

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS COMMITTEE SUB- COMMITTEE

Minutes of the meeting held on 3 August 2010 at Little Ouseburn Village Hall, Little Ouseburn, York.

PRESENT:-

County Councillors John Blackburn, Andrew Goss (as Substitute for County Councillor Bill Hoult), Ron Haigh, Robert Heseltine and Cliff Trotter.

Apologies were received from County Councillor Bill Hoult.

Eight members of the public were present.

1. APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN

Members discussed the appointment of Chairman and Vice-Chairman of the Sub-Committee and suggested that this should be undertaken on a rotation basis, with the Chairman and Vice-Chairman appointed at the beginning of each meeting.

RESOLVED –

That for the purposes of this meeting County Councillor John Blackburn be appointed Chairman and County Councillor Ron Haigh be appointed Vice-Chairman.

COUNTY COUNCILLOR JOHN BLACKBURN IN THE CHAIR

COPIES OF ALL DOCUMENTS CONSIDERED ARE IN THE MINUTE BOOK

2. PUBLIC QUESTIONS OR STATEMENTS

The Assistant Chief Executive (Legal and Democratic Services) reported that other than those persons who had indicated that they wished to speak on particular applications, and would do so at the time of the consideration of that application, there were no questions or statements from members of the public.

3. APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AT SKEWKIRK BRIDGE, KIRK HAMMERTON

CONSIDERED –

The report of the Assistant Director of Economic and Rural Services advising Members of the investigation of the evidence relating to the application from the British Horse Society for a Definitive Map Modification Order (DMMO) to add a bridleway to the Definitive Map and statement at the site of the former Skewkirk Bridge within the Parishes of Kirk Hammerton and Tockwith. The report requested Members to authorise

the making of a Definitive Map Modification Order, which if confirmed, would record a public bridleway on the Definitive Map and Statement.

Penny Noake, the County Council's Definitive Map Team Leader presented the report to Members. Sue Ruffitt an external public rights of way consultant, had produced a report to assist the Council in deciding whether or not Bridleway rights were reasonably alleged to exist. A copy of that report was appended to the documents and Ms Ruffitt was in attendance at the meeting to discuss any issues that arose.

Ms Noake explained the Committee's responsibilities in deciding whether to make an order and also the legal issues in respect of the application outlining Sections 53 of the Wildlife and Countryside Act 1981 and 31 of the Highways Act 1980.

Ms Noake provided a detailed summary of the background to the application highlighting the following issues:-

- The application was long standing and complicated.
- The bridge had been demolished in 1969 following approval from West Riding County Council.
- It had been removed, as it had been deemed to be unsafe.
- The route was not recorded on the Definitive Map.
- The West Ridings Definitive Map was not published until 1972 and was compiled from information collected by the formal processes in the early 1950's.
- There was no suggestion from either of the parishes that there were routes to record.
- In the 1980's a number of court cases were held in accordance with Section 56 of the Highways Act 1980 to determine whether there were public bridleway rights over the Skewkirk Crossing and to discover who was liable to replace the bridge.
- The Court gave consideration to all the evidence and held that the County Council were not liable for the maintenance of the bridge and, as the bridleway over the river had been admitted, no further steps were taken to establish what rights actually existed.
- Two distinct issues had become apparent, whether a public right of way existed over the River Nidd and who had responsibility for the replacement of the bridge.
- She outlined how the purpose of this meeting was to determine whether the public rights of way existed.
- Vast amounts of evidence had been considered dating back from the 18th Century to the present day.
- A consultant was brought in by the County Council to consider that evidence and produce a report. A full copy of the consultant report was provided, together with a summary in the report submitted to the

Committee. Sue Rumfitt, the author of the consultant report, was present at the meeting to answer any questions in relation to that.

- The Definitive Map and Statement were issued in 1972 based on the formal process from 1950 onwards.
- The Definitive Right of Way was not recorded in Kirk Hammerton.
- The Bridleway on the Tockwith side of the river outlined in Plan 2 appended to the report was in conflict to the Definitive Statement.
- The Definitive Statement indicated that the Parish boundary, which was the middle of the river, conflicted with the depiction in the Definitive Map.
- The application was originally made to the middle of the river to meet up with the Bridleway from Kirk Hammerton, however, the British Horse Society were informed that the application should take into account the full width to meet the Bridleway on the Tockwith side of the river and that was what was put forward.
- In terms of the Court cases the vast majority of evidence put to those was made available to Sue Rumfitt to enable her to undertake her independent assessment of the application, however, it was noted that some of the information was withheld. The main concerns coming from the Court cases were whether the Bridleway was considered to be a public highway and who would maintain that. At the time the Courts decided that the County Council was not liable for the maintenance of the bridge and as the County Council admitted that there was a Bridleway over the river the Court took no further steps to establish what rights actually existed.
- In 2008 the British Horse Society submitted an application to the County Council for a DMMO to add a Bridleway to the Definitive Map and Statement. A great deal of historical and complex information was provided in support of that application. At this stage the County Council decided to allow an independent expert to consider the information to determine whether an Order should be made.
- The independent examiner, Sue Rumfitt, separated the evidence in to four time periods:-
 - Evidence prior to the Tockwith Enclosure Award of 1797.
 - Evidence of the Tockwith Enclosure Award.
 - Evidence post the Tockwith Award but prior to 1900.
 - Evidence post 1900.
- The importance of the Tockwith Enclosure Award of 1797 was outlined as this provided detail of a bridge at the Skewkirk Crossing. A sequence of maps from the 18th and 19th Centuries provided details that a bridge was in situ, but did not provide evidence that there was a road leading to the bridge.

- The ordnance survey map of 1893 showed no bridge at the Skewkirk Crssing and the landowner at the time, Mr Shillito, declared that the bridge had been washed away and had been replaced by a ferry for a short time.
- A new bridge had been provided from around 1900, with a toll applied from around 1905. The evidence of toll charges had been produced in support of the private, rather than public nature of the bridge.
- Advice had been provided to the landowner that Skewkirk Bridge should be considered as being in private ownership, however, that conflicted with the understanding of the people.
- The bridge had been closed one day per year by the then landowner around 1900 and it was reasonable to assume that this had been done at the same time as the toll charge.
- The bridge was closed in 1963 without protest, however, this did not relinquish the public rights, if they existed over the bridge.
- The application had generated ten responses, with three of those objecting to the proposals. Details of the representations were summarised within the report.
- The report highlighted the following conclusions:-
 - There was conflicting evidence as to whether or not public rights existed over the route.
 - The conclusions related to the Wildlife and Countryside Act 1981.
 - A highway was reasonably alleged to subsist in Kirk Hammerton Parish over the application route.
 - The highway was probably in existence since 1647, if not before and no other legal event had occurred since then to extinguish the highway.
 - A highway was reasonably alleged to subsist in Tockwith Parish over the application route.
 - The highway had been dedicated since the Tockwith Enclosure Award.
 - The status was reasonably alleged to be that of a Bridleway.
- The recommendation to the Committee therefore was for a Definitive Map Modification Order to be made for the claimed route to be shown on and described in the Definitive Map and Statement as a Bridleway.

A Member sought clarification regarding the description within the report of Mr Shillito being the landowner at the time and this was clarified that the land did not belong to Mr Shillito.

The Chairman invited members of the public to submit their questions/statements on this application, at this stage of the proceedings.

Mrs Karan Main submitted a Statement objecting to the application for a Bridleway at that location. Full details of the statement were circulated to Members in writing.

Mrs Main indicated that Mr Fattorini, the landowner, apologised that he could not attend the meeting, but wished to comment that he did not object to a public footpath being provided at the location stated, but did not support the provision of a Bridleway.

Mr Mark Weston, representing the British Horse Society, provided a statement to the meeting in support of the application.

A Member asked for clarification of what had been stated by the landowner in terms of providing a footpath at the location in question and whether that acknowledged the fact that there was a right of way there. In response it was stated that the landowner accepted that a footbridge could be provided across the river and was willing to accept a right of way on foot, he was not willing, however, to allow a Bridleway to be placed there. It was emphasised, however, that while Mr Fattorini was willing to provide a footbridge over the river he did not recognise that a public footpath existed there. It was suggested that that position was open to discussion between the landowner and the County Council. Officers suggested that it was common place for such a provision to be made without an acceptance of public rights of way either on foot or through a Bridleway. It was clarified, therefore, that the landowner, Mr Fattorini was prepared to allow a foot bridge at the location described, but did not concede that there was a public right of way at that location.

RESOLVED –

That the Committee authorise the Corporate Director, Business and Environmental Services to make a Definitive Map Modification Order for the claimed route, to be shown on and described in the Definitive Map and Statement, as a Bridleway. In the event that formal objections to that Order are made, and are not subsequently withdrawn, to refer the Order to the Secretary of State for determination, and in doing so to exercise powers delegated to him under the County Council's Constitution in deciding whether or not the County Council can support confirmation of the Order.

4. APPLICATION TO ADD A PUBLIC FOOTPATH TO THE DEFINITIVE MAP FROM QUAKER TERRACE TO BLACK BULL YARD AT MASHAM

CONSIDERED –

The report of the Corporate Director, Business and Environmental Services advising Members of an application for a Definitive Map Modification Order to add to the Definitive Map a public footpath from Quaker Terrace to Black Bull Yard, Masham. A location plan was attached to the report and the route referred to was detailed. Members were requested to authorise the Assistant Chief Executive, Legal and Democratic Services to make a Definitive Map Modification Order.

The report set out the Committee's responsibilities in considering the Map Modification Order.

The background to the application was outlined, together with the legal issues under Section 53 of the Wildlife and Countryside Act 1981 and Section 31 of the Highways Act 1980.

Evidence in support of the application was set out as follows:-

- The formal application of 4 April 2006 was supported by evidence of use forms but no historical documentation.
- Between 2003 and 2008, 25 Evidence of Use Forms were completed by local residents and submitted to the County Council relating to the claimed route.
- The route was described as a footpath or walk way forming a through route between Quaker Terrace and Black Bull Yard.
- Six of the forms were disregarded as they had not identified the route and of the 19 remaining forms, use of the route had been described as being unhindered for periods of time ranging from one to 85 years. 14 had stated that they used the route on foot and 5 by bicycle.
- A number of restrictions to the use of the route had taken place in the years 1980, 2005 and 2007.
- Evidence showed that a gate was fitted in 1980 across the claimed route, but it was not clear whether the gates were locked or if these obstructed the route.
- A witness statement indicated that the gates fell into disrepair but did not state when this was.
- If the gate presented an effective challenge to use by the public it would be the preceding 20 years that would need to be examined.
- Four of the 19 appropriate responses had stated that they had used the route unhindered for 20 years prior to 1980.
- It was noted that the evidence stated that the route was temporarily obstructed in 2005 by wooden barriers in the same location as the gates in 1980. These were installed to restrict the public use while building works were taking place at the property.
- Gates were installed in 2007 at the same location as the gates put in place in 1980 and the barriers in 2005.
- There was no historical evidence or documentation in support of the application.

In respect of the representations received in response to the application one letter had been received in support, one letter in objection and two e-mailed objections. The letter of objection had come from a legal representative of the owner of the property at 21 and 21A Black Bull Yard claiming that the route had been obstructed to public use in 1982, 1992 and 2004.

In terms of the evidence provided the following observations were made:-

- Four people had used the route unhindered for a 20 year period prior to the alleged gate obstruction in 1980.

- After 1980 and up to the erection of the gates in 2007 the submitted forms show that 11 people had over 20 years unhindered usage of the claimed route.
- The letter of support did not provide evidence that carried any weight when applying the legal test set out under the Wildlife and Countryside Act 1981.
- In terms of the objections stated by the landowner it was not clear from the documents provided whether the gates were actually installed or not.
- This indicated an intention of the owner to take steps to prevent public use of the route but did not appear that any effective measure was taken until 2007.
- The objectors in both emails raised concerns about the affect a public right of way would have on the private use of the affected yard, however, only evidence pertinent to whether or not public rights existed could be taken into consideration in determining applications for modification orders.

In summary the report offered the following:-

- Evidence suggested that the public had used the route for more than a 20 year period prior to the gates being put in place in 2007.
- Although one of the affected land owners had suggested that gates were put up in 1982 and 1992 this was not reflected by the evidence provided.
- On balance the evidence received by the County Council appeared that a right of way was reasonably alleged to subsist and on that basis an Order should be made.

Commenting on the application Members indicated that there was no evidence to suggest that any gates provided had been locked.

RESOLVED –

That the Committee authorise the Corporate Director, Business and Environmental Services to make a Definitive Map Modification Order for the route concerned to be shown and described in the Definitive Map and Statement as a footpath, and in the event that formal objections to that Order are made, and are not subsequently withdrawn, to refer the Order to the Secretary of State for determination and in doing so to exercise powers delegated to him under the County Council's Constitution in deciding whether or not the County Council can support confirmation of the Order.

SL/ALJ