

## NORTH YORKSHIRE COUNTY COUNCIL

### PLANNING AND REGULATORY FUNCTIONS COMMITTEE SUB- COMMITTEE

Minutes of the meeting held on 25 February 2011 at Long Preston Village Hall, Long Preston.

#### PRESENT:-

County Councillors David Blades (as substitute for Ron Haigh), Robert Heseltine and Cliff Trotter.

Apologies were received from County Councillors John Blackburn, Ron Haigh and Bill Hoult.

7 members of the public were present.

#### **16. APPOINTMENT OF CHAIRMAN AND VICE CHAIRMAN FOR MEETING**

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

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### **COUNTY COUNCILLOR ROBERT HESELTINE IN THE CHAIR**

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### **COPIES OF ALL DOCUMENTS CONSIDERED ARE IN THE MINUTE BOOK**

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#### **17. MINUTES – MEETING HELD ON 26 NOVEMBER 2010**

That the minutes of the meeting held on 26 November 2010, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

#### **18. 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 the application, and would do so at the time of the consideration of that application, there were no questions or statements from members of the public.

#### **19. APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO ADD A PUBLIC FOOTPATH TO THE DEFINITIVE MAP, STRIKES LANE TO RAVENSTONES, SUTTON-IN-CRAVEN**

CONSIDERED –

The report of the Corporate Director, Business and Environmental Services advising Members of an application for a Definitive Map Modification Order to add a public footpath to the Definitive Map and Statement from Strikes Lane via the Ravenstones to Sutton Lane, Sutton-in-Craven. The report requested Members to authorise the making of a Definitive Map Modification Order.

Penny Noake, Definitive Map Team Leader, 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 1981.

She introduced James Perkins, Assistant Definitive Map Officer, to the Committee. He provided a detailed summary of the report highlighting the following issues:

- The application was received by the County Council in December 1985 for the route concerned to be added to the Definitive Map and Statement as a public footpath.
- The evidence that had been submitted in support of the application was entirely evidence of use of the route and no historical documentation as to the status of the route had been relied on.
- 15 evidence of use forms had been submitted in 1985, which were in the old format that requested limited information and did not include plans for the signatory to show the route they had used. Therefore, when the application was investigated in August 2010, the original 15 signatories were contacted and requested to complete the modern format evidence of use and plan; 4 of the new format forms were returned.
- A further 20 evidence of use forms were submitted between 2009 and 2010 to support the application.
- The application was considered on the basis of 24 evidence of use forms. Of the 24 forms, 3 indicated that they had received permission to use the route, which could be regarded as exercising a private right of access and therefore these forms were disregarded.
- Evidence from the 21 remaining forms demonstrated that the public claimed to have used the route for the 20-year period prior to the application being made in 1985.
- A letter dated December 1985 stated that Strikes Quarry had been fenced off at Strikes Lane by the landowner to prevent people arriving by car, not to prevent walkers. The landowner had also put up a sign reading 'Private No Trespassers'.
- There has been no evidence that users were hindered from using the route prior to the challenges made by the 'new' owner.

It was outlined that although it was not common for cul-de-sacs to be added to the Definitive Map, it was not unknown and routes were recorded as cul-de-sacs where they terminated at a point of interest. The evidence that had been provided to the County Council indicated that a substantial number of people had been walking part of the route unhindered for 20 years, therefore reasonably alleged that the path subsisted.

The Chairman brought to Members attention a statement that had been received from Mr Wood, Legal Representative for the land owner. (A copy of the statement has been placed in the minute book.)

**RESOLVED –**

That the Committee authorise the Corporate Director of Business and Environmental Services to make a Definitive Map Modification Order for the section of the route shown to be shown 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.

**20. PUBLIC FOOTPATH NO 05.5/105, SHAKEY BRIDGE, BENTHAM – MODIFICATION ORDER 2010 –**

**CONSIDERED –**

The report of the Corporate Director, Business and Environmental Services to advise Members of an Definitive Map Modification for the addition of Public Footpath No 05.5/105, to the Definitive Map at Shakey Bridge, Bentham.

Penny Noake provided a detailed summary of the report to members, highlighting the following issues:

- That an appeal had been submitted on 23 June 2006, against the decision made by North Yorkshire County Council to the Secretary of State and an Inspector was appointed to review the evidence.
- The British Transport Commission Act did not make it an offence to use the land on which the claimed route lies, as the land in question was not railway lines, sidings or a railway embankment, and did not form part of an access or approach to a station or a goods yard and therefore rights could be acquired by usage.
- The Secretary of State directed the County Council to make a Definitive Map Modification Order and this was advertised from October 2010.
- One objection to the order had been received from Mr P Kellaway, who owned part of the land crossed by the route.

It was outlined that officers now supported that the order should have been made, given the strength of evidence of use and that there was not any evidence to show that the landowners had taken steps to prevent access by the public and therefore considered that the County Council should support the confirmation of the order.

**RESOLVED –**

That the Committee authorise officers to support the confirmation of the Order within the County Council's submission to be made to the Secretary of State, and that in the event of any Public Inquiry that may be held, that officers retain that stance.

**21. DOWNGRADING OF PUBLIC BRIDLEWAY NO 05.26/37 TO FOOTPATH, NUTGILL FARM, INGLETON – MODIFICATION ORDER 2009**

**CONSIDERED –**

The report of the Corporate Director, Business and Environmental Services to advise Members of an opposed Definitive Map Modification Order to downgrade Public Bridleway No 05.26/37 to a Public Footpath at Nutgill Farm, Ingleton.

A detailed summary of the background to the application was provided and the following issues were highlighted:

- An application was made on 18 May 1999, under Section 53 of the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order to downgrade the bridleway to a footpath, and re-align a section of the route. The applicant believed that errors had been made by the former West Riding County Council when the Definitive Map for the area was produced in 1969.
- Officers had undertaken further research of records in their possession and of records held by North Yorkshire Archive Service.
- Despite the further research, officers were not satisfied that there was sufficient evidence to rebut the presumption that the original recording of the route as a bridleway was correct. Therefore in January 2008 the application was formally rejected.
- In February 2008 Mr J Brass lodged an appeal against the decision with the Secretary of State, who then appointed an Inspector to review the evidence. The Inspector recommended that the appeal be allowed in part and that the order should be made to downgrade the bridleway to a footpath; but dismissed the part of the appeal in relation to a short section of the route on a different alignment.
- The Secretary of State directed the County Council to make a Definitive Map Modification Order and it was advertised from February 2010 to March 2010.

It was stated that despite the inspector's view, officers had the opinion that there was insufficient evidence to satisfactorily show that an error had been made in the recording of the route as a bridleway when the Definitive Map was originally prepared and that the County Council should uphold their original view that the status of the route not be amended.

A statement was circulated to Members from Elizabeth Kirk, on behalf of the Byways and Bridleways Trust. (A copy of the statement has been placed in the minute book)

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

Mr John Brass of Nutgill Farm, addressed the Committee in support of the order. He stated that an investigation of the Parish Council's records had been carried out and that there was no evidence to show that the route was a bridleway. He felt that there had been errors made when the route was originally put on the Definitive Map.

Mr Mills, owner of Nutgill Cottage, made a statement to the Committee. He stated that he was aware of the footpath across the land, and although it was sign posted it was rarely used. He was fully aware of the footpath when he purchased the property and was happy with its location. Having read the report, and taken account of the objectives raised, he considered that those had no validity. He suggested that some of the issues within the report were confused, particularly in relation to the route of the footpath, as that had never been routed through the cottage. He agreed with the report that closure of

the land across the footpath should not be allowed and the re-routing of the path would require a further process for that to take place. He called for a positive way forward to be developed by the Committee.

Members expressed their concern that a Parish Council representative was not present at the meeting.

**RESOLVED –**

That the Committee authorises officers to submit that the Order should not be confirmed within the County Council's submission to be made to the Secretary of State, and in the event of any Public Inquiry that may be held, that officers defend that stance.

LB/ALJ