

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS COMMITTEE SUB- COMMITTEE

Minutes of the meeting held on 27 April 2011 at The Galtres Centre, Easingwold.

PRESENT:-

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

32 members of the public were present.

22. APPOINTMENT OF CHAIRMAN AND VICE CHAIRMAN FOR MEETING

RESOLVED -

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

COUNTY COUNCILLOR CLIFF TROTTER IN THE CHAIR

COPIES OF ALL DOCUMENTS CONSIDERED ARE IN THE MINUTE BOOK

23. MINUTES – MEETING HELD ON 25 FEBRUARY 2011

RESOLVED -

That the minutes of the meeting held on 25 February 2011, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

24. 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 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.

25. APPLICATION TO ADD A PUBLIC FOOTPATH TO THE DEFINITIVE MAP AT SHERIFF HUTTON PARK, SHERIFF HUTTON, RYEDALE

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:

- (a) From The Lodge, Sheriff Hutton, to Public Bridleway No. 25.85/8, Sheriff Hutton, Ryedale; and

- (b) the route referred to being shown by a bold dashed black line marked A-B and CD-E on the plan attached to the report.

The 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, outlined in Sections 53 of the Wildlife and Countryside Act 1981 and 31 of the Highways Act 1980.

She noted that there had been a proposed compromise submitted immediately prior to the meeting. She emphasised that there was no place in the process for such a compromise to be developed, at this stage, as the evidence had to be taken account of in respect of the application before the Committee. She noted that determining the application outlined within the report was in the interests of all parties, as not to do so would leave the matter outstanding and could lead to further applications in relation to those set out in the report, at a later time.

The Definitive Map Officer outlined the application, which had been submitted by the Parish Council and dated back to April 1995. Details of the evidence of use forms submitted in relation to that application were outlined. The majority of the forms claimed the route lay across land belonging to Sheriff Hutton Park. There had been a number of owners of the property during the period relating to the application. It was considered, by officers, that the 20 year period over which relevant usage must be demonstrated would be up to the end of March 1995.

It was noted that there was no historic documentary evidence of the route being the subject of public rights of way submitted with the application and no such evidence was held by the North Yorkshire County Records Office.

It was reported that the application in 1995 has used evidence of use forms that had subsequently been replaced in 2004/05. Improvements had been made to the forms, allowing more information to be obtained from those, and, when the case was reinvestigated in 2010 new evidence of use forms were sent out to all those who had originally sent in forms. Of the 72 people who had sent in the original form, 22 completed and returned new forms. Issues relating to why the new forms were felt necessary were outlined, they being, the inclusion of a plan and the possibility that the original forms had been completed by one person and subsequently signed by other people. The 22 forms submitted in 2010 represented the evidence of use of 24 people. All 24 witnesses had reported using the route on foot, four had used the route on horseback, six had used the route on a pedal cycle and six had also used the route with a motorised vehicle. It was noted that by cross referencing previous forms two of the people had previously stated that their use was to access friend's houses, constituting use under licence, therefore, these evidence of use forms had been removed from consideration. Of the remaining people who completed the new style evidence form three failed to mark a route on the evidence of the use form map, five indicated that they had used only part of the route, usually from A-D on the plan, and the remaining 14 had used the full length of the route.

Details on the new forms had shown that three people had been challenged whilst using the route.

Examination of the period the route had been used indicated that there had been usage over the 20 year period, which led officers to conclude that there was significant evidence to assert that a right of way on foot was reasonably alleged to subsist over the claimed route, thereby, meeting the test set out in the Wildlife and Countryside Act 1981.

In terms of the evidence against the application it was noted that a consultation had commenced in 2007, but had been deferred as the officer in charge had left the Authority, with this recommencing in 2010 to ensure the evidence was gathered appropriately.

The various landowners along the route had been consulted. Representations against the application had been received from the owners of Lodge Farm, the previous owners of Sheriff Hutton Park and the current owner of Sheriff Hutton Park, who had submitted a large body of evidence. The objections from Lodge Farm had been made in 2007 and reiterated in 2010. It was noted that the evidence gathered during the most recent period of consultation comprised of historical records, witness statements, photographs and letters. A witness had stated, in objection to the proposals, that gates indicated in Plan 2 had been locked between 1975 and 1978. Two local farmers had also stated that the gates were marked "private" between 1988 and 1995. A further witness also indicated that the gates were locked between 1983 and 1990 during the summer months. It was noted, however, that there was some doubt as to whether the route was continually obstructed by the gates, which led to the conclusion that these may not always have been locked. It was also noted that the substantial body of documents submitted by the current landowner at Sheriff Hutton Park did not pass comment on whether he considered there was a right of way across the Park.

Evidence submitted against the application gave photographs of signs which stated "private road" or something similar. In terms of this application, the claim was for a public footpath and a sign stating private road was unlikely to deter a pedestrian from using that route, as this appeared more aimed towards a vehicle user. It was suggested that signs to prevent pedestrian use should state "no trespassing" or "no access to anyone". Reference should have been made to the prevention of walking along the route.

In summary it was stated that there appeared to have been challenges to the public use of the route during the relevant period. It was considered that the challenges were more likely to have taken place in section D-E of the route rather than A-D. It was acknowledged that measures had been taken to prevent the dedication of the route as a public footpath, however, it was considered that these were not sufficient to negate the intention to dedicate the way as a public footpath, although there was insufficient evidence to support the dedication of a public bridleway, a public restricted byway or a public byway. It was the officer's opinion that the evidence reasonably alleged that a right of way on foot subsisted over the claimed route of A-B and C-D-E as set out on Plan 2 of the report.

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

The following local representatives spoke in favour of the application:-

Ian Brookes
Helen Spath
David Willis
Brian Sheppard
Penny Bean

Issues raised within their statements included:-

- ◆ The evidence had been diluted by North Yorkshire County Council since the application had been submitted, with substantially more evidence forms submitted than those taken into account now.

- ◆ The existing route continues to be used at least 4/5 times per week.
- ◆ The route is used extensively and consistently.
- ◆ Gates have not been locked and there has been no restriction to the use of the route.
- ◆ The route was considered to be a footpath and not used for any other purpose.
- ◆ Many people had walked the full length of the route, while some only walked the partial length.
- ◆ The route included popular walks for local people.
- ◆ Use of the route had been observed since 1918.
- ◆ The views of those who had not been contacted in the second consultation should also have been taken account of.
- ◆ The route had been used frequently over the last 20 years for exercise purposes and for dog walking.
- ◆ The only challenge made to a regular user, whilst using the route, had been in June 2010.
- ◆ The issue had been discussed extensively by the Parish Council over the last 25 years and the route had always existed during that time.
- ◆ Over the years when the Park had been up for sale the issue of the outstanding application had always been brought to the attention of the selling agents by the Parish Council.

Speaking against the application:-

Alan Lewis
 David Unsworth
 Robin Barker
 Mrs Rickatson
 Robert Brumby

A written statement was submitted by Mike Rickatson which was read out to the Committee by the Clerk.

Issues raised included the following:-

- ◆ Those using the route in the past had been employed by the landowners.
- ◆ The route had been blocked by locked gates many times during the qualifying period, with evidence showing locked gates between 1973 and 1979 and between 1975 and 1979.
- ◆ Security fencing to stop admission to a pig farm was in place in the early 1980s, which prevented use of the route.

- ◆ Signage emphasised the route was a private road.
- ◆ There were cattle grids and gates along the route.
- ◆ Alternative routes were available around that set out in the application, which were used.
- ◆ There was a wealth of evidence suggesting that the route did not exist in its entirety.
- ◆ Not all local landowners had been mentioned in the report nor had their evidence been requested or taken account of, including previous owners of the Park.
- ◆ There was evidence to suggest that people attempting to use the route were not using that appropriately and were causing problems for local farmers and landowners.
- ◆ People were straying from the appropriate route and using this without permission.
- ◆ There was evidence to suggest that locked gates were in place between 1975 and 1980 around the area of the pig farm.
- ◆ Signs were in place at The Lodge gates stating “private road” and “no through road”.
- ◆ The gate between points D and E on the plan were locked by the owner of Holme Farm between 1975 and 1979.
- ◆ Only 14 people alleged that they had used the route to its full length regularly.
- ◆ It was suggested that there could be no proof of use between D-E and it was asked whether the application could be split into sections taking account of AB and CD.

Following the statements by members of the public, Members of the Committee considered the application and discussed relevant issues, seeking clarification on a number of points from officers present. During their consideration a number of issues were raised including the following:-

- ◆ Clarification and the legal definition of a footpath were provided in respect of the continued use of the route despite signs displaying “private road” having been erected there.
- ◆ It was noted that unless signs clearly indicated that there was no right of way for pedestrians, then a right of way could be thought to exist.
- ◆ Members queried the issue in relation to potential trespassing on private land. It was noted that many public rights of way existed with gates along them, which did not prevent them from being regarded as rights of way.
- ◆ Members suggested that previously, where locked gates had been in place along a route, then it had been classed to be not a public right of way, however, it was clarified by the County Council’s legal representative that rights of way depended upon the evidence given and noted that the claimed footpath on this route

emphasised that some interruption did take place, therefore that was acknowledged.

- ◆ A Member emphasised that it was unclear from the evidence provided as to whether the gates had been locked or unlocked in respect of the use of the route.
- ◆ A Member noted that it had been suggested that the route existed between AD, but not DE and asked whether a motion could be carried in respect of that accepted part of the route. In response it was stated that Members had to make their decision based on the evidence provided, which included section C-D and, therefore, had to take account of the full route rather than extracting sections of that.
- ◆ A Member queried the right for a landowner to lodge a deposition with the County Council that they had no intention of dedicating new public rights of way across their land under Section 31(6) of the Highways Act 1980. The issue was clarified by officers and it was noted that around 200 of these depositions were in existence.

Taking account of all the evidence provided and the issues set out Members moved to the recommendation.

RESOLVED -

That the Committee authorise the Corporate Director of Business and Environmental Services to make a Definitive Map Modification Order for the route A-E shown on Plan 2 to be shown on the Definitive Map as a public 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 could support confirmation of the Order.

26. FOOTPATH NO. 10.40/46, SPRING STREET TO MANOR ROAD, EASINGWOLD, MODIFICATION ORDER 2010

CONSIDERED -

The report of the Corporate Director, Business and Environmental Services advising Members of an opposed Definitive Map Modification Order, the effect of which, if confirmed, would be to add a footpath from Spring Street to Manor Road, Easingwold, through the yard of the Angel Public House. A location plan was attached to the report as Plan 1. The route referred to was shown on Plan 2, which was also attached to the report. It was noted that the matter would be referred to the Secretary of State for a decision on whether or not to confirm the Order and Members were requested to decide what stance North Yorkshire County Council should take in making that referral.

County Councillor Ron Haigh declared a personal interest in respect of this item in relation to him knowing one of the witnesses in respect of the application.

The Definitive Map Team Leader explained the Committee's responsibilities in deciding on what stance to take in respect of the referral to the Secretary of State. She noted that this matter was one step further than the previous application in that the application had been originally considered by the Hambleton Area Committee in November 2008, prior to DMMOs being considered by the Sub-Committee, where it had been recommended that the application be rejected, as it was considered there was insufficient evidence to show that a right of way was reasonably alleged to exist.

The applicant, who was formally advised of this in January 2009, appealed to the Secretary of State. Consequently an Inspector was appointed to examine the evidence and recommend whether the appeal should be allowed or dismissed. The Inspector concluded that the appeal should be allowed and directed the County Council to make a Definitive Map Modification Order. The Order was made in July 2010 and was advertised from 22 September 2010 to 2 November 2010. Three formal objections were received on the grounds of loss of privacy and security, but no evidence concerning the alleged public use of route was provided.

The report highlighted how a report for information only was presented to the meeting of Hambleton Area Committee in March 2011 and, as a result, the Committee requested that its views be made known to the Planning and Regulatory Functions SubCommittee. It was noted that the Area Committee was not happy that the Secretary of State had directed the Council to make the Order despite its resolution in November 2008. In light of the previous resolution the Committee was disappointed that an officer recommendation was made to the Sub-Committee that the County Council should support the confirmation of the Order in its forthcoming submission to the Secretary of State.

Officers circulated photos of the route, highlighting where two properties had been built along the route, with a gap between them where the public right of way was said to exist.

Details of the evidence in support of the application was highlighted, with 61 user evidence forms having been submitted between 2004 and 2008. Of the 61 forms 14 had been withdrawn from the supporting evidence and the reasons for that were detailed. As a result 47 valid user evidence forms showed the route was being used regularly by a number of people prior to its being fenced off in 2004. Details of the evidence of use were highlighted in the report and it was noted that 38 of those indicated that they used the route ten times or more per year.

Other issues highlighted, included:-

- ◆ The gate at the entrance to the Angel car park not having been locked, or, on many occasions, not closed.
- ◆ The two boxer dogs at the pub being friendly and passable.
- ◆ The route having been used, on foot, regularly over the 20 year period outlined.
- ◆ User interviews were undertaken and details of those were highlighted in the report.
- ◆ Photographs showed the positioning of the gates referred to in the report.

Members suggested that future meetings, where photographic evidence was to be supplied, should incorporate the use of projection facilities, allowing all those present to view the photographs at the same time.

Details of the evidence in objection to the application was provided and the following issues were highlighted:-

- ◆ The main body of evidence had been submitted by the landowner.
- ◆ An aerial photo dated from 1974 indicated a different alignment to that claimed in the application.

- ◆ The landlord of The Angel from 1985 to 1993 locked the Spring Street gate every New Year's Day on the understanding that this would prevent a right of way being established and thereby complying with the terms of the lease. The gate was also locked on other occasions to prevent unauthorised parking.
- ◆ The fence across the boundary of The Angel yard and field to the north and the dogs running loose in the yard would have been a deterrent to the users of the route.
- ◆ Though the requirement in the lease was to prevent a right of way being established was not publicly available, the overt actions undertaken by providing the fencing and allowing the dogs to run loose should have alerted the public that there was no intention to dedicate a right of way.
- ◆ There were no objections to the proposed development, at the time of the planning application, from the users of the route, despite that meaning closing off the claimed footpath. Notices advertising the planning application were clearly displayed on the site and Hambleton District Council had written to neighbouring properties.
- ◆ Users had stated that the route was wide enough for a car to pass along it, however, this could only apply to the route after it had been cleared to create a beer garden and access track for brewery vehicles in 1986/7 and, therefore, the route as described by users could only have been in existence for 16 to 18 years before the cut off date of July 2004.

Counsel's Opinion had been sought by the main objector, who had submitted the following:-

- ◆ The claimed route was not the same route that appeared to have been used in the 1970s.
- ◆ There was a hedge and fence along the northern boundary with Manor Road which could not have led to access to the route, "as of right".
- ◆ The dogs would have not been securely kept in the area outlined should people have been using the route.
- ◆ The Spring Street gate was present throughout the 20 year period and was closed every night for security purposes.
- ◆ The planning application for the development over part of the claimed route provided evidence of no intention to dedicate.
- ◆ The public did not use the route for the whole 20 year period.

The other objections received in relation to the route were from one of the tenants of the new houses, at the northern end of the claimed route, and from the current licensee of The Angel. Both were on the grounds of loss of privacy and security but gave no evidence about the alleged public use of the route, so could not be considered as material objections to the Order.

The report provided details of the comments on the evidence from the Definitive Map Officer. She emphasised that the weight of the evidence was finely balanced. She

referred to the alleged locking of the gates one day per year contained in the terms of the lease for The Angel Public House, which was seen as being a way of preventing the route from being established as a public right of way. Reference was made to the Godmanchester case, which had outlined that unless the reason for the locking of the gates had been made clear to users of the route, then it was not enough to simply lock the gates, as directions to the reason for this had to be provided to those using the route.

It was also noted that sworn statements provided had stated that the gate had been shut rather than locked. An unlocked, shut gate would not stop people from using the route.

A Member sought clarification on the Godmanchester ruling, as he considered that this had taken place after the alleged period of the route was being claimed. In response it was stated that this was the case, however, current case law had to be taken account of, even though it may have been considered appropriate at the time to merely close/lock the gates for one day per year to prevent a route being claimed.

The Definitive Map Officer, whilst conceding that the matter was finely balanced, considered that the evidence was slightly more weighted in favour of the applicant.

It was emphasised that the matter had to be referred to the Secretary of State as there were objections to the Order and only the Secretary of State had the power to determine whether or not the Order should be confirmed. In respect of that the County Council needed to decide what stance it wished to take in its submission and the following options were provided:-

- (a) not to support the confirmation of the Order if it is felt that the evidence did not support the establishment of public rights;
- (b) to take a neutral stance if it felt that whilst the evidence might have been sufficient to take the Order, there was insufficient evidence for confirmation of the Order; or
- (c) to support the confirmation of the Order as it felt that on balance of probabilities the Order should be confirmed.

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

Mr Kirk spoke in favour of the application stating that the evidence submitted to the Secretary of State, when this had been referred, overwhelmingly showed that the route had been used for 20 years, with substantially more than six returns emphasising this. He noted that officers were recommending support of the confirmation of the Order and asked Members to recognise that support.

A Member asked why the applicant had not objected to the planning application for the two houses built across the route. In response Mr Kirk stated that the planning process had been undertaken in a concealed way, with an impression given that the houses would not be built across the route. He suggested that the matter had not been properly advertised. He also considered that Easingwold Town Council had looked at the planning application and had not objected to it.

Acting on behalf of the objector, Mr Hobson, Mr Peter Torrible referred to the rejection of the proposals by Hambleton Area Committee in November 2008 as they had considered there was insufficient evidence for the public right of way to be established. He noted that the evidence pointed to the gate at the side of the public house having been locked by the landlord and that supporters of the Order had found the gate locked at times. He emphasised that, from the evidence provided, the route had not been used for a 20 year period, "as of right", as that had been blocked at times due to the closure and locking of the gate. He suggested that the Committee should consider the resolution of the Area Committee and be consistent in its stance on this matter.

Mr Brian Taylor, an elected representative to Easingwold Town Council and also a coopted member on Hambleton Area Committee addressed the Committee. He pointed out that although Hambleton Area Committee had noted the response of the Secretary of State, following their refusal of the application, they had been unhappy to see that officers of the County Council had overruled the decision of the Area Committee taken in 2008, by recommending that the confirmation of the Order should be supported. In terms of the Town Council's non objections to the planning application he stated that they were unaware of the footpath at that stage and had only been made aware of that when an application was submitted for the public right of way. He emphasised that the subject of the footpath had not come as part of the planning application at the time.

Mrs Kirk addressed the Committee stating that officers were aware of the right of way issue when planning considerations were undertaken and noted that the business access road of the main objector came out at that location. She considered that it was common knowledge that people were coming in and out of that access and that fact had been acknowledged at the time.

In relation to the planning consideration matter Mr Torrible again addressed the Committee stating that there had been no reference to the public footpath across the land within the planning application and there was no evidence to take forward in terms of planning policy guidance.

Members suggested that there had been plenty of opportunity provided for members of the public to object to the planning applications in relation to the considered public right of way across the land identified.

RESOLVED –

That in view of the evidence provided the Committee does not support the confirmation of the Order, as it felt that the evidence did not support the establishment of public rights, and that decision should be the County Council's stance when the Order is referred to the Secretary of State for decision and at any public inquiry that the Secretary of State may hold to assist in determining the matter.

The meeting concluded at 12.45 pm.

SL/ALJ