

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



Urgent

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

9 January 2017

Dear Sirs,

Alleged Trespass on Rotherham Metropolitan Borough Council (the "Council") owned Land off Droppingwell Road, Thorpe Hesley, Rotherham to Access the site known as Watson's Tip (the "Site")

We refer to the above matter and write further to the writer's email to your [REDACTED] dated 30 November 2016. As at today's date, there has been no response that email.

What is clear is that, yet again, the Council and/or its employees have acted in what can only be described as an extremely unsatisfactory manner and we have cause to write to the Council again to set out our concerns. We also write in an attempt to resolve the on-going dispute as regards the use of the Accessway without the need for court proceedings to be issued.

The meeting of 11 August 2016, your failure to address our concerns of the events following that meeting and the comments made by Mr Wilson at the public meeting held on 8 December 2016

In our letter to you of 20 October 2016, which you have still yet to substantively reply to, we set out in detail our concerns as regards the actions of Mr Damien Wilson. In particular, we recorded that:

1. The writer and [REDACTED] met with Mr Wilson on 11 August 2016 at the Council's offices at Riverside House ("the Meeting"). Also in attendance at the Meeting was the Council's [REDACTED] and [REDACTED] of the Environment Agency (the "EA").
2. Prior to the Meeting, an agenda was circulated by the Council's [REDACTED]. That agenda stated that the purpose of the Meeting was "to discuss the proposals for the site, any mitigation proposed which would minimise complaints and how best to provide factual information to the public about the site." At the Meeting there was a discussion as to how MHH Contracting Limited ("MHH")/Grange Landfill Limited could work together with the

Council and the EA so as to inform local residents and businesses about how the landfill site off Droppingwell Road ("the Site") was going to operate when it reopens early next year.

3. It was agreed at the Meeting that the Council, the EA and Grange Landfill Limited would work together to produce a fact sheet of information (the "Fact Sheet") that could be distributed to local residents and business to inform them of, amongst other things, how the Site would operate, what hours it would operate and how many vehicles would be accessing the access road from Droppingwell Road to the Site (the "Accessway"). It was agreed that the first draft of the Fact Sheet would be produced by the Council and that this would then be completed by MHH/Grange Landfill Limited prior to circulation by the Council to all stakeholders.
4. Further, at the Meeting, there was a discussion, instigated by Mr Wilson, as to how to avoid a situation whereby lorries attending Site would be backed up along the Accessway. Mr Wilson commented during those discussions that there was nothing that the Council could do to prevent such a situation from occurring but he was reassured that measures would be put in place to prevent this.
5. On 15 August 2016, the writer telephoned the Council's [REDACTED] to enquire as to when the first draft of the Fact Sheet could be expected. The writer was informed that [REDACTED] was to work on the Fact Sheet that week and then provide a first draft the following week when Mr Wilson had been able to consider the draft. At that stage, [REDACTED] explained that she had not been able to discuss the contents of the Fact Sheet further with Mr Wilson following the Meeting.
6. On 15 September 2016, the writer again called [REDACTED] to ask whether the Council were now in a position to provide a first draft of the Fact Sheet. [REDACTED] advised that there had been a delay in producing the Fact Sheet as the EA were reluctant to be involved in the production of the same. However, the Fact Sheet was still to be produced and the writer advised that he looked forward to receiving the same.
7. Following the conversation on 15 September 2016, the BBC aired a programme on 19 September 2016 which featured the Site. Prior to the airing of that programme, a director of Grange Landfill Limited had been approached by the BBC production team for his comments on the issues to be raised in the programme. It was then represented to the BBC, and (partly) reported in the programme itself, that Grange Landfill Limited had recently met with representatives of the Council and agreed to work together with the Council to produce a fact sheet for local residents giving them accurate and detailed information about the operations that would take place at the Site. The BBC were advised that "we are presently waiting for the Council to provide a first draft of this consultation document".
8. On 7 October 2016, having heard nothing further from the Council in relation to the Fact Sheet, the writer emailed [REDACTED] copied to Mr Wilson. That email asked if [REDACTED] could update the writer on where the Council were at with the fact sheet that was agreed to be produce for the local residents and businesses. The email stated that "*We are presuming that it is still intended that a fact sheet is going to be prepared and we look forward to receiving the first draft as soon as possible. We are very conscious that there has been a significant amount of misleading information generated by local media recently and it is hoped that the fact sheet will go some way to giving the local residents and businesses an accurate description of how the landfill will operate when open*"

9. Neither [REDACTED] or Mr Wilson responded to that email despite the writer receiving "read receipt" notifications from both.
10. As you are aware, the only written communication that we have received from the Council following the Meeting was your letter dated 10 October 2016 which alleged that the Accessway passes over Council owned land and that MHH, employees and/or contractors do not have any right of way over that Accessway and that in the event that we do not cease using the Accessway then the Council will consider issuing proceeding for an injunction in order to prohibit any further alleged trespass and claim damages in trespass. Your letter of course was also dated the same day that you changed the lock on the gates on the Accessway (the "Gates") so as to prevent MHH, its employees, agents and contractors from accessing the Site via the Accessway as they had done for in excess of twenty years.
11. As you are also aware a temporary compromise was agreed between Mr Wilson and our [REDACTED] [REDACTED] on 10 October 2016 in the presence of the Police Officer that was in attendance. It was agreed that the Gates would be locked at 6.00 pm and re-opened at 7.00 am for the next few days to allow the contractors and employees that were on Site to leave the Site and to access to the Site along the Accessway. As you were aware from the writer's email dated 7 October 2016 and from Mr Wilson's discussions with [REDACTED] it was necessary to gain access to the Site at this time as drilling contractors were required to carry out borehole testing on the Site so that an environmental monitoring infrastructure could be installed as required by the terms of the permit issued by the EA.
12. It was therefore somewhat of a surprise to us to note from your letter of 10 October 2016 that the Council were not prepared to allow access to the Site over the Accessway on the afternoon of 10 October 2016 or on 11 October 2016 as agreed with Mr Wilson. As a result, it was necessary to install a manned guard on Site overnight on 10 October 2016 in order to ensure that the equipment of the contractor was protected as we were unable to remove the same from Site. It is not clear to us why, within a few hours of a compromise being agreed as regards the use of the Accessway, the Council deemed it appropriate to revoke such an agreement. It was alleged in your letter of 10 October 2016 that this was a reasonable approach to take in the absence of any evidence that MHH had any right of way over the Accessway. However, it was clearly the Council's position, prior to the agreement being reached between Mr Wilson and [REDACTED] that no right of way existed. Therefore, we did not accept that it was reasonable to revoke the temporary compromise that had been reached. It is our opinion that the intention was to cause MHH, its employees, its agents and its sub-contractors as much disruption as possible when the Council were aware that drilling contractors had been engaged to attend Site and that it was necessary for that Contractor to be present on Site for the next two weeks or so. The Council were aware of this fact as a result of the EA issuing a briefing note to all stakeholders on 7 October 2016 telling it that work would commence on 10 October 2016 and this was also referred to in the writer's email to [REDACTED] dated 7 October 2016 as referred to above.
13. We had been led to believe that MHH and Grange Landfill Limited were working together with the Council to produce the Fact Sheet, which would include details of how frequently the Accessway would be used.
14. It appeared to us that the Council had no intention whatsoever (or if it did as at 11 August 2016 that intention subsequently changed) of producing the Fact Sheet in conjunction with MHH, Grange Landfill Limited and the EA and that if that position was correct then we would have at least expected the courtesy of being informed that the Council no longer wished to

produce the joint Fact Sheet and that the Council's revised (it would appear) position was that no right of way exists along the Accessway. Instead, the Council has sought to threaten this company with serious and expensive litigation and to unilaterally prevent egress along the Accessway on 10, 11 and 12 October 2016.

In the email dated 30 November 2016 referred to above, it was recorded that on 4 November 2016, we were advised that papers had been sent to your counsel (on 2 November 2016) and that your counsel's clerk had stated that she would confirm shortly when it was expected that counsel would be able to settle his advice. On 8 November 2016, the writer sent a further email to your [REDACTED] to seek confirmation as to the position. Having heard nothing, the writer sent a further email to [REDACTED] on 11 November 2016. In that email the writer stated that it was not acceptable to us that the matter be allowed to drift towards the end of the then licence period without there being a resolution.

On 11 November 2016 [REDACTED] emailed the writer to advise that he and [REDACTED] had arranged a meeting with Mr Wilson to take place on the afternoon of 14 November 2016 and that following which, [REDACTED] hoped that you "would be able to state a clear approach to get this matter resolved". This did not happen.

On 18 November 2016, having heard nothing from [REDACTED] the writer emailed [REDACTED] to advise that the Council had been in receipt of our letter of 20 October 2016 for some four weeks and that we expected to hear substantively from the Council by 4.00 pm on 21 November 2016. The writer telephoned [REDACTED] on 22 November 2016, having heard nothing and was advised that Mr Wilson, [REDACTED] and [REDACTED] and himself were due to attend a meeting with local councillors on 24 November 2016. The writer was also advised that the matter was not going to be resolved by the end of that week and that a further meeting with ward and area assembly members had been scheduled to take place on 6 December 2016. [REDACTED] advised that the Council had received its counsel's advice and that this had been provided to the councillors.

It was not clear to the writer why the Council could not set out its position prior to the meeting on 6 December 2016 and it was therefore reasonable for us to assume that the Council's position in respect of our letter of 20 October 2016 would be confirmed sometime during the course of that week. As stated in the email of 30 November 2016, it was rather "out of blue" that the writer received a telephone call from [REDACTED] on 29 November 2016 in which she stated that she had been asked by Mr Wilson to invite a representative of MHH to a public meeting to take place on 8 December 2016 at Winterhill School. The writer made enquires of [REDACTED] as to what the proposed meeting was for, who would be in attendance and why we had been invited. However, all that [REDACTED] was able to say was that she had been asked to invite us to the meeting.

The writer spoke with [REDACTED] on 29 November 2016 to seek confirmation as to how the public meeting was to operate. [REDACTED] was unable to provide any confirmation as to what the intention was in respect of the meeting on 8 December 2016 or how this might impact upon the Council being in a position to respond to our letter of 20 October 2016. The writer did suggest to [REDACTED] that it very much sounded like Mr Wilson was inviting us to attend a meeting to allow members of the public to raise questions as regards the re-opening of the Site. The writer reminded [REDACTED] that when he and [REDACTED] had met with Mr Wilson and [REDACTED] on 11 August 2016 it was agreed that the Council, the EA and Grange Landfill Limited would work together to produce the Fact Sheet that could be distributed to local residents and businesses to inform them of how the Site would operate, what hours it would operate and how many vehicles would be accessing the Accessway.

In the email of 30 November 2016, the Council were advised that we were clearly not in a position to be able to fully consider whether it was appropriate or not to accept the invitation that was received from [REDACTED] until:

- a. We were in receipt of the Council's substantive response to our letter of 20 October 2016 and the Council had confirmed that a right of way existed over the Accessway as described in our letter of 20 October 2016;
- b. It had been confirmed in writing:
 - i. What the agenda was for the meeting on 8 December 2016?
 - ii. Who the Council intended to be present at the meeting on 8 December 2016?
 - iii. What role, if any, the Council envisaged would be played by any representative of this company that did attend? and,
 - iv. Why the Council believed it was necessary for a representative of this company to attend?

Further, it was stated in the email of 30 November 2016 that it was recognised that the local residents may not be fully aware of the history of the matter and what was agreed with the Council on 11 August 2016. It was stated that no doubt the Council would not be publicising to the local residents that it was originally agreed that the Fact Sheet would be produced and that the reason why this did not materialise fully fell at the door of the Council.

Despite the writer asking [REDACTED] to reply to the email of 30 November 2016 by 4 pm on 2 December 2016 we heard nothing further from the Council.

However, we are aware that at the meeting on 8 December 2016:

- a. Councillor Ian Jones advised those present that:

"The main problem that we all have as far as the answers go is that, at the minute as you can see, we have not got full contingence. We have got no representative from MHH Contracting and we have also not got anybody from the Environment Agency"

The public were not advised or made aware that MHH had emailed the Council on 30 November 2016 to seek clarification as regards the Public Meeting and that the Council had failed to respond to the same. This was misleading and clearly, members of the public attending the meeting would draw inferences from the fact that there was no formal representative of MHH at the meeting. We expect a full explanation to be provided of why this was the case.

- b. Mr Wilson advised those present that:

"What I can't say to you today is that there is not a single solution to this because we don't know the volumes of traffic, the size of the vehicles etc. None of that information has been provided so it's difficult to respond"

The public were not advised that it had been previously agreed by Mr Wilson that the Council would work together with MHH to produce the Fact Sheet and that had it done so, the information to which Mr Wilson made reference to (as regards volumes of traffic and the size of vehicles attending the Site etc) would have been known to the Council in or around September/October 2016 and that this information would have been available to those attending the meeting. However, Mr Wilson clearly chose not to make this known to those attending the public meeting and this was clearly misleading. We expect a full explanation to be provided of why this was the case.

It was also noted that Mr Wilson made clear to the public at the meeting on 8 December 2016 that the Council has adopted a position that it will do whatever it can to prevent the re-opening of the Site. Mr Wilson stated *"I want to assure you that the Council and elected members will find every move possible to try and prevent this starting again"*. We were not aware that the Council had taken such a policy decision. This has not been communicated to ourselves. Please confirm when the Council took such a decision as it is not clear to us when such a decision was made given the events set out above following the Meeting.

What is clear is that the manner in which the Council's representative has conducted matters following the Meeting and the dealings surrounding the public meeting have been far from satisfactory and it is clear that this should be addressed by the Council. This is not how we would have expected the Council's representative to have conducted matters.

Acceptance of the position of MHH as set out in our letter dated 20 October 2016

As you are aware, the present licence that is in place to allow access to the Site expires on 14 January 2017. We see no reason why the Council is not now in a position to confirm that the Accessway can be used as set out in our letter of 20 October 2016. We note that at the public meeting on 8 December 2016 Mr Wilson made the following admissions:

"And that's the reason we are in the position that we are in today as that permission has been sat on and there has always been a legal permit held by the Company, they just haven't exercised it. And they have now applied to vary that permit in order to start activities on the second part of the site which still has a right/permission dating back to 1958."

"So it's a very difficult position but I want to assure you that the Council and elected members will find every move possible to try and prevent this starting again. We have had to explore the planning options but unfortunately, because there is no new application, no major variation in terms of what they propose to do and no new planning application required which we as a Council could then determine/refuse, or indeed insist on petitions, that's created a real difficulty."

"One of the key areas and main areas that we weren't able to go public about at the time is about access rights, as what you probably do know is that the site is surrounded by Council land. One of the areas that we did explore was to prevent rights of access across our land in order to carry out testing, let alone tipping. Unfortunately, the Council ended up in a legal jam as the contractors, who went on our site without our permission, said that they were exercising the prescribed right of access. So we challenged them and refused them access, and this led to a legal challenge with us being issued from MHH's lawyers to the Council a letter saying that they have evidence that there is a right of access."

"If we look at the title deeds at the Land Registry, there is no such evidence there. However, subsequent evidence was provided by the contractors, which we then verified with our lawyers and barristers to seek advice to ensure we were on solid ground, and the information that came back said that they do seem to have a right of access that dates back in some parts to 1929, with other parts dating back to access granted in the 1990s, from late 80s and 90s, with consequential existing tipping arrangements, allowing them to restate those rights of access at any stage."

"With what information has been provided to that effect, it would appear that we do not have a case. It has not been concluded as of yet, but it is very unlikely we can prevent that right of access as it has been prescribed and there is evidence to suggest that this dates way back to the 1980s and 90s"

In the circumstances, please confirm by 4.00 pm on 11 January 2017 that MHH's position in respect of the use of the Accessway is accepted. We fail to see how the Council can continue to refuse to address this point given the comments made by Mr Wilson on 8 December 2016.

In the event that we do not receive the confirmation requested, we will have little alternative but to consider issuing immediate proceedings at Court for a declaration confirming that a right of way exists for the reasons advanced and, in the alternative, that the finding made by the Planning Inspectorate in 1992 is determinative of the existence of the right to use the Accessway. We shall also seek a declaration to confirm the existence and to define the extent of the right to use the Accessway independently of the findings of fact reached in 1992. Immediate access to the Site is needed beyond 14 January 2017 and therefore it is likely that in those proceedings we will also seek an immediate injunction against the Council to prevent the Council from interfering with the right to use the Accessway for all purposes associated with the use of the Site as has been established as set out in our letter of 20 October 2016.

We would also remind you that our claims for damages have yet to be resolved. These were suffered as a direct result of the Council's interference with the right to use the Accessway and were set out in our letter of 20 October 2016. In the event that we receive the confirmation requested we will provide you with a Schedule of Damages so that it can be considered whether these can be agreed.

We look forward to hearing from you. In the meantime, all the rights and remedies of MHH and its agents are fully reserved and we fully reserve the right to refer this correspondence to the Court should it be necessary to do so.

Yours faithfully,

MHH Contracting Limited

MHH Contracting Limited

In house Solicitor

mhhcontracting.co.uk