

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS COMMITTEE SUB- COMMITTEE

Minutes of the meeting held on Friday, 8 October 2010 at Scarborough Christian Fellowship, Scarborough.

PRESENT:-

County Councillors John Blackburn, Ron Haigh, Robert Heseltine, and Bill Hoult.

12 members of the public were present.

5. APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN FOR MEETING

RESOLVED –

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

COUNTY COUNCILLOR RON HAIGH IN THE CHAIR

COPIES OF ALL DOCUMENTS CONSIDERED ARE IN THE MINUTE BOOK

6. MINUTES

RESOLVED –

That the minutes of the meeting held on 3 August 2010, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

7. PUBLIC QUESTIONS OR STATEMENTS

The Assistant Chief Executive (Legal and Democratic Services) reported that, other than those persons who had indicated 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.

8. APPLICATION TO ADD A PUBLIC BRIDLEWAY TO THE DEFINITIVE MAP AT FOLKTON, SCARBOROUGH

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 Right of Way from Folkton, Scarborough to Folkton Wold, near Fordon, Scarborough.

A brief introduction to the application, which was received by the Council in June 2008, was provided, and it was noted that the applicant was Folkton Parish Council.

The Chairman invited those Members of the public who had indicated that they wished to speak to address the Committee accordingly.

Isobel Green, Ann Goldsbrough, John Vinten, Gillian Vinten, Mr Found, C E Moxlow and Leslie Atkinson each spoke in favour of the application, highlighting their usage over a number of years spanning from 10 years use to 60 years use, outlining their walking and horse riding activities that had taken place there. Each stated that they had undertaken unhindered access to the route until recent development had taken place.

Chris Howson, representing the landowner Mr Alan Baker, suggested that there had not always been public access to the route and noted that there was an existing footpath for public use nearby. He suggested that the evidence provided was not substantial enough to warrant the addition to the Definitive Map of a Public Bridleway at the location outlined.

Following the public issues raised, officers provided a detailed summary of the report highlighting the following issues:-

- 22 Evidence of Use forms, giving the evidence of 24 people, that had been submitted with the application.
- The majority described the usage on foot and on horse back, supporting the application for a Bridleway.
- An analysis had been carried out on the evidence of use submitted and detailed were provided in the report.
- On the balance of probabilities, in respect of the evidence provided, it was considered that the right of way was reasonably alleged to exist.
- Comments were provided on the evidence in support of the application and it was noted that, of the forms provided, eight did not provide clear evidence of a public right of way, therefore, 14 forms had been used as evidence.
- Of the 14 forms 8 showed the routes used as a footpath only, 2 as a footpath and a bridleway, and 4 as a footpath, bridleway and by vehicle.
- It was determined that the vehicular usage was not appropriate and therefore would not be put forward for any granted permission.
- The Parish Council submitted a copy of the 1807 Folkton Inclosure Award and a letter from North Yorkshire County Council dated 23 August 1991 as part of their evidence.
- The Folkton Inclosure Award stated that a public bridleway of width 20 feet was to be set out from the Flixton Road running across those lands awarded to Samuel Herbert, Rector of Folkton. This clearly showed the route running south from Flixton Road to the Parish boundary.
- The letter from North Yorkshire County Council suggested that the public

were entitled to use the route despite it not appearing on the Definitive Map.

- In terms of the Inclosure Act it was emphasised that this could not be used to prove that the route existed.

The following issues were raised in respect of the objections to the application received:-

- There had been one objection to the application received from the landowner.
- The Folkton Inclosure Act did not have explicit powers to set out roads of lower status than carriage roads or less width than 30 feet, therefore, whether or not the bridle road set out in the Award was intended to be a Public Right of Way was of no practical importance.
- No adjustment was made in the Finance Act to allow for the presence of a Right of Way. Details of the Finance Act and its relevance to Rights of Way issues were explained.

It was outlined that, despite the lack of historic evidence that could be fully utilised in respect of the application it was still considered that there was sufficient evidence in place to suggest that there had been usage of the route for a period of at least 20 years. It was emphasised, therefore, that this met the necessary criteria of the Wildlife and Countryside Act 1981. It was therefore recommended that the Committee authorise the making of a Definitive Map Modification Order in respect of the route.

Following the outlining of the report Members discussed the application and referred to the following issues:-

- It was asked whether the advice to Members was to disregard the Inclosure Act evidence and the relevance of the issues relating to the Finance Act. In response it was stated that the two issues could not be relied on to prove that the Right of Way was there or not.
- It was noted that some of the verbal evidence had related to school trips, etc and it was suggested that if this was not a right of way then permission would have been required for this to take place.

It was noted that farmers and farm workers had the legal right to use the land for access.

- In terms of user evidence it was noted that only six people had stated that the Right of Way was used by people on horse back and it was suggested that there was only limited evidence to consider this as a Bridleway. In response to the issues raised it was emphasised that no permission had been granted or was required for walking groups accessing the land along that route and in terms of horse back usage it was stated that although there was not a large number of people who had stated their usage, there was evidence to suggest that it had been used for this purpose for over 20 years. It was also emphasised that six out of fourteen was a reasonable proportion.
- In terms of horse usage it was asked whether this could have been the landowners and farm workers who had been seen using this. In response

it was stated that the evidence did not suggest that and that the use was by local people for leisure purposes rather than work.

- It was clarified that there was no evidence to suggest that any permission had to be sought for school trips that had taken place along that route and it was noted that walking groups regularly used the route.
- Members suggested that there was sufficient evidence put forward to reasonably allege that the Public Right of Way and Public Bridleway had existed for a period of more than 20 years. One Member of the Committee considered there was insufficient evidence to warrant the granting of a Public Bridleway for the route, however, other Members suggested that the evidence provided alleged that a bridleway was in place at that location, with sufficient usage to warrant agreeing the recommendation within the report.

RESOLVED –

That the Corporate Director Business and Environmental Services be authorised to make a Definitive Map Modification Order for the route set out in the Application to be shown on the Definitive Map as a Public Bridleway, 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 shall support confirmation of the Order in referring the matter to the Secretary of State.

County Councillor John Blackburn declared a personal and prejudicial interest in the following three items in respect of him being a Member of Scarborough Borough Council. He left the room and took no part in the consideration of, or vote on, the items.

9. APPLICATION TO REGISTER LAND AS TOWN OR VILLAGE GREEN – SUNKEN GARDENS, SCARBOROUGH

CONSIDERED –

The report of the Corporate Director, Business and Environmental Services on an application for the registration of an area of land known as the Sunken Gardens, Scarborough as a Town or Village Green.

Officers provided a brief outline of the report, noting that, following a recommendation from Members, an Inspector had been appointed to hold a non-statutory public inquiry to hear evidence and to make a recommendation to the Registration Authority. The inquiry had been held in Scarborough in March and the Inspector's report was provided in the documentation. Members were asked to note that the Inspector had recommended that the application be refused.

The Chairman invited Members of the public who had indicated they wished to speak on this matter to address the Committee.

Mr Adrian Perry of the Scarborough Civic Society addressed the Committee. He outlined how following a decision by Scarborough Council to sell the land he had objected to that proposal.

Mr Perry gave a brief summary of the issues as he saw them. He stated that the site in question had been visited since 1939, was not a particularly beautiful area, but had a wide spacious area of land. Any development at that location would be detrimental to the streetscape, which was already clogged with cars in the surrounding areas.

He outlined the support he had received from various organisations in the pursuit of registering the land as Town or Village Green. He noted the recommendation following the non-statutory public inquiry, from the Inspector, but considered that the refusal was based on a technicality and suggested that the request for Town or Village Green status for the area of land should still be supported by Councillors.

The Clerk read out a letter from Lord Mandersville, the applicant. He suggested that the original application had been accepted by officers at the County Council, with the exception of the garden being accessible when arts fairs were held and when nearby flat owners disposed of their bagged rubbish. He noted that, at the Inquiry held in March 2010, the factors had been declared as interrupted access over the required period for registration and the Inspector had found these to be totally unfounded with accessibility available. He found it surprising, therefore, that a recommendation of refusal had been the result due to the site not being identified.

He highlighted the issues that were considered at the inquiry and the evidence provided both in the application and at the inquiry. He noted that officers at North Yorkshire County Council had accepted all points as being proven and satisfactory, apart from the two points requiring minor clarification, during the application process. He could not understand why, therefore, the recommendation had been to refuse the application, following the non-statutory public inquiry.

He considered it tragic that, should the recommendation be heeded, Scarborough would lose a most valuable green space within the town centre. He suggested that should the application fail for not being recognisably described then he would have to reconsider re-application.

Officers outlined the report stating that following the recommendation of Members at a previous meeting of the Planning and Regulatory Functions Committee a non-statutory public inquiry had been held, with legal council instructed to carry this out. Details of the outcome of that inquiry were contained within the documents, which suggested that the application should fail because the applicant had failed to prove that users were inhabitants of any proven locality or of a neighbourhood within a locality or localities. On that basis the report recommended that the application be refused.

Members considered that the locality issue was a difficult matter to address for the applicant. It was asked how it could be determined that the area was just used by Members of the public and not predominantly by local people. In response it was stated that it was not felt that this issue had been fully explained in the application which was why the Inspector had come to the decision he had. It was suggested that many of the people using the area were likely to be visitors. It was emphasised that the use of the area by local people had not been proved, which was why the non-statutory public inquiry had not supported the application.

Members considered that the inspector had provided a detailed report, which adequately outlined why the application had been recommended for refusal.

RESOLVED –

That the Application be refused because the Registration Authority was not satisfied, on the balance of probabilities, of the existence of a locality or neighbourhood within a

locality, a significant number of whose inhabitants had indulged in lawful sports and pastimes as of right, upon the Site for a period of 20 years or longer at the date of the application.

10. APPLICATION TO REGISTER LAND AS TOWN OR VILLAGE GREEN – BEECH WALK/EASTWAY PLAY AREA, EASTFIELD, SCARBOROUGH

CONSIDERED –

The report of the Corporate Director, Business and Environmental Services on an application for the registration of an area of land known as Beech Walk/Eastway Play Area in Eastfield Near Scarborough, as a Town or Village Green.

Members were advised that there were no members of the public wishing to speak on the item and that no objections had been received with regard to the proposals, other than an initial holding objection from Scarborough Borough Council which had now been resolved.

There had been 37 letters claiming use of the land regularly by local residents as an area for recreation and leisure. There was no evidence to suggest any of the sports and pastimes exercised were unlawful and no questions had been raised about use having taken place for anything less than the requisite 20 years.

The recommendation, therefore, was to approve the application.

RESOLVED –

That the application by Eastfield Parish Council to register the area of land known as Beech Walk/Eastway Play Area as Town or Village Green, be approved.

11. APPLICATION TO REGISTER LAND AS TOWN OR VILLAGE GREEN – HELREDALE PLAYING FIELD, WHITBY

CONSIDERED –

The report of the Corporate Director, Business and Environmental Services on an application for the registration of an area of land known as the Helredale Playing Field, Whitby as a Town or Village Green.

A brief summary of the report was provided by officers, as there were members of the public wishing to speak on the item. It was noted that the application had previously been submitted to North Yorkshire County Council's Yorkshire Coast and Moors County Area Committee in April 2009 and it had been resolved that an Inspector be appointed to hold a non-statutory public inquiry to hear the evidence and make a recommendation to the Registration Authority. As a result Vivian Chapman QC had been appointed as Inspector and had instructed an inquiry held at Sneaton Castle Conference Centre, Whitby in April 2010. Details of the Inspector's report were provided. The Inspector had recommended that the application be refused on the basis that it failed to meet the relevant "as of right" criteria.

It was noted that following receipt of the Inspector's report the applicant had indicated by email that in the event of refusal an application for judicial review would be made.

The Chairman invited Members of the public who had indicated they wished to speak on this matter to address the Committee.

Viv Wright spoke in favour of the application and against the judgement made by Vivian Chapman QC. She suggested that he had been involved in similar cases, but the evidence that he had given had been contrary and appeared to be ambiguous. She stated that she considered the Inspector had failed to carry out the inquiry properly and had not raised the evidence from Scarborough Borough Council. She noted that the Inspector had only accepted evidence from Whitby Urban District Council and considered the inquiry to have been flawed.

She considered that North Yorkshire County Council, as the Registration Authority, should not be taking the advice provided from the Inspector. She considered that a number of assumptions had been made in relation to the application, which incorporated interpretations and beliefs held by the Inspector rather than the evidence provided having been used effectively.

In relation to the application failing to meet the "as of right" criteria she suggested that this was not the case and that there was strong evidence to show that the land had been used for sports and pastimes and, therefore, the "as of right" criteria had been met in line with the appropriate Act.

She considered that the non-statutory public inquiry should be recommenced, rather than a decision taken on the recommendation provided by the Inspector.

She drew the Committee's attention to an e-mail submitted by Chris Maile of the Campaign for Planning Sanity Group which stated that he would be lodging a complaint in respect of the Inspector's report, to the Law Society. The e-mail suggested that the Inspector was guilty of gross misconduct and the rights of the appellant had been violated by the recommendation provided. He went on to outline why he considered that the Inspector's decision had been flawed and why the application should be reconsidered. He noted that the evidence of the appellant had not been allowed.

The e-mail also accused the Inspector of not telling the truth and of providing oral directions that were contradictory to the legal arguments.

In essence Mr Maile emphasised that he was extremely unhappy with the conduct of the Inspector and suggested that there was a need for the inquiry to be re-opened.

Mr Mark Nicholson addressed the Committee, Mr Nicholson introduced himself as the Chairman of the Helredale Neighbourhood Council and outlined how the piece of land in question was well used. He outlined the groups that were using the area for play, particularly children, and noted that the football pitch was used by three teams.

He described the public inquiry as being farcical and suggested that the Inspector was following his own agenda, rather than considering the evidence. He could not understand why Scarborough Borough Council were not able to submit their evidence in relation to the application. He suggested that the inquiry should have been based on the evidence that had been provided for this to have been fair.

Following the public address officers outlined the report highlighting the result of the conclusions of the non-statutory public inquiry. Details of the Inspector's report were provided with the documentation and it was noted that the Inspector recommended that the application be refused on the basis that the application failed to meet the relevant "as of right" criteria.

A Member referred to the Campaign for Planning Sanity and the e-mail from Chris Maile. He asked whether the applicant's representative had a suitable legal background to be able to represent them and whether it may be more appropriate for the applicant to seek

advice from Counsel in respect of a possible judicial review. In response it was stated that it was clear from the details provided and correspondence from Mr Maile that he had been involved in a number of public inquiries of a similar nature previously.

A Member asked for clarification in respect of “as of right” and “by right”. It was also noted that the report submitted by the Inspector referred to the obiter comments of Lord Walker in relation to the Beresford case and it was wondered what was meant by this. In response it was explained that obiter referred to comments made by Judges on a particular case that could be relevant to another case, then these could be used as a description to outline the matter being discussed. In terms of the Beresford case the obiter outlined a degree of right, which had been used to compare with the application being considered by the Inspector.

A Member asked whether the Committee was allowed to determine whether they considered that the Inspector had not told the truth and, if so, whether consideration of the application should be deferred until that matter could be cleared. In response it was stated that the concerns outlined were for the inspector himself, rather than the Committee. It was noted that Vivian Chapman QC had been appointed as the Inspector for the non-statutory public inquiry as he was highly regarded in this area of law. It was emphasised that there was no reason to believe that he had acted inappropriately in respect of this case.

RESOLVED –

That the Application be refused because the Registration Authority was not satisfied that it meets all the criteria set out in section 15(2) of the Commons Act 2006 for the reasons set out in the Inspector’s report dated 28 July 2010.

SL/ALJ