carried out – between 08:00 and 16:00 - missing the weekday PM peak period. The surveys would therefore not have caught the commuter resident in the area out to walk their dog early or late in the day. Multiple witnesses spoke of their use of the footpath early in the morning and/or

in the evening, times which would not have been captured by the Applicant's surveys. Indeed the Applicant's own daughter stated in cross-examination that she runs in the area between 04:30 and 06:00 and after 18:00 and walks the path with her children at the weekend at 17:00 or after. She noted that at the weekends she would see all sorts of users of the highway network in the area of the footpath: walkers, cyclists, horse riders and a "scattering of cars". In cross examination Mr Paxman (also representing the Applicant) spoke of walking with his dog between 06:00 and 07:00 on weekdays and before 09:00 at weekends.

- 6.17 Mr Sizer (for the Holmfirth Harriers Athletic Club) described the organised group runs which take place, starting between 18:15 and 19:00 and lasting from 45 minutes to 2 hours. He indicated that the footpath to be stopped-up is regularly used by these groups and that the junction of the existing footpath and Wolfstones Road is a re-grouping point for runners. Mr Sizer considered that greater safety concerns arise with group running because they take up more space and are therefore more likely to interact with traffic.

The Trig Point

- 6.18 The route from Wolfstones Road to the Trig Point is a permissive path in the ownership of the Holme Valley Land Charity which is under the control of Holme Valley Parish Council. Mr Cropper (representing the Applicant) detailed his past involvement with both bodies and the charity's work to rationalise its land portfolio; some pieces of land had been sold off but the Trig Point land had been kept and improved. Although no longer on the Parish Council or charity's board of trustee he concluded that whilst possible, it is very unlikely that that this land will be closed off from public use. [Inspector's Note – I recall Mr Cropper saying words to the effect of "there is no indication that the land will be closed off from public use".]

Unilateral Undertaking

- 6.19 The Council does not consider that the proposed unilateral undertaking would make the application acceptable (ie a highway that is safe as currently and free from drainage issues); nor has it been provided with sufficient detail to have any confidence in the proposed verge improvement. The Council has made clear that since it will not be a party to the undertaking it will not draft the document in consort with the Applicant. However, it was made clear that the Council will consider the document so that it can confirm its position; but it will not be drawn into an agreement by stealth whereby it drafts the details of the Applicant's proposal.

Conclusion

- 6.20 The Applicant has not satisfied the tests under s247 – the 'necessity' test is met; the 'merits' test is not. The Council requests that the Secretary of State does not make the Order.

Holmfirth Walkers are Welcome

- 6.21 Holmfirth Walkers are Welcome's mission is to promote recreational walking in the Holme Valley for residents and tourists; there are around 100 regular members and we organise and lead group walks many of which use Footpath 60. One of our most popular walking leaflets includes this path.
- 6.22 The historic path follows the ridge of Thong Moor in an almost straight line from Netherthong to the summit of Wolfstones, a very popular local beauty spot. Modern routes tend to use the valleys but the more ancient paths used the drier ridges with clear visibility. This is one such path and any diversion from its historic route would violate its historical integrity.
- 6.23 Most users carry straight on across Wolfstones Road to the summit of Wolfstones. The diversion would take users a considerable distance out of their way and force them to walk along the potentially hazardous, busy road. If approved the diversion would benefit one person but considerably disadvantage hundreds of users and expose them to unnecessary risk.

Mrs Smith

- 6.24 I have lived in the area for over 40 years and until the current pandemic have been a regular user of the footpath as a walker and of Wolfstones Road as a driver. Walkers heading to the Wolfstones Summit (the Trig Point) have good visibility of traffic on Wolfstones Road and only have to cross it; using the diversion they would be forced to walk along the road which does not have footways. The footpath is popular with families, and children would be at particular risk on this stretch of road. The road is busy and well-used by commuters heading to/from Huddersfield.
- 6.25 Moreover, the diversion is totally unnecessary; the house wall alongside the path has no windows or other openings so the occupants privacy is not an issue. Users of the original footpath occasionally meet vehicles on it, but visibility is perfect and walkers can easily stand aside for a few moments without inconvenience.

Mr Greenwood

- 6.26 The diversion of the footpath appears to serve no purpose for the general public but does appear to add additional risks to most of the route affected, by requiring users to walk along Wolfstones Road for a considerable distance where it does not have a footway, is already narrow and approaches a blind bend/summit. This would be particularly dangerous for families with children.
- 6.27 The existing footpath provides one of the few routes in the area which does not involve walking along a road. When my children were younger we used it frequently for that reason. The diversion route is a lovely path in its own right (although its attractive views are much the same as can be seen elsewhere along footpath 60); it simply starts and ends in the wrong place. However, if both routes were to be retained this would be a

benefit to the public.

Holmfirth Harriers Athletic Club

- 6.28 Our members have used this footpath hundreds of times over the last 50+ years, both as individuals and as part of organised group summer training runs. These usually operate in the evenings (6pm – 7pm start) twice a week from the end of March to mid-September.
- 6.29 The proposal diverts the footpath away from its original alignment, destroying the line of the route which has been in existence for hundreds of years, and will force many users to walk or run along Wolfstones Road. They would be walking/running with their back to the traffic to a blind corner in an unrestricted speed limit zone. This is clearly not acceptable. The current proposal does not even include an improvement to the verge on this section of road. There would be significant disbenefit to members of the public, yet there is only private benefit to be gained through enabling the planning permission works to be fully implemented.
- 6.30 Furthermore, the development has been substantially completed in any case and consequently the Order should be rejected.

Peak and Northern Footpaths Society

- 6.31 The Peak and Northern Footpaths Society is a registered charity working for walkers, with the object of creating, preserving and improving open spaces, public access rights and public rights of ways. The Society considers that the disadvantage which would be caused to members of the public justifies not making the Order. However, the Society does not automatically object to footpath diversions; indeed it is supporting several diversions in the local area which it believes would be of benefit to the public interest.
- 6.32 What is now Holmfirth Footpath 60 has a long history of use by residents of local settlements including Netherthong, Wilshaw and Holmfirth. It is likely to have been used for many centuries as a clear, direct way to common lands avoiding densely wooded areas in the valley. The section of footpath which is the subject of the Order is shown on the Netherthong Enclosure Map of 1826 (photo 1 of CD16.1) confirming the importance of the route at the time. [Inspector's Note: in cross-examination the Society's witness conceded that the reference on this map to "Woodhead" was more likely to be to the landowner than an indication that the path led to Woodhead Road as suggested in his Statement of Case.]
- 6.33 The footpath is shown on successive Ordnance Survey Maps from 1854 onwards and now on the Kirklees Definitive Map. The section to the stopped-up is a landscape and historical feature worth keeping in its own right. It is part of the cultural and social history of the Holme Valley which adds a rich layer to walking in the area; this physical history would be lost should the diversion go ahead. At the Inquiry Mr Leader (for the Society) indicated his view that the current footpath oozes Yorkshire

character with its passage close to traditional buildings and that some features of the diversion route (eg the fencing) are incongruous at 300m elevation in Yorkshire.

- 6.34 Footpath 60 connects directly with land owned by the Holme Valley Land Charity at Wolfstones Height, designated for the benefit of the community and informal recreation, and which includes the Trig Point. The footpath is the only public footpath which connects directly with this land from Netherthong, Holmfirth and the wider valley. It is possible to walk from Holmfirth to the Trig Point entirely on car-free public paths and it is used by locals and visitors as part of several circular walks. 'The Thongs and Wolfstones Heights' safe 2-3 hour circular walk for inexperienced walkers has been downloaded more than 400 times from the Viewranger website.
- 6.35 The proposed diversion would completely break this off-road, safe and direct access in the most inconvenient manner and would ruin the aesthetics of the walk. It would also more than double the walking distance of the around 150m stretch of path to be stopped up, more than 100m of which would involve walking along Wolfstones Road.
- 6.36 It would be dangerous to walk on the west side of Wolfstones Road because there is no verge and visibility is poor due to the bend. Walkers would therefore be forced to walk on the east side of the road with oncoming traffic behind them. Whilst there is a narrow grass verge along this section of road it is at the same level as the road and vehicles can drive over and park on it. In comparison with the safe, traffic-free and convenient route Footpath 60 has provides to/from Wolfstones Heights for centuries, the diversion represents a significant public loss as it is longer, indirect and includes road walking where none currently exists.
- 6.37 The Applicant's survey of usage of the footpath has a number of flaws:
- It ignores those who would have used the original footpath if the diversion had not already been in place;
 - No surveys were carried out in the period April to mid-September, which is the peak rambling/tourist season;
 - No surveys were carried out after 4pm, thus missing any use of the footpath in the lighter evenings.
- 6.38 Furthermore, the Order would be in conflict with the Kirklees Rights of Way Improvement Plan, the Kirklees Walking and Cycling Strategic Framework 2018-2030 and the Holme Valley Parish Council Climate Emergency Action Plan, all of which aim to improve and encourage walking in the area.

Letters of Objection

- 6.39 36 letters of objection to the Order were submitted to the consultation (six of which are from people/organisations who appeared at the Inquiry). The material points are:

- The footpath is one of the most well-used in the area, by individuals, family groups and organised groups of walkers and runners.
- The proposal disregards the custom and practice of generations of users of the footpath. The footpath is an ancient inter-settlement route and, as such, is part of local history. The diversion would make the route less interesting and result in the loss of part of its character. Part of the pleasure of using country footpaths is passing by buildings and through hamlets, which are an important part of the rural landscape and it is common for footpaths to pass close by them.
- The existing alignment of the footpath has been used for centuries and provides direct access to the local landmark of the Wolfstones trig point. The footpath, part of which is an ancient coffin road, is part of an almost straight line route along the ridge from Netherthong to Wolfstones Heights. The diversion would destroy the continuity and spoil the approach to the Heights.
- The diversion would be a detour and an inconvenience; it adds around 200m to the distance required to reach the trig point and involves going downhill and back up again.
- The diversion would be more, not less, dangerous than the existing footpath requiring more time spent on Wolfstones Road, where there isn't a proper footway, to reach the Trig Point at Wolfstones Heights.
- The existing junction of the footpath with Wolfstones Road is at the brow of the hill where visibility is at its best. The road has a 60mph speed limit and this is the safest place to cross the road.
- There is much more danger to pedestrians using Wolfstones Road than having to share the existing footpath alignment with an occasional, slow moving vehicle going to/from the adjacent properties.
- The Applicant knew the footpath existed when he moved to the property. There is no need to stop-up the path. The impact on his privacy is minimal.
- The Applicant's survey probably under reports use of the footpath – none of the survey days were Summer weekends. Nonetheless, the survey demonstrates that a majority of users of the path are heading to the trig point.
- The existing footpath does not encroach on the privacy of the Applicant's house any more than the average highway footway anywhere in the neighbourhood or country.
- The diversion is a lovely path in its own right, but it starts/ends in the wrong place.

- The Order is at variance with the Kirklees Local Plan and draft Home Valley Neighbourhood Plan, both of which seek to promote safer walking and the creation of a pleasant, unspoilt landscape and environment for walking.
- Allowing the stopping-up/diversion of this footpath would set a dangerous precedent to stop-up and divert footpaths across the area.

7. CONCLUSIONS

Bearing in mind the submissions and representations I have reported, I have reached the following conclusions, reference being given in brackets [] to earlier paragraphs where appropriate.

- 7.1 Having regard to the legislation and case law it is common ground that there are two main issues in the determination of a stopping-up/diversion order under s247 of the Town and Country Planning Act: firstly, whether or not the stopping-up is required to enable development to be carried out in accordance with a planning permission (the 'Necessity' test); and secondly, whether any significant disadvantage arising from the stopping-up/diversion are of such significance or seriousness that the order should not be made, having regard to the advantages which would be conferred by the Order and the development it would enable (the 'Merits' Test) [4.1 and 6.2].

The 'Necessity' Test

- 7.2 Planning permission reference 2014/62/92814/W permits at Wolfstones Heights Farm "Formation of new access and stopping-up existing access, diversion of public right of way and related external works." In 2018 (Reference 2018/93302) a non-material amendment to this permission was approved by Kirklees Council. The amendments comprise a new retaining wall and the formation of a raised bed and a flight of external steps as indicated on drawing no. 13072D-200-PO2 (CD1.4.1.5). Permission Reference 2017/62/91374/W also permits at Wolfstones Heights Farm "Demolition of existing garage and stable, erection of garages, garden room and fuel store and associated landscape works (listed building)". In 2018 (Reference 2018/93277) a non-material amendment to this permission was approved by the Council comprising alterations to ground levels and landscaping and the addition of external steps as indicated on drawing no. 13072D-301-PO4 (CD1.4.1.11).
- 7.3 Significant elements of these permissions have already been implemented including the provision of new vehicular access and the diverted footpath which has been in place and available for public use on a permissive basis since 2017. However, the following physical elements of the permissions (as shown on drawing no. 13072D-200-PO2) are yet to be implemented as detailed in CD15.1.2):
- Alterations to levels and the parking area adjacent to the lower garage area

- New retaining walls
- Creation of a further parking area
- Stone steps leading to the lower garage roof terrace
- Additional landscaping
- Removal of existing access drive to create extended lawn and garden area.

7.4 Whether or not these physical elements would all require planning permission in their own right, they are part of the planning permissions detailed above and could not be implemented whilst keeping the footpath open to public use. Consequently, I am satisfied the stopping-up is necessary to enable development to be carried out in accordance with a planning permission.

7.5 The description of development for permission 2014/62/92814/W includes reference to "stopping-up of existing access and diversion of public right of way". Whilst it is not normally appropriate to revisit the merits of a planning permission in considering a s247 order, it is necessary in this case to consider the merits of the stopping-up and diversion element of the permission, to the extent that and given that this is the fundamental effect of the proposed s247 Order now under consideration.

The 'Merits' Test

Full Implementation of the Planning Permissions

7.6 Making the Order would enable full implementation of the planning permissions detailed above and, in particular, provision of the elements listed in paragraph 7.3. The benefits of this would be primarily to the occupants of Wolfstones Heights Farm in the form of a slightly larger garden, some additional parking space and a second, external, access to the lower garage roof terrace. To my mind these benefits would be limited, given that it would only marginally increase the size of the already large garden, that there is already of plenty of space for parking/storing vehicles around the property and that there is already access to the roof terrace. The Applicant also argues that some of the physical works and landscaping would potentially improve the appearance of Wolfstones Heights Farm (CD15.1.2) This would be a public benefit, albeit that in my view it would be a very limited one; the building is already very attractive.

7.7 A number of supporters of the Order argue that stopping-up of the footpath would provide greater privacy and security for the occupants of Wolfstones Heights Farm and at the same time remove the awkwardness some walkers feel in passing close by a residential property [5.3]. However, there is only one, small first floor window directly facing the path and the height of the wall largely prevents users of the footpath from seeing into the garden fronting Wolfstones Road. Whilst not directly

facing the path the east facing elevation windows of Wolfstones Height Farm can be seen from the footpath across a parking/garden area. However, given the distance and angle of view, the impact on the occupants' privacy is, in my view, minimal. The roof terrace of the lower garage is the most prominent feature of the property from the footpath and anyone sitting or standing on this would be clearly seen. However, it can also be seen above the hedge from the diversion path, so full privacy on the roof terrace would not be achieved by the stopping-up in any case. Consequently, the overall effect on the occupants' privacy, and any sense of awkwardness felt by footpath users, would be very small.

- 7.8 It is the case that the west facing elevations of the property are easily accessible from the footpath, although gates would be likely to have a similar effect on security [5.3] as stopping-up and diverting the footpath.

Use of the Footpath

- 7.9 A number of objectors to the Order anecdotally claim that the footpath to be stopped-up is well-used and that the majority of people are heading to the Wolfstones Heights Trig Point [6.39]. However, the only survey of use of the footpath is that undertaken by Paragon Highways and submitted by the Applicant (CD1.4.4 and CD1.5). CD1.5 describes the footpath as "reasonably well used" (paragraph 6.4). The surveys were carried out over eight days between November 2017 and October 2020 and record an average of 24 users per day, varying between 7 and 65 on individual days [see summary in Table 4 of Mr Appleton's proof of evidence (CD15.2.2)].
- 7.10 These figures include a walking group of 38 people recorded on Saturday 21 September 2019, which the Applicant has excluded from his own analysis of the data. However, as there is evidence that walking groups operate in the area and use Footpath 60 [6.21 and 6.28] and given that such a group was present on one out of only eight days surveyed, I consider that it is appropriate and necessary to include the group in any robust analysis of the data. Whilst the witnesses for Holmfirth Walkers Are Welcome and Holmfirth Harriers may not have provided documents to demonstrate that the organisations formally approved the written and verbal evidence given, there is no reason to dispute their statements that groups of walkers and runners use the footpaths in the area.
- 7.11 Moreover, as the surveys were only carried out between 08:00 and 16:00 each day, it is very likely that the total usage per day of the footpath is higher than the survey indicates. Indeed, several witnesses (including ones appearing for the Applicant) indicated that they frequently used the footpath either before 08:00 (particularly for dog walking) or after 16:00 [6.15].
- 7.12 There is no significant challenge to the Applicant's statement that the footpath is a recreational route rather than one used for commuting. Consequently, I concur with the view that usage of it is likely to be highest during the summer months and at weekends/holiday periods [6.37 and 6.39]. However, although the surveys were carried out on

eight days over a period of nearly three years, none were undertaken between April and mid-September. Nonetheless, the days of highest recorded usage are Saturday 21 September 2019 (65 users) and Sunday 25 October 2020 (43 users), the latter nearly twice the next highest recorded usage day being Sunday 17 March 2019 (24 users). In contrast the highest recorded usage on a weekday is 13 on Thursday 30 November 2017 (summation of figures in Table 4, CD15.2.2).

- 7.13 On this basis, and accounting for those using the path before 08:00 or after 16:00, usage on late Spring/Summer weekends is likely to be significantly higher than the average daily figures indicated by the survey. Indeed, in a period of about an hour on my Sunday afternoon (12 September 2021) site visit, I saw 11 people using the path.
- 7.14 The Applicant's analysis of the surveys refers to the proportion (33% or 42% depending on whether the walking group is included) of all people using the permissive path to reach or leave the Trig point who walked there/back via the original footpath [4.14]. However, this is a fairly meaningless figure given that, irrespective of the proposed stopping-up/diversion, there are three easterly approaches to the Trig Point – via the original footpath, via Wolfstones Road coming from the north and via Wolfstones Road coming from the south. Moreover there are other (unsurveyed) routes to the Trig Point from the west using permissive footpaths.
- 7.15 The much more relevant analysis concerns the destination of all users of the existing footpath, because this indicates the proportion of its users who would potentially be inconvenienced by the stopping-up and diversion. The surveys (see summary in Table 4 CD15.2.2) identify the direction users came from/went to before/after joining/leaving the existing footpath at Wolfstones Road. Again, including the walking group of 38 people, this records that:
- 4% (7 people) came from/went to the north (Moor Lane) via Wolfstones Road;
 - 41% (80 people) came from/went to the south (Upperthong) via Wolfstones Road;
 - 55% (109 people) came from/went to the Trig Point land.

Moreover, on the busiest day (Saturday 21 September 2019), the nearest equivalent to a summer weekend day surveyed, 72% of users of the footpath came from/went to the Wolfstones Trig Point.

- 7.16 Although the footpath diversion route had been open for public use on a permissive basis since 2017, usage of it was only recorded on the final two, October 2020, survey days. This is unfortunate. Across these two days an average of 25.5 people were recorded using the diversion footpath against an average of 25.0 people recorded using the original footpath 60 (Table 4, CD15.2.2). Although not recorded in the survey it is logical and likely that, whilst some people might be using the diversion

footpath for journeys to/from the Trig Point or the south, the majority of those using it would be heading to/from the north via Wolfstones Road.

- 7.17 In summary the survey demonstrates that across the Autumn/Winter/early Spring months surveyed, the footpath is reasonably well used and there is the likelihood that usage is significantly higher during the late Spring/Summer months, also bearing in mind likely usage before 08:00 and after 16:00. Across the surveyed months a majority (55%) of users of the original footpath were heading to/from Wolfstones Trig Point, although the 72% figure for Saturday 21 September 2019 (the busiest day surveyed) suggests that the proportion of all users heading to/from the Trig Point is likely to be higher than the 55% average on Summer weekends. With the choice of both the original and diversion footpaths the limited evidence of only two of the eight days of surveys indicates that almost identical numbers of people chose to use each footpath. Moreover, nearly all (96%) of those using the original path were heading to/from either the Trig Point or south along Wolfstones Road, whilst it is likely that most of those using the diversion path were heading to/from the north via Wolfstones Road.

Convenience

- 7.18 The diversion increases the length of walk between points A and B on the Order plan from around 150m to around 340m. Whilst the additional 190m is not in its own right a very long distance it would add more than 10% to the around 1.5km current distance along Footpath 60 from Netherthong to Wolfstones Road. For those heading to/from the Trig Point or to/from the south via Wolfstones Road, the diversion takes people in the wrong direction and also requires them to go downhill and then back up again. I envisage that the increased distance, the loss and then gain of height and the general sense of heading in the wrong direction ("two sides round the triangle") would, together, be considered by many of these users to be a significant inconvenience in their trip [6.29 and 6.39].
- 7.19 On the other hand, for those heading to/from the north via Wolfstones Road, the diversion route is slightly shorter than the original footpath, does not involve the gaining and loss of height and would be likely to be considered by most to be a little more convenient than the original footpath. The limited evidence of the two days on which use of both the original footpath and the diversion was surveyed suggests that broadly equal numbers of people head to/from the north via Wolfstones Road as head to the south or to the Trig Point.

Safety

- 7.20 For those heading to/from the south via Wolfstones Road the diversion would increase by about 118m the distance required to be walked along the road, whilst for those heading to/from the north it would reduce the road walking distance by the same amount. In terms of wishing to minimise on-road walking there would therefore be both winners and losers. However, given that those heading to/from the north or south will

already be walking along Wolfstones Road at some point in their trip, the net adverse impact, in terms of the amount of road walking, is likely to be at most minimal.

- 7.21 However, notably, for those heading to/from the Trig Point (an average of 55% of those using the section of footpath to be stopped-up and as high as 72% of users on the surveyed September Saturday) the diversion would introduce on-road walking on Wolfstones Road for the first time, albeit that they do currently have to cross this road. In common with many of the rural roads in the area, the section of Wolfstones Road between its junction with the diversion footpath and its junction with the original footpath does not have a footway on either side. However, it does have a relatively narrow grass verge on its east side.
- 7.22 The Paragon Highways survey records an average of 182 vehicles using the relevant section of Wolfstones Road between 08:00 and 16:00 on the surveyed days and the daily average speed of this traffic is between 16.3mph and 21.8mph on the 60mph speed limit road (summary in Table 2 of CD15.2.2). Notwithstanding the limitations of the survey (no traffic volumes or speeds surveyed after 16:00 each day or between April and mid-September) I consider the volume and speed of traffic on the road to be low. Moreover, this is confirmed by my own observations of the traffic on my July and September site visits. Furthermore, the accident data shows that there have been no personal injury accidents on this section of road in the last 21 years (paragraph 2.3.2, CD15.2.2).
- 7.23 Overall, having regard to the volume of traffic, its average speed and the accident history on this section of road, I conclude that the highway safety risk for those forced to walk along Wolfstones Road because of the diversion, whether on the grass verge or the carriageway itself, would be very small.
- 7.24 However, it appears to me that a significant part of the attraction of Footpath 60 is that (aside from having to cross Wolfstones Road) the trip from Netherthong to the Trig Point can be made without walking along a public road. However small the threat from vehicles might be in reality, I envisage that a significant number of people heading to the Trig Point would be likely to consider the diverted route to be decidedly less attractive than the original path because of the requirement to walk (most likely with their backs to the traffic) along a section of 60mph speed limit Wolfstones Road and cross two private access points. I reach this conclusion (i) whether or not the existing grass verge were to be hard-surfaced (ii) notwithstanding the possibility of encountering a vehicle on the original path/lane accessing Wolfstones House Farm and (iii) recognising that these people may well walk along roads without footways elsewhere. This is particularly likely to be the case for people with children; indeed a local resident reported making the trip to the Trig Point along Footpath 60 when his children were young specifically because it did not involve on-road walking [6.27]. Moreover, it seems to me that the walk of around 1.5km from Netherthong to the Trig Point is likely to be one particularly suitable for families with children.

7.25 Whilst drawings have not been provided to demonstrate the point, the Applicant states that there is greater visibility along Wolfstones Road where the diversion meets the road than where the original path does so [4.26]. However, I consider this to be of very minimal benefit given the low volume and speed of the traffic on Wolfstones Road. Moreover, better visibility of approaching traffic is of most benefit to pedestrians seeking to cross a road and in my judgement, because of the bend in the road at this point, pedestrians would be advised (and in reality be likely) to not cross the road at this location. Instead those heading to the Trig Point would be likely to stay on the east side of Wolfstones Road (with their backs to the approaching traffic) and cross the road at the junction of the original path with the road directly opposite the start of the Trig Point permissive path.

Attractiveness of the Path

7.26 I agree with the view of many that the diversion route, with its relatively gently sloping, curving alignment, landscaping, benches and extensive views over and beyond a duck pond is, in itself, attractive. However, I consider that it has a country park character and feel and, thus, also agree with the view that it is not typical of a rural Yorkshire footpath at this altitude [6.33]. Consequently, I recognise that this might mean that some users would not find it attractive. Moreover, the expansive views over the valley from the diversion are in any case not significantly different from the views from parts of Footpath 60 which would not be diverted.

7.27 It has been argued that the alignment and width which is fixed by the Order; the benches could be removed as could the landscaping, or the latter could easily be left to grow to a height at which it would obscure the views over and beyond the duck pond [6.10]. Whilst this is the case it is not a factor which I consider should weigh materially against the Order, bearing in mind that the attractive character of the footpath proposed to be stopped-up (as detailed below) could equally be lost through unsympathetic works or alterations. Consequently, I have assessed the attractiveness of the original and diversion footpath as they both stand now.

7.28 The slope of the original footpath is steeper than that of the diversion; walkers/runners will have an individual preference for either short steep or long gentle slopes, although overall more height has to be gained using the diversion when heading to/from the south or the Trig Point because it diverts down the hill and back up again. Furthermore, the section of footpath to be stopped-up is no steeper than other parts of Footpath 60 on the route from Netherthong. It is stated that the slope can be slippery in wet or icy conditions [5.3], although it seems to me that anyone who has walked uphill across varying terrain for 1.5km from Netherthong is likely to be suitably clothed/equipped to safely deal with a short section of tarmacked, albeit steep, path.

7.29 More generally, whilst of very different character to the diversion, I disagree with the view that the original footpath is unattractive and has a

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- dingey tunnel-like feel [5.3]. The boundary stone walls have an appeal and the glimpses of the side elevations of the historic Wolfstones Heights and Wolfstones Heights Farm buildings add interest. That objectors to the Order have not submitted photographs of this section of path does not mean that it is not attractive.
- 7.30 The history of the footpath as a public right of way has not been definitely determined, and, indeed, there is not any evidence from an historical expert on the matter. Nor have copies of all the historical maps referred to by the Peak and Northern Footpath Society, or substantiating evidence of some other historical contentions it has made, been put before the Inquiry [4.21 and 4.22]. However, the section of path which would be stopped-up is clearly shown on the 1826 enclosure map (photo 1, CD16.1), albeit that the annotation "Woodhead" is probably a reference to a landowner rather than a directional sign. It is not unsurprising that the path was first formally identified as a public right of way in the 1950s [4.21] because that shortly follows the introduction of the requirement for local authorities to define public rights of way.
- 7.31 Whilst it cannot be stated for certain, it seems to me highly likely that people have been using the path, on this particular alignment, to move about the valley for around 200 years or more, irrespective of when formal legal rights of way along it were established. And, whilst some walkers find pleasure in sitting on a bench looking at a duck pond, others equally gain pleasure from knowing (or at least reasonably assuming) that they are using a historic route, passing close to attractive historic buildings. Overall, I conclude that the original and diversion footpaths are of a similar level of attractiveness, albeit for very different reasons.
- 7.32 At 2.4m – 3m wide, the diversion is wider than the 1.2m width of footpath to be stopped-up. However it is contended by some that the section of footpath to be stopped-up is actually 4m wide and a Definitive Map Modification Order has been made by the Council to reflect this [3.4]. If the DMMO is confirmed the diversion would not have a width advantage over the original footpath. If the DMMO is not confirmed and the original path is confirmed as being 1.2m I consider that this does not materially alter the comparative levels of attractiveness of the two paths. Indeed at the Netherthong end of footpath 60, the path is physically very narrow, constrained between garden fences with overhanging vegetation. Yet, to my mind this is still an attractive section of the path overall.
- 7.33 Many of the supporters of the Order are particularly concerned about the loss or closure of the diversion path if the Order were not to be made [5.3]. Some objectors also suggest that retaining both paths would be the ideal solution. However, it is important to note that not making the Order would not, in itself, lead to the loss or closure of the diversion footpath. The diversion has been in place and available for public use on a permissive basis, in addition to the original footpath, since 2017. If the Order were not made, the original footpath could not be stopped-up, but there is no legal reason why the diversion could not also be retained for public use on a permissive basis. That said, I note that the Applicant indicates that he cannot be expected to maintain both paths and that it is
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his intention that the diversion would be closed to public use if the Order were not to be made (something I have assumed in reaching my conclusions).

Access to the Trig Point

- 7.34 It is the case that a permissive footpath, rather than a public right of way, leads from the western end of Footpath 60 to the Wolfstones Trig Point and consequently it is possible that public access to the Trig Point could be prohibited at some point in the future [4.18]. However, the path is owned by the Holme Valley Land Charity and there are currently no specific proposals to prevent public access. Should public access to the Trig Point be prohibited at some point in the future and usage of footpath 60 significantly alter as a result of this, there could at that point be a case to reconsider the merits of the stopping-up/diversion. Again, that a photograph from the Trig Point has not been submitted as part of the evidence to the Inquiry is of no matter; I visited the Trig Point on both of my site visits and it is a very attractive beauty spot with extensive panoramic views and I can appreciate why people would wish to visit it. Moreover, that the path to the Trig Point may be of relatively recent origin does not undermine the probable more historic nature of the footpath proposed to be stopped-up or the fact that the Trig Point is now an attractive place to visit in the locality.

Other Matters

- 7.35 It is the case that KMBC granted planning permission for development clearly involving the stopping-up and diversion of the footpath, that its officers subsequently advised on the design of the scheme and that the officer recommendation was to make a previous order to stop-up/divert the footpath under s257 [4.23]. However, the Council has indicated (CD14.2.1) that the extent of the disadvantages of the proposal only became clear in the objections submitted in respect of the stopping-up/diversion which had not been made in response to consultation on the planning application. Applications for planning permission and for highway stopping-ups/diversions are separate statutory processes and the 'approval' of the latter cannot be a foregone conclusion outcome of approval of the former.
- 7.36 It is also the case that the number of letters submitted in support of the Order are more than double those made in objection to it [4.8]. However, whilst I have had regard to the level of support for the scheme, ultimately my recommendation is based on the merit of the arguments made, not the number of letters making them.
- 7.37 It is the case that the witnesses of both the Peak and Northern Footpath Society and KMBC accepted that, whilst objecting to the scheme and Order proposed, they were not as a matter of fundamental principle opposed to a diversion of footpath 60 [4.19]. However, that some other diversion might in theory be acceptable, does not justify making this Order even if land ownership means that the scheme actually proposed is the only feasible one [4.20].

- 7.38 That it was not out of arrogance or brazenness that the Applicant constructed the diversion path in advance of stopping-up Order being made [4.6] and that he has not closed the legal route in advance of the Order [4.7] weigh neither for nor against making the Order.

Unilateral Undertaking

- 7.39 The Applicant has submitted a copy of an executed Unilateral Undertaking (CD13.22) under which, if the Order were to be made, the Applicant would pay £12,000 to KMBC as a contribution towards works to hard-surface the grass verge of Wolfstones Road between its junctions with the footpath to be stopped-up and the diversion route. For a number of reasons KMBC has indicated that it would not accept and apply the money for the stated purpose (paragraph 1.9 of page 15/19 of CD13.23).
- 7.40 However, I have concluded above that some walkers would be less likely to use footpath 60 if it were diverted whether or not the verge along Wolfstones Road were to be hard-surfaced. Consequently, the undertaking does not alter my recommendation on the Order. Moreover, given that, in my judgement, these works would not materially improve the diversion route, there is also not a case to identify that the works are necessary in the event that the Secretary of State does not accept my recommendation and resolves to make the Order.

The Order Plan

- 7.41 Whilst I have not considered arguments concerning the width of the footpath to the stopped-up, which is a matter for the DMMO, the precise location of it is relevant to this s247 stopping-up order. The plan submitted with the stopping-up/diversion application and the formal Order plan shows the 1.2m width of footpath to be stopped-up broadly in the centre of the wider lane/drive (CD3.1.2). This is inconsistent with the Applicant's written and verbal evidence that the path is on the northernmost side of the lane/drive (paragraph 22 of CD15.1.2). The Applicant has argued that the discrepancy is simply one of scale (CD13.5), but, nonetheless, submitted during the adjournment in the Inquiry a revised plan (Diversion Plan 13072-200-P11-28Dec21, part of CD13.5v3) which more clearly shows the footpath to be stopped-up on the northern side of the lane/drive. In the interests of accuracy in the event that the Order is made it would be necessary to make it subject to this revised plan.
- 7.42 Whilst public consultation took place on the basis of an incorrect plan, the discrepancy in the alignment is of approximately only 1m or so. Therefore, I think it is highly unlikely that anyone would have misunderstood which section of footpath the Order relates to, or would not have submitted a representation on the Order on the basis of the advertised plan but would wish to do so on the basis of the amended plan. On this basis no prejudice would be likely to result from this course of action.

Overall Balance

- 7.43 I have concluded that there are planning permissions in place, full implementation of which would require the stopping-up of part of Footpath 60. However, consideration must also be given to whether any disadvantages arising from the stopping-up/diversion would justify not making the Order having regard to the overall benefits which would be conferred by it.
- 7.44 The Applicant's survey describes the footpath as "relatively well used" and for the reasons detailed above it is likely that its use in the late Spring/Summer months (not covered by the survey) is significantly higher than during the rest of the year. For those heading to the Trig Point or to the south along Wolfstones Road, the diversion is likely to be considered to be a significant inconvenience, particularly for those just making the 1.5km or so walk between Netherthong and the Trig Point. I envisage that the attractiveness of the diversion path (views of the pond and benches etc) would be unlikely to outweigh this inconvenience for most people, whilst users who value the history of the original alignment of the path and its proximity to vernacular architecture would also have their walking experience significantly reduced in quality.
- 7.45 Whilst the possibility of an accident cannot be completely discounted, I consider that in reality the highway safety risk for walkers using the section of Wolfstones Road necessitated by the diversion would be very small. Nonetheless, I envisage that the possibility of an accident whilst walking along Wolfstones Road, whether or not a footway is provided on the existing grass verge, would be likely to dissuade some people who currently use the path to head to/from the Trig Point (a majority of the surveyed users on the original footpath) from making this trip if the Order were to be made. This is most likely amongst people walking with children currently attracted to the route because its lack of on-road walking.
- 7.46 For those heading to the north along Wolfstones Road, the diversion route is marginally more convenient than the original path and some, but not all, of these walkers will appreciate the diversion's benches and views more than they do the history of the original path. For these people the loss of the diversion path would be a disbenefit, although it is important to note that not making the Order would not directly result in the loss of this path. That would only result from a decision of the Applicant to withdraw public use of the path which has been in place on a permissive basis since 2017.
- 7.47 Whilst there would be winners and losers, I conclude that the stopping-up and diversion would result overall in more disadvantage than advantage to the convenience and enjoyment of users of footpath 60, reducing the likelihood of people using it for their recreation. Moreover, I consider that the resulting harm caused would be significant, to the extent that it is sufficiently great to be worthy of attention in this particular situation.

7.48 Whilst many elements of the relevant planning permissions have already been implemented, making the Order would enable the permissions to be fully implemented. However, aside from the very minor further enhancement of the appearance of Wolfstones House Farm, the benefits which would arise from this are private ones for the occupants of Wolfstones House Farm. Overall the benefits of the development are, in my view, limited in nature, scale and importance. Furthermore, I conclude that the significant disadvantage arising from the stopping-up/diversion, detailed above, would clearly outweigh the benefits which would result from it. On this basis the disadvantage is of such significance (ie not remote or far-fetched and applicable to the gravity of this situation) as to justify not making the Order.

7.49 For this reason I recommend that the Order is not made.

8. **RECOMMENDATION**

8.1 I recommend that the Order is not made.

8.2 However, should the Secretary of State decide to make the Order then I recommend that (i) he makes clear in his decision the lack of the necessity for the verge works on Wolfstones Road (as provided for in the Unilateral Undertaking submitted by the applicant) and (ii) the Order is made on the basis of plan no Diversion Plan 13072-200-P11-28Dec21 (CD13.5v3) showing the footpath to be stopped up on the northernmost side of the lane/drive.

Malcolm Rivett

INSPECTOR

APPENDIX 1 – APPEARANCES***Representing the Applicant:***

Noel Scanlon, Solicitor, instructed by Richard Howard Butterfield, who called:

- Russell Dickson Earnshaw, Chartered Architect
- Eric Appleton, Chartered Civil Engineer
- John Gregory Cropper, Local Builder
- Joanna Cronie, Local Resident and Applicant's Daughter
- Richard Jeremy Paxman, Local Resident
- Susan Thomson Wimpenny, Local Resident

Supporters of the Order:

Helen Waldrom, Local Resident

Objectors to the Order:***Representing Kirklees Council***

Anthony Gill of Counsel, instructed by Sandra Haigh, who called:

- Phil Champion, Definitive Map Officer

Other Objectors to the Order:

David Payne, Holmfirth Walkers Are Welcome

Eva Smith, Local Resident

Roger Greenwood, Local Resident

Malcolm Sizer, Holmfirth Harriers Athletic Club

Andy Leader, Peak and Northern Footpaths Society

APPENDIX 2 – LIST OF INQUIRY DOCUMENTS

<https://programmeofficers.co.uk/Holmfirth/CD25Feb22.pdf>

APPENDIX 3 – CLOSING STATEMENT AND ADDENDUM ON BEHALF OF THE APPLICANT

<https://programmeofficers.co.uk/Holmfirth/CoreDocs/CD13.6.pdf>

<https://programmeofficers.co.uk/Holmfirth/CoreDocs/CD13.19.2.pdf>

APPENDIX 4 – CLOSING SUBMISSIONS OF KIRKLEES MBC

<https://programmeofficers.co.uk/Holmfirth/CoreDocs/CD13.7.pdf>

APPENDIX 5 – FINAL COMMENTS ON RESPECTIVE CLOSING SUBMISSIONS

<https://programmeofficers.co.uk/Holmfirth/CoreDocs/CD13.25.pdf>