

Name of meeting: Planning sub-committee (Huddersfield Area)

Date: 10 February 2022

Title of report: Reporting of Emergency Delegated Decisions - Council positions on acceptability of initial / final drafts of a Unilateral Undertaking for improvements to highway verge at Wolfstones Road, Netherthong. S.106 Town and Country Planning Act 1990.

Purpose of report: **Members are asked to note** two emergency delegated decisions made by Colin Parr, Strategic Director Environment and Climate Change, relating to initial and final drafts of a Unilateral Undertaking relating to the funding of improvements to the verge of part of Wolfstones Road to provide a more suitable surface for pedestrians. This is proposed to be offered in connection with the approved development at Wolfstones Heights Farm, HD9 3UU affecting public footpath Holmfirth 60, and a Draft Order made by the Secretary of State for Transport under s. 247 Town (ref Y&H/4337) which would divert part of Holmfirth 60, including its termination point. The Council formally opposed the making of an Order. A public inquiry has recently been held into the Draft Order. As part of that Inquiry, it has been necessary to state the Council's view and its position on the proposed undertaking on the drafts of the of the Unilateral Undertaking and carrying out the improvements described.

In the absence of sufficient time to bring a report to the sub-committee due to the Inquiry timetable and deadline, delegated decisions to reject both initial and final drafts of the Unilateral Undertaking were made by virtue of delegation under Part 3 Section F Scheme of Delegation to Officers - Chief Executive (d). Such decisions are required to be then reported to the next meeting of the committee that would have ordinarily made the decision.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Not applicable If yes also give date it was registered
The Decision - Is it eligible for call in by Scrutiny?	No – council committee
Date signed off by <u>Director</u> & name	Colin Parr - 01 February 2022
Is it also signed off by the Assistant Director for Finance, IT, and Transactional Services?	James Anderson on behalf of Eamonn Croston 31 January 2022
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Deborah Wilkes on behalf of Julie Muscroft 28 January 2022
Cabinet member portfolio	N/A

Electoral wards affected: Holme Valley South

Ward councillors consulted: Ward councillors have not been consulted as no decision required by the sub-committee. Cllrs. Davies, Firth & Patrick will be advised of this report.

Public or private: Public

1. Summary

- 1.1 The Council is an objector to a draft Order made by the Department for Transport (“DfT”) under section 247 of the Town & Country Planning Act 1990, proposing to change the alignment of part of public footpath Holmfirth 60 to enable development to take place and fully implement planning permission(s).
- 1.2 In January 2020 members of this sub-committee rejected a similar application for a diversion order under **s257** Town and Country Planning Act 1990. The Officer recommendation had been to make the requested Order, on the condition only if the applicant entered into a separate agreement for improvements to the verge on Wolfstones Road between the current and proposed termination points of footpath Holmfirth 60. Members rejected the application, even with this condition.
- 1.3 On 16 September 2020 the Strategic Planning Committee resolved to object to a similar draft Order made by the Secretary of State for Transport under section

247 Town and Country Planning Act 1990. Members should note that the matter was considered by the Strategic Planning Committee rather than the Huddersfield Area Planning sub-committee as the sub-committee was not scheduled to sit before the end of the DfT's draft Order consultation period on 29 September 2020. The decision to take the matter to Strategic committee was made in consultation with the sub-committee chair.

- 1.4 A virtual Public Inquiry into the draft Order opened in August 2021, with the Council as a statutory objector. The Inquiry overran the estimated number of days and was adjourned until 28 January 2022. During the Public Inquiry the agent for the applicant proposed the submission of a Unilateral Undertaking under s106 Town and Country Planning Act 1990 to fund 'improvements' - to be carried out by the Council as the local highway authority – to a length of verge along Wolfstones Road between the current and proposed termination points of the public footpath. Wolfstones Road is what can be described as an ordinary 'adopted' public road.
- 1.5 The Council received an initial draft of the Unilateral Undertaking in early December 2021. This initial draft and supporting documents are included at Appendix A.
- 1.6 An urgent decision was required on the acceptability of the Unilateral Undertaking as drafted. The Inspector had requested closing statements to the Public Inquiry be submitted in writing no later than 31 December 2021. As there was insufficient time to seek a decision from this sub-committee before a decision was required, an emergency delegated decision was made on 15 December by Colin Parr, Strategic Director – Environment and Climate Change. The decision was made under Part 3 Section F Scheme of Delegation to Officers - Chief Executive (d).
- 1.7 The decision, made in consultation with Cllr Lyons as Chair of this sub-committee, was to reject the proposed Unilateral Undertaking, as then drafted. A copy of this decision is included at Appendix B and contains detailed reasons for that decision. Inter alia, these reasons included the omission of vital information – i.e., technical details, deficiencies in the proposed wording; and furthermore, that any endorsement of the proposed changes to the verge of Wolfstones Road, and a commitment to implement the proposed works would be directly at odds with the position previously taken by members of the Huddersfield Area Planning Sub-

Committee in January 2020. The applicant's representative was advised of this decision.

- 1.8 The Inspector indicated that should the applicant wish to put a Unilateral Undertaking before the Inquiry, a final draft of this was to be submitted no later than two weeks prior to the resumed Inquiry i.e., no later than 14 January 2022. A final draft was received which addressed some but not all of the issues identified in consideration of the initial draft. A figure of £12,000 was proposed to be made available for carrying out of the works, but none of the additional technical information previously identified as being required was supplied. The Final Draft Unilateral Undertaking is included at Appendix C, along with various supporting documents submitted.
- 1.9 A further delegated decision regarding the Council's position on the final draft was required prior to resumption of the public inquiry on 28 January. This was made by Colin Parr on 25 January 2022. The decision was to reject the final draft s106 Unilateral Undertaking to carry out the proposed improvements to the verge of Wolfstones Road. The Council would not accept and apply the monies for the proposed purpose bearing in mind advice from officers. The decision is included at an Appendix D. The reasons for the decision are included.
- 1.10 The Inspector has instructed that an executed version of the undertaking must be submitted to the Programme Officer no later than 2 weeks after the close of the resumed Inquiry, i.e., 11 February 2022. The applicant's agent has indicated that this will be submitted. Notwithstanding the Council's position regarding the acceptance of this undertaking which would be as per the delegated decision of 25 January. At the time of writing the executed version of the Unilateral Undertaking has not yet been submitted.
- 1.11 **This report is for information only and no decision is required.**

2. Contact Officer

- 2.1 Phil Champion, Definitive Map Officer
Public Rights of Way publicrightsofway@kirklees.gov.uk

3. Background Papers and History of Decisions

- 3.1 Appendices

- 3.1.1 Appendix A – Initial Draft s106 Unilateral Undertaking received 2 December 2021.
- 3.1.2 Appendix B - Emergency Delegated Decision made 15 December 2021.
- 3.1.3 Appendix C – Final Draft – s106 Unilateral Undertaking received 14 January 2022.
- 3.1.4 Appendix D - Emergency Delegated Decision made 25 January 2022.

3.2 Previous Decisions

- 3.2.1 30 January 2020. Huddersfield Area Planning Sub Committee. Resolution to refuse to make the requested s257 diversion order.
- 3.2.2 16 September 2020. Strategic Planning Committee. Resolved that the Council object to the Town & Country Planning Act 1990 section 247 draft order and oppose the public footpath proposal in the Secretary of State's determination.

4. **Service Director Responsible**

- 4.1 Wendy Blakeley, Service Director (Interim), Highways and Streetscene.