

Your Ref: [REDACTED]/057300
Our Ref: [REDACTED]



CONTRACTING

Carlisle Street East, Sheffield S4 8DT

t. 0114 221 3795

f. 0114 221 3805

e. info@mhhcontracting.co.uk

www.mhhcontracting.co.uk

By post and by email



FAO [REDACTED]
Rotherham Metropolitan Borough Council
Finance & Customer Services Directorate
Legal Services
Riverside House
Main Street
Rotherham
S60 1AE

13 March 2017

Without Prejudice save as to costs

Dear [REDACTED]

Land off Droppingwell Road, Thorpe Hesley, Rotherham to Access the site known as Watson's Tip (the "Site")

I refer to the above matter and write further to our on-going correspondence and communications.

I acknowledge formally that you believe that there is a good opportunity for Rotherham MBC to resolve as many issues as possible regarding the Site. The present licence runs to 31 March 2017 and I can confirm that my instructions are, without prejudice to the issues and remedies set out in our previous correspondence, to consider this further with you.

Addressing the issues raised in your letter of 11 January 2017 in turn, I would respond, where it is necessary to do so, as follows, utilising the same headings used in your letter:

1. Access

It is MHH Contracting Limited's ("MHH") position that Rotherham MBC did commit a legally actionable wrong in its actions of 10 – 11 October 2016. MHH are though willing to withhold from taking steps to protect its position by way of court proceedings whilst the proposed settlement options are considered. That being said, I would also remind you that MHH's claims for damages have yet to be resolved. These were suffered as a direct result of the Rotherham MBC's interference with the right to use the Accessway and were set out in the letter of 20 October 2016. In the event that we do look towards a settlement of the issues, I will provide you with a Schedule of Damages so that it can be considered whether these can be agreed.

2. Fact Sheet

Mr Wilson was advised in the meeting of 11 August 2016 that details of the proposed operation were not available at that time, hence why it was agreed that the Fact Sheet would be drafted at a later date. To suggest that this did not give Mr Wilson any reassurance on these matters is somewhat trite given that I made several attempts to obtain a first draft of the Fact Sheet from your colleagues. This is well documented already in our correspondence.

3. Public Meeting of 8 December 2016

MHH's position as regards the actions of Rotherham MBC have been set out in detail in my letter of 9 January 2017. It is not intended that we should add to that at this juncture.

4. Proposed settlement options

Whilst we do not consider it strictly necessary for MHH's right of way to be recorded on the title register of the land in question, as we have clearly demonstrated that a right of way does exist, MHH are willing to consider regularising the position on the title. It is noted that you state that in exchange for providing MHH with the assurances that would be given by the right of way being recorded on the title register, Rotherham MBC would require what you describe as "some reciprocal concessions". Given that it is not considered strictly necessary for the title to be regularised, you will appreciate that the need and scope of any reciprocal concessions on the part of MHH may well be somewhat limited. That being said, the concerns expressed by local residents and businesses at the Public Meeting are acknowledged, as is the need for Rotherham MBC to be seen by the local residents and business to have acted in their best interests and to have achieved some form of concessions, which may go some way to alleviating the concerns (to be clear it is not accepted that those concerns are genuine and/or reasonable) that have been expressed.

In spite of the fact that it is not considered strictly necessary to regularise the position, my instructions are that MHH is willing to explore with you whether it will be possible to agree to certain concessions in return for having the right of way regularised on the title (or in fact acknowledged by making certain changes to the actual right itself as referred to further below).

I note that you refer to three specific concessions in your above letter. These are:

- a. MHH giving up the right to vehicular access to the Site from Upper Wortley Road;
- b. Agreeing prescribed hours of access to the Site (7.00 am to 6.30 pm Monday to Friday/7.00 am to 4.30 pm Saturday); and,
- c. Limits on the volume of traffic during the above hours.

Whilst it may not be the most appropriate forum to seek to discuss such concessions, I can say that my instructions are that MHH is not willing to consider any concessions that restrict the possible access to the Site from other rights of way or that impact upon the limits set by the permit that has been granted. However, it may well be that there is some scope to

consider matters such as hours of operation, speed limits for vehicles accessing the Site and implementing a system for idling vehicles.

The possibility of re-routing the Accessway to put greater distance between the Accessway and Millmoor Juniors Football club is noted. Obviously, this would raise a number of other issues which would need to be considered.

My suggestion, in order to determine if a suitable agreement can be reached, would be for the appropriate representatives of Rotherham MBC and MHH to meet to discuss the issues on a without prejudice basis. If this is something that is of interest to you, I would ask that you let me have details of your dates of availability (say three days/times in the next week or so) so that we could look to agree a mutually convenient date and time to meet.

5. Ruts from Tyres on Rotherham MBC's land

I will investigate this issue further and would suggest that this matter can be considered as and when the proposed meeting takes place.

I look forward to hearing from you. Given the fact that the licence will expire at the end of the month and we now require some finality, I look forward to hearing from you in respect of the proposed meeting by 4.00 pm on 16 March 2017.

Yours sincerely,

MHH Contracting Limited
In house Solicitor

mhhcontracting.co.uk