

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS COMMITTEE SUB- COMMITTEE

Minutes of the meeting held on 5 August 2011 at Tadcaster Sunday School, Kirkgate, Tadcaster.

PRESENT:-

County Councillors John Blackburn, Robert Heseltine, Bill Houlton, Dave Peart (as Substitute for County Councillor Ron Haigh) and Cliff Trotter.

Also Present:-

County Councillors Paul Richardson and John Savage.

14 members of the public were present.

31. APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN FOR THE MEETING

RESOLVED –

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

COUNTY COUNCILLOR JOHN BLACKBURN IN THE CHAIR

COPIES OF ALL DOCUMENTS CONSIDERED ARE IN THE MINUTE BOOK

32. MINUTES

RESOLVED -

That the minutes of the meeting held on 3 June 2011, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

33. 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 applications, and would do so at the time of the consideration of those, there were no questions or statements from members of the public.

34. APPLICATION TO REGISTER COMMON LAND - HAMMERTON MILL SANDBEDS, TOCKWITH

CONSIDERED –

The report of the Corporate Director – Business and Environmental Services that provided assistance to Members in their determination of an application (“the Application”) for the registration of an area of land known as the Hammerton Mill Sandbeds (“the Site”) as Common Land. The location of the site was identified on the application plan of the report and an updated OS plan of the area was provided

A member of the public, Mr Muir, intervened stating that this matter had been previously adjourned at a meeting of the Harrogate Area Committee, a number of years ago, and it had been envisaged that speaking times for members of the public would be extended to take account of the nature of the subject. It was noted, in response, that Minutes of that meeting had been made available and that at the time of the adjournment it was suggested that the next meeting should consider what speaking times to allow for members of the public. The next meeting that the issue had come to was this meeting and the Chairman stated that speaking times would be as outlined in the County Council’s Constitution, which allowed three minutes for members of the public to speak on an item.

Laura Renaudon, representing the Assistant Chief Executive (Legal and Democratic Services) introduced the report. She highlighted how the application site was set out in Section 3 of the report. Details of the site were set out both in an OS plan and at Appendix 1 to the report.

Details of the law relevant to the application were outlined in the report and Ms Renaudon referred to the appropriate law for the application to be determined. It was recognised that this was a complex matter and time was taken to fully explain the situation regarding the relevant law applicable to the issue and the full history of the application.

It was noted that in July 1970 the West Riding County Council made a provisional registration of the site as Common Land. An objection was subsequently received from the Yorkshire River Authority on 21 July 1972 and the Registration Authority cancelled the provisional registration in May 1973. It was noted that the current applicant was consulted on at some point, either about the initial registration in 1970 or about the proposed cancellation in 1973, however, it was unclear as to which. There were no objections at that time from the current applicant. In 1974 North Yorkshire County Council became the Commons Registration Authority for the area. The current application was made in February 2003 and was subsequently considered and deferred for further consideration at a meeting of Harrogate Area Committee in 2004. Details of the applicants submissions in support of the application and issues raised in objection to the application were fully detailed in the report.

Ms Renaudon outlined that there were five possibilities for the Sub-Committee to consider as follows:-

- (a) That a right to registration as Common Land arose before 1970 and the 1970 provisional registration was erroneously, and rectifiably, cancelled;
- (b) That a right to registration as Common Land arose after 1970, relying on a 20 year (or 30 year) period of user beginning before 1970 but expiring thereafter;
- (c) That a right to registration as Common Land arose some time after 1990, relying on a 20 year (or 30 year) period of user wholly post dating 1970;

- (d) That a right to registration as a Village Green arose before 1970 and the provisional registration (albeit as Common Land) was erroneously, and rectifiably, cancelled;
- (e) That a right to registration as a Village Green subsisted in 2003 and the application was made relying on a period of user of at least 20 years and continuing at that date.

The report went on to give consideration to each of those possibilities, providing details of considerations undertaken in relation to each. It was concluded that there was no merit to any of the possibilities listed and that the application failed in respect of all of those.

Ms Renaudon referred to the submissions made by Mr Muir and Mr Fattorini, that had been provided to the Sub-Committee, following the publication of the report. She considered there was no new evidence to suggest that the application should be approved, contained within those submissions.

She highlighted how Schedule 2 of the Commons Act 2006 made provision to correct non-registration or mistaken registration of Common Land or Village Greens under the 1965 Act. She did not consider its provisions were applicable to this case. The Common Land Provisions apply, broadly only to land which is regulated or recognised as Common Land under other enactments (2 (ii) (b)). The Village Green Provisions apply on to land allotted by other enactments as land for the exercise or recreation of local inhabitants (3 (ii) (a)). Neither provision allowed a second bite of the cherry for local inhabitants who failed to secure the registration of their assumed rights at the relevant moment. She suggested, therefore, that the Authority had no discretion other than to refuse the application for registration. She also considered it unnecessary to hold a Public Inquiry in relation to the matter as the weight of evidence did not, in her opinion, deem this to be a “difficult” case, with substantive conflict of evidence.

County Councillor John Savage sought to address the Committee in relation to the application, but prior to that, declared a personal and prejudicial interest in the matter, in respect of him knowing personally one of the people involved in the application, and following his address of the Committee left the room and took no further part in the consideration of the matter.

County Councillor Savage addressed the Committee and spoke in favour of the application. Mr Muir also spoke in favour of the application.

Issues highlighted by them included the following:-

- The matter was a complex application.
- A site visit to the area by Members of the Sub-Committee would be advantageous.
- There would be advantages in allowing the application.
- There was some concern that the matter had not been advertised accordingly at the Harrogate Area Committee and it had been suggested, through that Committee, that the matter should be adjourned from consideration at today’s meeting allowing further consultation to take place at a future meeting of the Area Committee.

- Local residents, including Mr Muir, had not known until the day before the meeting that consideration of the issue was to take place at today's Planning Sub-Committee meeting.
- They considered it appropriate to adjourn consideration.
- The speaking times allocated to members of the public for such a complicated matter were inadequate.
- There were new owners of the land who were willing to use this area for community use.
- The objections to the application before the Sub-Committee were based on those of the former owner.
- Submissions were out of date.
- The late knowledge of the matter being considered at today's meeting, by the local community, warranted an adjournment of consideration of the m application to a later date.

Mrs Main addressed the Committee and spoke in objection to the application.

She highlighted how the area was an important conservation area and did not warrant the application being approved.

Members of the Committee discussed the application and highlighted the following:-

- The sequential tests for the application appeared to fail at every point.
- The issue of the new owner agreeing with the application was a separate matter.
- There appeared to be no benefit from undertaking a site visit.
- The issue of the landowner being willing to accommodate community use on the land was a matter to be addressed between the landowner and the local community including the Parish Council.
- Concern that local residents had not been informed that the meeting was taking place.
- The matter should have been publicised in the local area and did not appear to have taken place.
- Concern that the Parish Council had not attended the meeting to speak in relation to the application.

In clarifying the concerns raised it was noted that the landowner and the Parish Council had been contacted prior to the meeting and had been extensively involved in the preparation of the report and the negotiations that were taking place in respect of the application. With regards to the matter not having been publicised in advance of the Area Committee it was noted that the Area Committee only advised people that the

meeting of the Planning and Regulatory Functions Sub-Committee would be taking place shortly to determine the application and it was emphasised that the opportunity to speak on such applications was at the Sub-Committee and not at the Area Committee. Reports submitted to the Area Committee on such applications were for information purposes only and were not open to debate.

RESOLVED –

- (i) That the application be refused; and
- (ii) As there were no substantive conflict of evidence (where it might matter) and there was no realistic grounds upon which the application could be granted it would not be appropriate for the matter to be referred to a Public Inquiry.

35. APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD TWO PUBLIC FOOTPATHS ON THE DEFINITIVE MAP AND STATEMENT AT CHURCH FENTON, SELBY

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 two footpaths to the Definitive Map and Statement at Church Fenton, Selby. The first footpath, known as footpath number 35.22/19, the Cinder Path, was shown on Plan 2 attached to the report running via points A – B – C. The second footpath, known as footpath number 35.22/20, Parson's Garth was also shown on Plan 2 attached to the report running via points B – D.

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, therefore, Members were asked to decide what stance North Yorkshire County Council should take in making the referral.

Details of the applications made under the Wildlife and Countryside Act 1981 to add the two routes, made in September 2000 were outlined. The applications were supported by user evidence forms submitted by 17 people. Historical evidence was also provided.

The claimed routes affected land in the ownership of three different landowners. Objections to the application had been received from a number of people including the landowner most directly affected.

As a result of the application being contested the matter was put before Selby Area Committee on 19 April 2004 with a resolution that the County Council would not make a Definitive Map Modification Order.

The applicant appealed the decision to the Secretary of State and in October 2008 the County Council received notification that the applicant's appeal was being allowed. The Secretary of State, therefore, instructed the County Council to make a Definitive Map Modification Order to record the two routes on the Definitive Map and Statement.

Following this direction, the County Council sealed the Order on 8 September 2010 and made this the subject of a public notification for a period of six weeks. During the period a further eight letters of objection were received, two of which were from people who had not previously objected. In total, therefore, there were now 20 objectors.

An additional three Evidence of Use Forms had been submitted, in addition to the 17 submitted with the application, during the publicity period. Details of the use of the route were set out in the report.

Historical evidence in support of the application was also detailed.

The evidence set out by the objectors was provided in detail.

The report provided a commentary on the evidence produced both for and against the application and in conclusion suggested that there was insufficient evidence to meet the test for the confirmation of the Order. It was noted that the County Council could take the following stance in its submission to the Secretary of State:-

- (a) To oppose the confirmation of the Order.
- (b) To take a neutral stance (the stance most commonly taken by Order making Authorities in the event that they do not support confirmation).
- (c) To support the confirmation of the Order.

Officers recommended that a neutral stance should be taken by the County Council when the Order was referred to the Secretary of State for a decision and at any Public Inquiry that the Secretary of State may hold to assist and determine in the matter.

Local resident Mrs Hills addressed the Committee in respect of the potential Map Modification Order. She suggested there was some merit in joining the network of footpaths together, however, one of the routes was through someone's garden and the owner had dogs, therefore, it was difficult to use that route. She suggested that other alternative routes were more appropriate.

Officers noted that the speaker was referring to points G-F of the route as indicated on page 158 of the report.

Members of the Committee considered the report and highlighted the following issues:-

- The original resolution when the issue was considered in April 2004 was for the DMMO not to be pursued and it was considered that it would be appropriate to maintain that stance rather than adopt a neutral stance.
- The balance of probabilities had changed since that decision had been made and, therefore, the Committee was considering a different set of criteria.
- The thresholds may have changed, however, the facts remained the same.

The Legal Officer clarified the position of the Committee in relation to the stance of the County Council when the Order was referred to the Secretary of State.

RESOLVED –

That the Committee authorise Officers from the County Council's Definitive Map Team to take a neutral 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.

36. CREATION ORDER TO UPGRADE FOOTPATH 35.5/1 TO BRIDLEWAY IN BARLBY WITH OSGODBY PARISH, SELBY

CONSIDERED –

The report of the Corporate Director, Business and Environmental Services advising Members of an opposed Creation Order, the effect of which, if confirmed, would be to upgrade the existing public footpath 35.5/1 to bridleway as part of the Trans Pennine Trail in Barlby with Osgodby Parish. The route that was the subject of the Creation Order was marked as A – B – C and is shown on Plan 2 of the report.

The report also informed Members that the matter would be referred to the Secretary of State for a decision on whether or not to confirm the Order, and, therefore Members were recommended to determine the stance that North Yorkshire County Council should take in making the referral.

Details of the Committee's responsibilities and the legal issues pertaining to the application were outlined.

It was noted that the route was part of the Trans Pennine Trail which linked towns and cities of North, West and South Yorkshire with Hull and the East Coast. The Trail was predominantly used by walkers and cyclists.

It was stated that the application was being made to put in place the remaining link for the Trans Pennine Trail network, as outlined on Sections A-B-C on Plan 2 within the report. The Section was currently recorded on the Definitive Map as Footpath No 35.5/1 in Barlby with Osgodby Parish and was required to be upgraded to a Bridleway, by means of a Creation Order, to allow additional use particularly by cyclists whilst offering a quiet off road route for horse riders.

Following the advertising of the Order three objections had been received by the County Council from Barlby with Osgodby Parish Council and two from residents of Ousebank who lived adjacent to the route.

Details of the nature of the objections were set out in the report and outlined to Members of the Committee.

It was noted that the route was already recorded as a public footpath and as such was used by pedestrians. Cyclists also made use of the route under licensed agreement and it was envisaged that opening the route as a Bridleway would be predominantly to the benefit of cycle users as it was not expected that it would be a great increase in the use of the route by horse riders. It was accepted that there were some narrow points along the route and that Barlby Road, at the toll bridge, was particularly busy and, therefore, was unlikely to attract a significant number of equestrians. It was not considered, therefore, that there would be a significant number of horses using the route, which in turn was unlikely to cause a hazard to those already using the route. It was also noted that a more suitable surface would be provided for the route to minimise the future maintenance by the County Council.

Note was made of the comments of the Selby Area Committee on Monday, 25 July 2011 asking that the Sub-Committee take account of their support for the scheme, together

with the concerns that if horse riding was made permissible that this could lead to a conflict with pedestrians in what was a predominantly urban area.

Mr Welch, Member of Barlby with Osgodby Parish Council and local resident addressed the Committee outlining objections to the application. He raised the following issues:-

- The use of the route could not justify the spending required to upgrade it.
- The condition of the route was such as the area floods, and it was unlikely that that issue could be resolved because of the nature of the land there which drains into the river.
- Further development was expected in the area leading to an increase in urbanisation.
- The proposed three metre width could not be achieved without substantial spending that no-one in the area wanted.
- The area was predominantly urban and, therefore, was unlikely to attract usage by horse.
- It was considered that maintenance was unlikely to take place causing problems in future years.
- It was requested that the Sub-Committee make a site visit to the Area to observe the situation before they came to a decision.

Members considered the report and issues raised and highlighted the following:-

- A horse rider using the route would have to dismount to go under the railway bridge.
- Would the proposal create something that the community needed?
- The Trans Pennine Trail was a multi-user route and horse riding would take place on that.
- It was emphasised that horses would be unable to cross the busy road at the toll-bridge end of the route and it was asked whether there was any way of securing a route that could be for pedestrians and cyclists only without having to create a Bridleway. It was noted that cycleways could accommodate cyclists, however, those would not have footpath rights.
- It was noted that the County Council had a budget for the maintenance of the route.
- The Trans Penning Trail brought economic benefit to Selby and was important to that area.
- Drainage was an issue in terms of the development of the route.
- It was noted that parts of the route were already Bridleway and that this Order would bring them into line with that.

- The width of the proposal was such as Bridleway had to be wider than footpath, allowing every user to be accommodated.
- Members considered that the issue was likely to be referred to Public Inquiry.

RESOLVED -

That the required legal criteria was found to be satisfied for the confirmation of the Order, and, therefore, the Committee authorise officers to support the confirmation of the Order within the County Council's referral of the matter to the Secretary of State, and, in the event of any Public Inquiry that may be held, the officers retain that stance.

37. APPLICATION TO UPGRADE FOOTPATH No 15.122/12 TO A BRIDLEWAY ON THE DEFINITIVE MAP AND STATEMENT, AT LONG FIELD, SPOFFORTH WITH STOCKELD

CONSIDERED –

The report of the Corporate Director, Business and Environmental Services advising Members of an application for a Definitive Map Modification Order, the effect of which if confirmed would be to upgrade an existing Footpath to bridleway along a route at Long Field, which runs from Stockeld Park to Holins Quarry at Spofforth with Stockeld. A location plan was attached to the report. The route was shown as A-B in the report. Members were requested to authorise the Corporate Director, Business and Environmental Services, to make a Definitive Map Modification Order.

It was highlighted that a formal application had been submitted on 1 September 2005 by Harrogate Bridleways Association to upgrade the footpath shown within the report to a bridleway. This was supported by 23 Evidence of Use Forms together with old Ordnance Survey maps and a 1910 touring map. A further 12 Evidence of Use Forms had been submitted subsequently.

The landowner of Stockeld Park Estate had deposited a statutory declaration with the County Council in 1999, and renewed that in 2004, in accordance section 31(6) of the Highways Act 1980 making intentions clear that they did not want to dedicate any additional public rights of way to those that already existed over the estate. Harrogate Bridleways Association responded to the deposition in 2004 stating that they believed a section of existing footpath was being used as a bridleway and should be recorded as such. The DMMO application for the route to be recorded as a bridleway followed that.

Attempts had been made to liaise between the two parties to resolve the matter, but that had not been able to be concluded.

Details of the evidence in support of the application, the historical evidence in support of the application and the evidence against the application were outlined in the report.

There were 30 signatories stating that the route had been used as a bridleway, apparently "as of right" for a period in excess of the 20 year requirement. One of the signatories stated that they had used the route on horse back for 37 years, while the other 29 riders had used the route for periods of between 3 and 47 years prior to the submission of the deposition in 1999.

Historical evidence showed Ordnance Survey maps with the route marked as “BR” (Bridle Road).

Evidence against the application noted the map and statement demonstrating the landowners intention not to dedicate under Highways Act 1980 Section 31(6) was deposited in 1999 and the further deposit was made in 2004. It also noted that signatories acknowledged that tenants occupied the land over which the application route crossed and that the tenant was known to challenge their use of the route when riding. It claimed that challenges had been made from 1962 onwards and that the OS plans highlighted in support of the application did not outline any public use of the route. The OS plans also predated the preparation of the Definitive Map.

Officers suggested that the user evidence submitted with the application was strong and demonstrated that public had used the route as a bridleway since 1952 although the majority of the use provided in evidence took place between 1980 and 2010. Their assessment was, therefore, that the requirement that the use of the route as a bridleway had taken place for a period of 20 years prior to the status being called into question by the statutory declaration in 1999 had been met. It was noted that two of the signatories had acknowledged that temporary gates had been installed across the route for livestock management, but they had not indicated that they were challenged when using the route on horse back and, nor did it prevent them from using the route. Whilst the historic maps were not proof that bridle rights existed on the route the inference was that the route was considered to be a bridle road.

The report stated that the County Council, under Section 53 of the Wildlife and Countryside Act 1981 needed to be satisfied that the claimed public rights subsisted or was reasonably alleged to subsist and concluded that the evidence in support of the application was sufficient to show that the claimed bridleway was reasonably alleged to subsist and that a Definitive Map Modification Order should be made.

Mr Peter Grant, the owner of the Stockeld Park Estate addressed the Committee and spoke against the application. He raised a number of issues including the following:-

- Other Bridleways run through the estate, but those appear to have a purpose, whereas the route applied for appeared to run from nowhere to nowhere.
- The consultation process during the 1950's for the creation of the Definitive Map determined that the claimed Bridleway should be designated a Public Footpath. During the period of consultation there was ample time for the public to make representations in relation to that.
- At the time of the publication of the Definitive Map the path was clearly designated a Footpath and not a Bridleway.
- There was little evidence of historical usage prior to 1981.
- It was known that a daughter of a farm tenant on the estate used to use the route concerned as a Bridleway, however, that was with permission.
- The current tenant had always challenged people riding the path when in a position to do so.

- The creation of the Definitive Map, and system of depositions against further claims, was meant to resolve disputes over Rights of Way.

Mr Michael Wood, representing the landowner, addressed the Committee and spoke against the application. Mr Wood handed a copy of his statement to the Chairma, which was accepted on behalf of the Sub-Committee. He highlighted the following:-

- The report referred to Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 which applied to cases where there was no existing Public Right of Way recorded on the Definitive Map.
- This was not such a case as the claimed route was already a public footpath.
- He considered that the application should be put to the more stringent test requiring evidence to demonstrate that on the balance of probabilities bridleway rights existed, and that he felt that the evidence provided did not do that.
- The issues raised by Mr Grant should be taken into account in determining whether the alleged that Bridleway rights existed.
- The correct legal test that should be applied in determining the application was set out in section 53(c)(ii) rather than section 53(c)(i).

County Councillor Cliff Trotter declared a personal interest in relation to the application in respect of him knowing the objectors, but not to an extent where the interest became prejudicial.

Members requested clarification of the issues raised by the public speakers in terms of the legal interpretation. A Member suggested that the application must satisfy the higher test at this stage as a public right of way was already in place at the location.

The County Council's legal representative clarified the situation in terms of the legal criteria that had to be met in terms of this application. He advised that although not expressly stated in the Act the County Council had in the past received Counsels advice to the affect that it was appropriate to apply the "reasonably alleged" criteria when determining whether or not to make such orders. He noted that advice pre-dated the Government advice note referred to by Mr Wood. He stated that it had in the past been the custom of the County Council to refer to the "reasonably alleged" criteria when considering whether or not such an Order should be made. He also reminded the committee that should there be a challenge to a made Order then it would be referred to the Planning Inspectorate to determine whether or not it should be confirmed.

A Member noted that he had recently visited the site and that he had been told by the current tenant that the route should not be used as a Bridleway. He also outlined how footpaths and bridleways were already in the area and there didn't appear to be a specific need for an additional bridleway.

It was noted that the local Parish Council had no objections to the application.

A Member noted that at either end of the application route bridleways were already in place and that this appeared to join the two together. It was noted that historically the

route had been used for horse and carriage travel which was why the bridleways were in place.

A Member considered that there was a great deal of conflicting evidence provided in relation to the application and that much of the evidence appeared to be of a similar nature. He considered the crux of the matter was the interpretation of reasonableness in terms of the alleged bridleway.

A Member stated that, whilst having sympathy with the landowners' position, he was satisfied that on the balance of probabilities there appeared to be a bridleway on the application route.

The County Council's legal representative identified the difficulty facing Councillors in terms of being unable to cross examine those supplying evidence statements and so having to take evidence supplied at face value. He noted, however, that as was likely the process would lead to a Public Inquiry and that the evidence would be tested thoroughly in that forum..

RESOLVED –

That the Committee being satisfied that on the balance of probability that an order should be made authorise the Corporate Director, Business and Environmental Services, to make a Definitive Map Modification Order for the route concerned 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 can support the confirmation of the Order.

38. RESTRICTED BYWAY, NO. 5.50/24 BILLY LANE, TIMBLE MODIFICATION ORDER 2010

CONSIDERED –

The report of the Corporate Director Business and Environmental Services, advising Members of an opposed Definitive Map Modification Order to add a restricted byway to the Definitive Map and Statement along the route known as Billy Lane, which runs from Back Lane to Main Street, Timble.

A location plan was attached to the report and details of the route referred to were outlined. Members were informed that the matter would be referred to the Secretary of State for a decision on whether or not to confirm the Order, and therefore Members were requested to decide what stance North Yorkshire County Council should take within its submission to the Secretary of State.

The Committee's responsibilities and the legal issues pertaining to the application were outlined.

It was outlined that in August 2005 Washburn Parish Council had submitted an application for a Definitive Map Modification Order for Billy Lane to be recorded as a byway open to all traffic. Originally there had been 15 Evidence of Use Forms from 18 signatories. Four signatories were discounted from consideration for reasons outlined in the report, leaving 14 claims of having used the route as of right. 12 signatories claimed to have used the route for 20 years or more. All had used the route on foot with other various methods of transportation used on the route at various times. It was noted that

the route had occasionally been temporarily blocked by parked cars in 2004. No objections to the application were received during the consultation period.

Since the original application significant changes had been made to the relevant legislation affecting the application, with the implementation of the Natural Environment And Rural Communities Act 2006 (NERC Act 2006) the effect of the introduction of the Act was to extinguish the rights which may have existed for motor vehicles which were not already recorded on either the Definitive Map or the list of streets at the 2 May 2006, with the rights no longer existing nor being able to be recorded. Recognising that there would be applications for byway open to all traffic prior to that date, the Act gave a back dated cut off date of 20 January 2005 for existing applications to be determined. Applications made after that date could still be considered with a byway open to all traffic being recorded on the Definitive Map.

The application for Billy Lane was submitted after that cut off date and could only be considered, therefore, as an application for a restricted byway, which excluded motor vehicle rights, unless it could be demonstrated that one of the exceptions set out under Section 67 (2) of the NERC Act 2006 was applicable.

Consideration was given to any exceptions potentially relevant to the circumstances at Billy Lane.

It was apparent that none of the exceptions under which mechanically propelled vehicular rights had not been extinguished were appropriate for Billy Lane and it was concluded, therefore, that the only rights that existed were those of restricted byway. As such a Definitive Map Modification Order for a restricted byway was advertised from 19 February 2010 to 2 April 2010.

Following that representations were received in support of the Order from the British Driving Society and an owner of a property on Billy Lane.

Eight representations of objection to the order were received from Washburn Parish Council and seven local residents of Timble.

The issues outlined by the Parish Council and local residents in objection to the Order were not issues that could be taken into consideration as part of the process in determining what public rights exist. No evidence had been provided of any overt action taken to prevent the use of the route on foot, by horseriders, by cyclists or by persons in a motor car nor was it denied that the route was freely used by the public. On balance the evidence suggested that any motor vehicle rights that may have existed along Billy Lane had been extinguished by the NERC Act 2006.

It was recommended, therefore, 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 in the event of any Public Inquiry that may be held.

Mr Graham Steel, currently the only resident of Billy Lane, addressed the Committee and spoke in favour of the recommendation. He outlined his observations regarding the use of the lane and suggested that it was not used mainly by mechanically propelled vehicles. He emphasised that the main use of the lane was by pedestrians. He noted that as he was the only resident of the lane, the delivery vans were only likely to call at his residence or Lucy's Cottage. He considered that the confirmation of a restricted byway as a right of way for the lane was appropriate.

Members noted that the Committee was only able to act under the relevant legislation which was the NERC Act 2006, as the application site did not meet the criteria for any exceptions. It was noted that the NERC Act extinguished the notion “once a highway, always a highway”.

RESOLVED –

That officers be authorised to support the confirmation of the Order 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 retain that stance.

39. APPLICATION FOR DIVERSION OF PUBLIC BRIDLEWAY NO 15.101/14 - NEW YORK FARM, NORTH RIGTON

CONSIDERED –

The report of the Corporate Director Business and Environmental Services advising Members of an application for a Diversion, the effect of which, if pursued, would be to divert Bridleway No 15.101/14, New York Farm, North Rigton. A location plan was attached to this report and a plan highlighting the proposed deletion and the section of bridleway proposed to be added was also provided.

The report set out the Committee’s responsibilities in terms of Section 119 of the Highways Act 1980 which allows the County Council to make a diversion order where it was satisfied that appropriate criteria were met and it was expedient to do so.

The Committee’s decision would be the first stage of a two part process. Should Members authorise the Order and there were subsequently no objections, the County Council could then confirm the Order subject to the diversion still being expedient and meeting the criteria set out in the report.

An objection to the Order, not subsequently withdrawn, would be subject to the Secretary of State confirming that.

A formal application for the diversion was submitted in June 2010 by the landowner of the farm. The diversion was submitted to accommodate development on the farm which would effect the Bridleway’s current alignment. Details of how the new route would be accommodated on the land were outlined in the report. An informal consultation on the proposal was undertaken with the statutory consultees in July 2010. Replies were received from the British Horse Society, British Driving Society, the Ramblers Association and the Harrogate Bridleways Association. All but the Harrogate Bridleways Association had considered the new route to be appropriate, however, they had objected to the proposal, having concerns that the stone set surface of the bridge would prove to be slippery to horses. They stated that they would wish to see the route being used through winter before they were prepared to withdraw their objection.

In response to the concerns raised in the consultation, arrangements had been made for surface testing to be carried out on the cart bridge to determine whether the surface would be a risk to equestrian users. Assurances had been provided by the landowner that should the surface become a hazard to equestrian users in the future, remedial works would be carried out to make it safe.

Members noted that a slip test would be carried out on the bridge and that the landowner had done his best to accommodate the issues raised.

RESOLVED –

That the Corporate Director, Business and Environmental Services, be authorised to make a Diversion Order for the route concerned to be diverted to the alignment as shown on plan 2 as A – D – E – C on the Definitive Map, 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 should support confirmation of the Order.

40. APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT AT ROSPER ROAD, PALEY'S PLANTATION TO KIRKBY MOOR FARM, KIRKBY MALZEARD

CONSIDERED –

The report of the Corporate Director, Business and Environmental Services advising Members of an application for a Definitive Map Modification Order, the effect of which if confirmed, would be to add a Bridleway along the route known as Rosper Road, which runs from Paley's Plantation to Kirkby Moor Farm at Kirkby Malzeard. A location plan was attached to the report and the claimed Bridleway was shown as A – B – C on a plan contained within the report. For much of the route (A-B) the claimed Bridleway followed the line of an existing Public Footpath (Footpath No. 15.70/10), which was shown as A – B – D on the plan.

The report outlined the Committee's responsibilities and the legal issues pertaining to the application.

It was stated that the application had been made under Section 53 of the Wildlife and Countryside Act 1981 and was submitted in March 2004 to add the route shown as A-B-C on the plan within the report to the Definitive Map and Statement as a Bridleway.

The application was supported by 14 Evidence of Use Forms together with old Ordnance Survey maps and an "early 19th Century map" of Kirkby Malzeard, an extract from the 1789 Enclosure Award for Kirkby Malzeard and photographs of the route. An additional 17 Evidence of Use forms were submitted in April 2006.

The applicant claims that the public had been using the route on horse back for many years up until the winter of 2000-2001 when the route was closed due to Foot and Mouth Disease Restrictions. During that time Kirkby Moor Farm was sold and when the route could be used again the new owner challenged the rider and locked the gate at the southern end of the route.

Investigations into the application commenced in August 2005 and those affected by the application were contacted. Objections to the application were received from the owners of Kirkby Moor Farm, the owner of Paley's Plantation and Kirkby Malzeard Parish Council. Evidence opposing the application included an OS map dating from 1856, eight letters from local residents stating they had not seen the route used as a Bridleway, only as a Footpath, and a statement from the Parish Council saying that its members had never known the route used as a Bridleway.

Although the intended status of Rosper Road in the Inclosure Award was clear it was difficult to prove that the road was the same route as the claimed Bridleway. Work had been instigated by one of the witnesses, involving a Public Rights of Way Consultant, to

research the Inclosure Award and the “early 19th Century map” appeared to have been drawn up to accompany that. The report was submitted to officers in October 2010.

Officers contacted the objectors setting out the new evidence submitted but their objections continued. The owner of Paley’s Plantation, however, stated that she had no evidence to oppose the application, but was concerned about the suitability of the route for horse riders.

Details of the user evidence in support of the application was outlined, with, in total, 31 Evidence of Use Forms submitted by local people claiming the route referred to as A-B-C in the plan, within the report, as a Public Bridleway. Of those, 27 witnesses appeared to have used the route as a Bridleway “as of right”. The 27 witnesses together claimed to have used the route as a Bridleway for in excess of the required 20 year period prior to the status of the route being called into question in 2002. None of the users had been stopped or challenged when using the route until 2001-2002.

The historical evidence in support of the application was outlined. This included the map from the County Record Office labelled early 19th Century map and several Ordnance Survey maps from 1892 to 1930 showing the route marked as BR (Bridle Road). A map was also provided accompanying the Tythe Appointment of 1841 showing an unlabelled track across the fields in the same location as the claimed Bridleway. An extract from the 1789 Kirkby Malzeard inclosure Award was also submitted with the application. A witness supporting the application researched all the Quarter Sessions books dating from 1781 to 1971 covering the area. A certificate setting out of public roads dated 12 July 1791 confirmed that all public roads to be set out through Kirkby Malzeard Inclosure Award had been completed which indicated that the public highway as described in the Inclosure Award were certified as being having physically made available for public use. No subsequent Stopping Up or Diversion Order could be found. Various photographs showing use of the route were provided.

Details of the evidence against the application were outlined. The owners of Kirkby Moor Farm had objected to the application stating that when the land was purchased searches only showed a Footpath across, not a Bridleway. They also objected on the grounds that their land was naturally wet and would suffer seriously from regular use by horses and that there was a risk to livestock being let out.

Other evidence submitted included:-

- A copy of an 1856 OS map showing the route but with no status.
- A letter from the previous owner of Kirkby Moor Farm stating there was no Bridleway on the claimed route.
- A letter from a local resident who undertook a survey of Parish paths in 1991 stating that the route was a Footpath and had never seen horse riders using it.
- Letters from local residents and local horse riders stating that they had seen the route used as a Footpath but not as a Bridleway. The letters covered a substantial period of time, one stating that they had never seen horse riders on the route for over 61 years.
- A copy of the MAFF Agricultural Return for Kirkby Moor Farm dated June 1941 stating conditions of farm roads – none.

The landowner of Paley's Plantation had written stating that although there was no written proof against the claimed Bridleway for the past 60 years there had been only a stile and later a small gate from the wood into the field belonging to Kirkby Moor Farm.

Kirkby Malzeard Parish Council objected to the application on the grounds that the claimed Bridleway was not shown on the Definitive Map, active Members of the Parish Council had extensive knowledge of the area and had never known the route to be a Bridleway, the name Rosper Lane was not known to Parish Councillors, searches when Kirkby Moor Farm was sold had not shown a Bridleway, the use of the route by horses would damage the land and disturb livestock.

Officers commented on the evidence provided and considered that on balance, in reference to the historical documentary evidence, that a claimed route should be shown on the Definitive Maps and Statement as a Bridleway. Officers doubted that, viewed in isolation, the user evidence submitted by the applicant would meet the statutory test for dedication of the route as a Bridleway. Sympathy was extended to the landowners concerns over potential damage and disturbance, but these issues could not be considered when determining whether or not public rights to use the route existed.

Mr Richard Sadler and Mr John Richmond addressed the Committee and spoke in favour of the application. Among the issues they highlighted were the following:-

- They had used Rosper Road for many years on horseback.
- In 2002 the user of the road had been ordered off the land and the access had been blocked.
- Subsequently an application was put forward for the Definitive Map Modification Order with the appropriate evidence provided, details of which had been outlined earlier in the meeting.
- The route had been used extensively by both walkers and horse riders from the early 1920's.
- Historical details of its use were outlined.

County Councillor Paul Richardson, Mrs Ruth Broadley and Mr Neil Frazer addressed the Committee and spoke in opposition to the application.

County Councillor Paul Richardson initially declared two personal interests, one of which was prejudicial, in relation to the application. He outlined how the son of the owner of Kirkby Moor Farm rented land from his wife, which related to the prejudicial interest and his personal interest related to him having walked the Footpath previously. He stated that he would use his right to address the Committee as a member of the public, for three minutes, and then would withdraw from the room, taking no further part in the proceedings.

The three speakers outlined a number of issues, highlighting the following:-

- There was historical evidence to suggest that the route had never been a Bridleway, including a map from 1856 that indicated a number of Bridleways, but not this one.

- Any one using the land not as a Footpath would have been confronted by previous landowners and would not have been allowed to use the route “as of right” prior to 2002.
- When the present owner undertook searches when purchasing the property in 2000 the route was only given as a Footpath.
- More credence should be given to the OS map completed in June 1856 than the early 19th Century map provided.
- Bridleways were shown on the 1856 map, but this was not one of them.
- The previous tenant had stated that between 1962 and 2000 the route had not been a Bridleway.
- A representative of the Parish Council who had resided in the area for more than 50 years had never known the route to be a Bridleway.
- The issue had first been raised with the Parish Council in 2001 and research that had followed had indicated that the route was a Footpath.
- Those opposed to the application had remained consistent in their observations from the start.

Following the public speakers Members of the Committee discussed the application and the following issues were raised:-

- A Member questioned the legal status of Rosper Road following the earlier application where the “once a highway – always a highway” premise had been overturned by the introduction of the NERC Act which had extinguished vehicular rights, in the terms outlined. He wondered what status this road had. In response it was explained that at the time of the 1789 map which showed this as a highway this would be a horse and carriage/foot road and that was how a highway would have been indicated at that time.
- A Member considered that the historical evidence provided indicated that the route as a Bridleway had existed for a substantial period of time.
- A Member pointed to the “new evidence” provided in terms of the early 19th Century map and noted that this had previously been unseen by the Definitive Map making Authority. He therefore considered that the recommendation put to the Committee was correct and that the legal status of the evidence provided should be extensively checked out at the next stage of the proceedings, should the application develop to that stage.

RESOLVED –

That the Corporate Director, Business and Environmental Services be authorised to make a Definitive Map Modification Order for the route shown as A–B–C on Plan 2 of the report, to be shown on the Definitive Map as a Public Bridleway, and in the event that formal objections to that Order were made, and were 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.

The meeting concluded at 1.45pm

SL/ALJ