

**NORTH YORKSHIRE COUNTY COUNCIL****PLANNING AND REGULATORY FUNCTIONS COMMITTEE SUB- COMMITTEE**

Minutes of the meeting held on 25 November 2011, commencing at 10.00 am at Catterick Leisure Centre, Catterick Garrison.

**PRESENT:-**

County Councillors John Blackburn, Robert Hesletine, Bill Hoult and Cliff Trotter.

Officers Jane Wilkinson, Simon Evans and Lee Humphrey (Legal and Democratic Services and Doug Huzzard (Business & Environmental Services).

Also present County Councillor Melva Steckles and Martyn Richards (Head of Legal Services Richmondshire District Council).

20 members of the press and public were present.

**45. APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN FOR THE MEETING****RESOLVED –**

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

**COUNTY COUNCILLOR BILL HOULT IN THE CHAIR****COPIES OF ALL DOCUMENTS CONSIDERED ARE IN THE MINUTE BOOK****46. MINUTES****RESOLVED -**

That the minutes of the meeting held on 7 October 2011, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

**47. PUBLIC QUESTIONS OR STATEMENTS**

County Councillor Bill Hoult said that 12 people had formally registered to speak at the meeting on the Earl's Orchard Field application. He confirmed that he was aware that County Councillor Melva Steckles would also like to speak on this item. The Chairman indicated that each speaker would be limited to three minutes and be given the opportunity to speak following presentation of the report by County Council Officers.

48. **LAND AT EARL'S ORCHARD FIELD, RICHMOND - APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN**

CONSIDERED –

The report of the Corporate Director Business & Environmental Services informing Members of an application to register an area of land at Earl's Orchard Field, Richmond as a Town or Village Green. The application site owned by Richmondshire District Council is subject to a lease to Richmond Town Football Club. A location plan was attached to the report. The County Council is the Commons Registration Authority and therefore responsible for determining the application.

Also appended to the report was a full copy of the application, together with supporting evidence submitted by Applicant and the objections received in response. The relevant legislation and the determining criteria to be applied under the Commons Act 2006 were outlined in the report. Because of the conflicting evidence that had been submitted and on account of the serious dispute that existed between the parties the report recommended that a non-statutory public inquiry be held.

The matter had been reported to the Richmondshire Area Committee for information and the report had been noted.

Introducing the item County Councillor Bill Houlton explained that he would first call upon Doug Huzzard the County Council's Highway Asset Manager to speak to outline the report before hearing speakers from the floor who had given advance notice of their intention to speak at the meeting.

Doug Huzzard gave a powerpoint presentation comprising of photographs of the application site. He then summarised the application, supporting evidence and objections received. He emphasised to Members the strict criteria that had to be applied to all of the evidence when making a decision. He said it was difficult to ascertain with any certainty if those people claiming to have walked dogs had been doing so as a consequence of using the public footpath along the riverside edge of the field. He confirmed that many of the claimed activities did on the face of it constitute 'lawful sports and pastimes'. Correspondence from Richmondshire District Council and Richmond Town Football Club indicated that use of the land had been 'by right'. Members were directed that where evidence was immaterial and should be disregarded and where it was based on the merits of the land being used either as or as not a village green. The conflicting views and lack of clarity of evidence was the reason officers were recommending the appointment of an independent expert who would then conduct a non-statutory inquiry. Members were told that an independent expert would be able to examine the evidence in detail and cross-examine witnesses.

The Chairman then invited County Councillor Melva Steckles to address the meeting.

**County Councillor Melva Steckles declared a prejudicial interest in the application as it affected the financial position of Richmondshire District Council and she was also a district councillor of that local authority. She stated that she would use her right to address the Committee as a member of public for three minutes and would then withdraw from the room and take no further part in the proceedings.**

County Councillor and Richmondshire District Councillor Melva Steckles addressed the Committee and spoke in opposition to the application. She said that the appointment of an independent expert would result in the County Council and Richmondshire District Council having to pay legal costs of approximately £20,000 at a time when both authorities faced significant budget cuts. She invited the Sub-Committee instead to determine the application that day and to reject the application.

Mr Derek Clark, Mr Raymond Clark, Mr Arthur Smith, Mr Ian Short and Mr Barry Denny addressed the Sub-Committee and spoke in favour of the application. Comments included:-

- Outlined details about the history of the application site.
- Details of their personal activities on the application site for a period in excess of 20 years.
- Not opposed to the playing of football on the site but objected to being denied access.
- Alternative walking route not suitable for the elderly and/or disabled.
- Statements that before the fences were erected, access to the site was not challenged.
- Don't class fences as temporary as only removed one month in year.
- Claims that a significant number of local inhabitants have used the site as community open space.
- When river is in flood the width of the public footpath is reduced.
- Concerns about the safety of children playing in close proximity to the river.
- Local inhabitants are responsible dog owners and problems with dog fouling on the site are due to visitors and outsiders.
- Invited the sub-committee to approve the application that day based on the evidence in the report and oral evidence given at the meeting.

Simon Evans, legal officer reminded Members that the criteria stipulated that 'use must be as of right for a period of at least 20 years'. The events that had occurred after the fences had been erected on the site were not relevant nor were issues surrounding dog fouling. Members were advised that it was possible that where the relevant criteria had been met on some but not all of the application site then a commons registration authority could determine to register only that part of the site. In the past there had been instances where an application had resulted in only partial registration of the land applied for because it had been held there was no evidence to support registration of the entire site.

Mr Martyn Richards, joint Head of Legal Services, Richmondshire & Hambleton District Councils addressed the Sub-Committee and spoke in opposition to the application. He said that as the landowner, Richmondshire District Council objected to the application. He referred the Sub-Committee to the written representations submitted by the District Council, and said that the District Council did not support all of what was said in the review of evidence in the County Council's report but was however satisfied with the recommendation. Richmondshire District Council did he said support the appointment of an independent expert to conduct a non-statutory public inquiry because the application required a quasi judicial setting in which to test the evidence. The application was clearly contentious and limiting members of the public to only three minutes speaking time was insufficient. The cost of instructing an independent expert was not relevant.

The Chairman asked Mr Richards if Richmondshire District Council was now able to confirm the power under which the land was purchased and now held. Mr Richards replied that a search of the District Council's records had to date revealed no information on this point and he was not optimistic of anything coming to light.

Mr James Conway, Mr Stephen Andrew, Ms Linda Blackburn, Parish Councillor Shirley Thurbon and Mr Oliver Blease addressed the Sub-Committee and spoke in opposition to the application. Comments included:-

- Statements that prior to the village green application being lodged they had challenged people regarding access to the site.
- Confirmed support for the stance adopted by Richmondshire District Council.
- Invited the Sub-Committee to dismiss the application that day.
- Richmond Town Football Club very keen to engage with the local community.
- Confirmed that fences erected due to problems with dog fouling and in order to comply with football league rules and to stop pitch from being damaged.
- In past application site used for grazing sheep and public had no access.
- The remains of a stone wall on the site demonstrated the historic separation of public access.

The Chairman then read out a letter from Emma Gruffyd (not present at the meeting) in support of the application that had been handed to the clerk. Copy placed in the Minute Book.

Members asked a number of questions and sought clarification of the evidence they had heard from speakers both for and against the application.

The Chairman said that after listening to the speakers that day it was clearly an emotive subject and he was in no doubt about the strength of public feeling. The crux of the matter was usage of the land in the period December 1988-2008. A lot of the oral evidence given that day was he said not relevant. The Chairman read out the determining criteria and sought comments from other Members.

County Councillor Robert Hesletine said that the evidence was far from clear. He had read the documentation and listened to the oral submissions and there were clearly conflicting views. He referred to the report and precedent set by previous decisions which recommended the appointment of an independent expert to conduct a non-statutory inquiry. He said that it was important that justice was seen to be transparent and efficient. The use of an independent expert and the cost of that expert whilst not material to the application did come at a cost. He said he was unable to determine with any accuracy what rights existed in the relevant period and urged all parties to try and come to a mutual agreement. County Councillor Hesletine moved the recommendation and in so doing noted that there was no right of appeal to the Council's ultimate only application for Judicial Review.

County Councillor John Blackburn supported the comments made by County Councillor Hesletine. He said that he would have like to have made a decision that day but after listening to the evidence and reading the papers was unable to do so and agreed that the appointment of an independent expert was correct in the circumstances.

The Chairman said that the application was not about the merits of dog walking or football. Determination of the application would require a thorough exploration of all relevant issues which was why he supported the report recommendation.

**RESOLVED –**

That the Corporate Director (Business & Environmental Services) with advice and guidance from the Assistant Chief Executive (Legal & Democratic Services) is authorised to appoint an independent expert to conduct a non-statutory inquiry into the application to register land at Earl's Orchard Field, Richmond as a Town or Village Green.

That following receipt of the report from the independent expert, a further report inviting the County Council to determine the application to register land at Earl's Orchard Field, Richmond as a Town or Village Green is referred to the NYCC Planning and Regulatory Functions Sub-Committee.

The meeting concluded at 11.40 am.

JW/ALJ