



Ms. Zoe McPhail, Casework Officer
Rights of Way and Common Land Decision Service PINS/DEFRA

By email only: zoe.mcphail@planninginspectorate.gov.uk

23rd July 2025

Dear Ms. McPhail

Kirklees Council (Holmfirth 60 – Wolfstones Road to Brown Hill, Netherthong) Definitive Map Modification Order 2021 ('DMMO') - Public Local Inquiry 14th July to 18th July 2025 (Inquiry Ref: ROW/3321757)

We would be grateful if you would please bring this letter to the attention of the Secretary of State Inspector, Ms. Heward, as soon as possible. Of course, the Inquiry has closed, but some items in the Closing on behalf of the Order Making Authority ('OMA') have necessitated brief comment, as it is submitted that the Closing for the OMA contains factual inaccuracies.

In chronological order as they appear in the Closing for the OMA, these are as follows.

1. West Riding/Ripponden Memos

1.1 At the start of paragraph 27 of the Closing of the OMA it is stated: *"Mr Scanlon suggests that the memo may make the Council liable for inaccurate reporting of PROWs. It is unclear on what basis the alleged liability would arise."*

1.2 Whilst the rest of the said paragraph 27 opines that the point is academic (with which we do not agree but that is of course the OMA's opinion for the purposes of its Closing), it is respectfully clear on what basis alleged liability would arise. Paragraphs 92 to 98 (particularly paragraphs 93 and 94) of the Statement of Case of Mr. Scanlon of NSCL assists the Inspector in this respect.

2. Evidence of Mr. Champion

2.1 It is noted at paragraph 49 of Ms. Bell's Closing on behalf of the OMA, it is stated: *"Six users gave evidence; Mr Champion also gave evidence of use (so really seven users gave evidence)."*

2.2 The bracketed reference to *"so really..."* may, it is accepted, be intended to bring this statement into the ambit of opinion, rather than being a statement of fact. Where it is the case that it is promoted as fact, this would be incorrect. This is because nothing in the OMA's Statement of Case, Mr. Champion's Proof of Evidence (particularly his introductory paragraphs) nor from revisiting our notes, points to any aspect of his examination at the Inquiry suggesting that Mr. Champion's evidence is 'user' evidence.

2.3 At no time before Closing has it been represented that Mr. Champion was providing user evidence. Mr. Champion has clearly stated in writing and verbally under examination that his attendance was on behalf of the Council as *expert witness* only. We did not bring this to the attention of the Inspector at Closing, as we wished to wait and directly check Mr. Champion's submitted SoC, PoE and our notes of his live examination at the Inquiry.

2.4 Were it to be the case that Mr. Champion's evidence was 'user' evidence, then for example, it would mean that Mr. Scanlon's evidence would equally also have to be considered 'user' evidence. Paragraphs 68 to 73 of the Closing Statement for the Landowners/Objectors assists the Inspector in our view.

3. Cross-Examination ('XX') of Mr. Scanlon

3.1 Later in the same paragraph 49 of her Closing on behalf of the OMA, Ms. Bell states:

"The fourteen user evidence forms are all signed with a statement of truth. The key evidence for the objectors, the only evidence to provide any photographs whatsoever was not supported by a statement of truth (Mr Cropper's proof). Whatever the reasons for this, this places his

evidence at the lowest end of the hierarchy. There is no need for detailed exploration of procedural rules (and no submissions are made on that basis) since it is an accepted point (NS XX) that his evidence is at the lowest point in the evidential hierarchy being neither sworn or affirmed or the subject of XX."

3.2 This statement is inaccurate. This is, it can be said with certainty, not a reflection of what Mr. Scanlon allegedly accepted in XX and, whether intended or not (we would obviously hope not and suspect this to be the case), is not representative of the facts.

3.3 The SoS-Inspector will no doubt recall that Mr. Scanlon categorically did not accept in XX that a 'statement of truth' or similar was required and that in these circumstances. Mr. Cropper's evidence did not represent the "lowest point" of the evidential hierarchy here (and has explained why at paragraphs 29 onwards of the Landowner/Objector Closing) and Mr. Scanlon did not accept this, notwithstanding Ms. Bell's XX of him.

3.4 The SoS-Inspector will recall that an exchange took place during XX of Mr. Scanlon, whereby he in no uncertain terms disagreed with the assertion that a statement of truth or similar was a "requirement" as put to him by Ms. Bell. The SoS-Inspector will also recall that Mr. Scanlon explained in headline terms why he disagreed and specifically identified that this is not a requirement because it is 'not that type of public inquiry', was not for example a national statutory public inquiry or formal court setting (Mr. Scanlon clearly used these words).

3.5 The SoS-Inspector will further recall Mr. Scanlon being pushed in XX on this point but continued to reinforce his disagreement with Ms. Bell. Mr. Scanlon only accepted in the headlines of generality that this would usually be the case were it a formal statutory public inquiry or formal court setting but was clear that this did not apply here. This is in contrast to how this is presented in Closing for the OMA at paragraph 49. Ms. Bell attempted to push Mr. Scanlon further in XX stating that it was again a "requirement" with which Mr. Scanlon reinforced his disagreement and offered explanation before Ms. Bell concluded her XX stating to Mr. Scanlon: "I think that you are wrong". Ms. Bell finally offered to the Inspector at this point of her XX of Mr. Scanlon to make a legal submission in this respect in her Closing for the OMA.

3.6 Ms. Bell's subsequent comment in Closing for the OMA was that there "*...is no need for detailed exploration of the procedural rules...*" (i.e. the Rights of Way (Hearings and Inquiries) Procedure Rules 2007) cannot logically follow from the facts and we believe is disingenuous or at best mistaken. Clearly reference to the relevant Rules was and is required, as Ms. Bell had alleged that Mr. Scanlon in XX was wrong. It is noted that despite the undertaking by Ms. Bell on behalf of the OMA to place legal submissions in Closing on this point, these have not materialised in Closing for the OMA.

3.7 This in our view and submission is an attempt to avoid acknowledgement that the premise of this specific part of Ms. Bell's XX of Mr. Scanlon was wrong for this forum, insofar as it was based on incorrect knowledge. Indeed, it is noted that Ms. Bell's Closing for the OMA does not disagree with Mr. Scanlon's factual legal points with reference to the Rules. This is unsurprising as they are unarguable here.

3.8 Paragraphs 29 to 50 of the Closing for the Landowner/Objector at various points explains with legal detail why Ms. Bell's assertion was incorrect during XX and why this aspect of her XX of Mr. Scanlon should in our submission be disregarded. This is particularly pertinent as the OMA appears to have effectively looked to discredit or further dilute the evidence of Mr. Cropper who was not able to attend the Inquiry having sadly died, based on a completely incorrect assertion of what Mr. Scanlon agreed to in XX.

3.9 The facts as stated by Ms. Bell in paragraph 49 of Closing on behalf of the OMA are respectfully incorrect. It is maintained that this aspect of XX of Mr. Scanlon should be disregarded entirely. Obviously, this is a matter for the SoS-Inspector, but we would submit in the circumstances that paragraph 49 in the Closing on behalf of the OMA be disregarded, given the factual inaccuracies stated throughout it.

4. Slough Borough Council v Secretary of State for Environment Food And Rural Affairs [2018] EWHC 1963 (Admin) ("Slough")

4.1 There has now been an opportunity to consider this following closing of the Inquiry. *Slough* is purportedly provided by the OMA in response to the point made in Closing for the Landowner/Objector that common land dedication is limited to items supplied by the Applicant (it being a fact that there was no input from the Applicant immediately beyond submission) and that it is not possible to transfer a *claimant's* burden of proof to a Council in

respect of common land dedication. A claimant applicant cannot expect the Council to do its job for it in this respect.

4.2 Following consideration of *Slough*, by Ms. Bell's own admission in Closing (verbally and beyond the written statement) for the OMA Slough does not offer any specific assistance on the point of law duly raised. Beyond nothing more than a reminder of the principles behind common law dedication (principles that all parties are familiar with in any event, particularly the SoS-Inspector), *Slough* is of no assistance whatsoever to the Inquiry. Its inclusion is inconsequential and irrelevant.

4.3 We refer the SoS-Inspector to paragraph 141 onwards of Mr. Scanlon's Closing for the Landowner/Objector.

The SoS-Inspector will obviously do with this information what they will. Nevertheless, following Closings it is important to bring this to the SoS-Inspector's attention. This is because in the parts covered above, opinion contained within the OMS's Closing seems to be referenced as fact. In addition, or in the alternative, fact appears to be based on inaccurate assertion, which did not follow from Inquiry examination in these identified parts.

Yours sincerely

[REDACTED]

Noel Scanlon

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