

**NORTH YORKSHIRE COUNTY COUNCIL**

**PLANNING AND REGULATORY FUNCTIONS COMMITTEE SUB- COMMITTEE**

Minutes of the meeting held on 3 June 2011, commencing at 10.00 am at Sleights Village Hall, Sleights, Whitby.

**PRESENT:-**

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

31 members of the public were present.

**27. APPOINTMENT OF CHAIRMAN AND VICE CHAIRMAN FOR MEETING**

**RESOLVED -**

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

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**COUNTY COUNCILLOR BILL HOULT IN THE CHAIR**

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

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**28. MINUTES – MEETING HELD ON 27 APRIL 2011**

**RESOLVED -**

That the minutes of the meeting held on 27 April 2011, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

**29. 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, there were no questions or statements from members of the public.

**30. APPLICATION TO REGISTER LAND AS TOWN OR VILLAGE GREEN – CASTLE PARK, WHITBY**

**CONSIDERED -**

The report of the Corporate Director, Business and Environmental Services, reporting on an application (“the TVG application”) for the registration of land at Castle Park, Whitby

identified on the plan comprising Appendix 1 (“the TVG application site”) as a Town or Village Green. The report was presented by Neil Leighton of Business Environmental Services. He outlined how the report set out the legal tests and background, together with details of the interested parties.

A number of photographs of the site, setting out the context for the application, were presented to the Committee.

It was noted that the application included the submission of 43 evidence of use questionnaires together with 24 letters of support and copies of 7 letters of objection previously sent to Scarborough Borough Council in relation to an earlier planning application affecting the site. A further 26 forms had been submitted subsequently and had been received following public notification of the application.

Full details of the application site were outlined alongside the photographs. It was noted that the total site extended to approximately 1.246 hectares.

Details of the history of the ownership of the site were outlined. It was noted that, at a public auction in May 2010. It was understood that Yorkshire County Homes Limited purchased the majority of the site, with a small section in the central area continuing to be owned by Annington Property Limited, who currently leased this to the Ministry of Defence.

Details of the objection to the Town or Village Green application and the evidence submitted in support of the application were provided in the report.

Mr Leighton stated that it was the role of the County Council, as Registration Authority, to be satisfied that the claimed use over the relevant 20 year period had not been by force, stealth nor with the permission or licence of the owner and had to be satisfied that the claim was made “as of right”. Where claimants had been permitted to be on the subject land then their use of the land would have been “by right” and not “as of right”. This issue was addressed in the report. He emphasised that it was for the Committee to determine, through the evidence provided, whether the necessary legal criteria had been met.

It was noted that the issue had been brought to the attention of the County Council’s Yorkshire Coast and Moors Area Committee on 31 March 2011 and a copy of the Minutes relating to their response was included in the report.

Committee was advised that it had been brought to officers attention that Yorkshire County Homes Limited currently owned all of the application site. The buildings currently on part of the application site were occupied by the Ministry of Defence. The County Council’s legal representative, Simon Evans, stated that the ownership of the site did not materially affect determination of the application.

It was noted that previously the tennis courts on the site had been fenced off, however the fencing had been removed, due to vandalism and free access was now allowed. It was pointed out from the floor of the public gallery, that the current maintenance of the site was undertaken by local residents.

In view of the serious dispute that existed between the applicant and the current landowner concerning the evidence before the County Council, a recommendation was being made for an independent expert to be appointed to conduct a non-statutory enquiry into the application.

The Chairman invited representations from those present at the meeting at this stage of the proceedings.

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

Rod Wood.

Ken Drury.

A number of short written statements had been provided by local residents which were read out to the Committee by the Clerk.

Issues outlined included:-

- The use of the land “as of right” since the 1960’s.
- The use of the area for many years as playing fields.
- The use of the land for lawful sports and pastimes.
- The use of the land by young children from the surrounding residential properties, allowing safe play within easy distance from their homes.
- The use of the area for recreational purposes for many years.
- The loss of valuable recreational land, in an area where there was little available, should the proposed developments take place.

Members confirmed the available playground facilities, that had been on the site during periods since the 1960’s, with local residents. The residents in attendance were asked what would be their plans for the future should they achieve the Village Green status for the site. In response it was stated that they would look to keep the area as it was now, with them maintaining this as a recreational facility for local residents. It was emphasised that residents were willing to participate in its upkeep and to ensure that it remained fit for purpose in terms of it being used for recreational purposes.

Emma Bingham of Walker Morris Solicitors, representing Yorkshire County Homes Limited, spoke in objection to the application, raising the following issues:-

- The application failed to meet all the required tests, including insufficient evidence of use, or, evidence of significant use.
- She considered that the Ministry of Defence had given local residents permission to use the site within the 20 year period stated, therefore, the use had not been “as of right” but had been “by right”.
- Planning permission had been granted for development to take place on the area of land, with affordable housing provided through that.
- She suggested that there was insufficient evidence to suggest that criteria contained in Section 15 (2) of the Commons Act 2006 had been met for the application to succeed.

- She considered the recommendation appropriate for the issues to be put to an independent expert to conduct a non-statutory enquiry.

Members sought clarification of what was considered to be a significant number of inhabitants of a locality as required by Section 15 (2) of the Commons Act 2006, in line with what Ms Bingham had stated in relation to that. In response the County Council's Legal Representative quoted directly from DEFRA Guidance to 'Part 1 of the Commons Act 2006, commons registration authorities and the Planning inspectorate for the pioneer implementation' (February 2011) which advises that significant number is relative to the size of the population of the neighbourhood concerned, consequently there were no defining figures provided with that guidance. He suggested that for the significant number criteria to be met the extent of user was required to indicate a general use by the local community.

A Member asked, should the application be unsuccessful whether any recreational area would be left following the proposed development. Ms Bingham outlined details of the proposed development stating that there would be 250 m<sup>2</sup> of play area and 2,500m<sup>2</sup> of open spaces. It was emphasised however that the issue of the planning application was not of concern to the Committee in terms of the application.

The County Council's Legal Representative confirmed that the matter that had to be considered was whether from the evidence provided Members were satisfied that the legal criteria had been met to justify registration as Town or Village Green.

County Councillor Jane Kenyon, the local County Councillor elected representative, spoke in support of the application and highlighted the following issues:-

- She had represented the ward where the application site lay since 1987.
- The site was previously a golf course before the Ministry of Defence came on to the land.
- The Ministry of Defence had opened up the recreation area for the use by local residents to integrate into the local community, enabling them to play there, and that continued to this day.
- She could recall playing on the area in the early to mid 1960's.
- She shared the concerns of local residents in relation to their children having to walk further afield to other areas to undertake their recreational activities.
- She could see the benefit of having a non-statutory inquiry.
- She noted that Annington Property Limited put the site up for sale when they found out about the Village Green application, suggesting that they thought that this would be successful.
- She noted that 48 affordable houses had recently been provided within the ward and would like to see a needs assessment undertaken for such housing, before any more was provided.
- She emphasised the need for recreational facilities to be provided in that area for local children to continue to make use of.

Clarification was sought on whether the application had to include the whole of the recreation area or whether that could be separated into smaller parts. Representatives of the applicants stated that their application referred to the whole of the area. The County Council's legal representative stated that it was possible for part only of an application site to be registered.

**RESOLVED –**

- (i) That in view of the serious dispute that exists between the applicant and the current landowner concerning the evidence before the County Council, the Corporate Director (Business and Environmental Services), with advice and guidance from the Assistant Chief Executive (Legal and Democratic Services), be authorised to appoint an independent expert to conduct a non-statutory inquiry into the Town Village Green application and to then prepare a report to assist the County Council in its determination of the application, with the estimated cost of the inquiry, £15,000, being met from existing Business and Environmental Services funding; and
- (ii) That following receipt of the expert's report, a further report be presented to the Planning and Regulatory Functions Sub-Committee to enable it to then determine the application.

The meeting concluded at 11.30 am.

SL/ALJ