

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS COMMITTEE SUB- COMMITTEE

Minutes of the meeting held on 13 January 2012, commencing at 10.00 am at Mill Room, Pickering Memorial Hall, Pickering, YO18 8AA.

PRESENT:-

County Councillors John Blackburn, David Blades, Robert Heslestine, Bill Hoult, and Cliff Trotter.

90 members of the public were present.

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

RESOLVED –

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

COUNTY COUNCILLOR CLIFF TROTTER IN THE CHAIR

COPIES OF ALL DOCUMENTS CONSIDERED ARE IN THE MINUTE BOOK

50. MINUTES

RESOLVED -

That the minutes of the meeting held on 25 November 2011, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record subject to the following amendment:-

Pg 4 Paragraph 5 final sentence to read

'County Councillor Heseltine moved the recommendation and in so doing noted that there was no right of appeal to the Council's decision only application for Judicial Review'.

51. PUBLIC QUESTIONS OR STATEMENTS

The Democratic Support Officer said that 20 people had registered the right to speak at the meeting on items listed on the agenda. Some were unable to be present at the meeting and the Democratic Support Officer would read out on their behalf the written statements they had submitted. The Chairman indicated that each speaker would be limited to three minutes and be invited to speak at the point in the meeting when the relevant agenda item was being considered as opposed to being asked to speak at this point in the meeting.

52. **LAND KNOWN AS AUNUMS FIELD, THORNTON LE DALE – APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN**

CONSIDERED –

The report of the Corporate Director – Business and Environment inviting the Sub-Committee to determine an application to register an area of land at Aunum's Field, Thornton Le Dale as a Town or Village Green. The application site was jointly owned by Sanctuary Housing Association and Alwyn Dudley Smith. Part of the application site comprised of rough pasture crossed by rights of way and was occupied by a tenant farmer. The remainder of the land was subject to construction work following the granting of planning permission for low cost housing. A location plan was attached to the report. As the Commons Registration Authority the County Council was responsible for determining the application.

Also appended to the report was a full copy of the application, together with supporting evidence submitted by the Applicant and the objections received in response. The relevant legislation and determining criteria to be applied under the Commons Act 2006 were outlined in the report. The report recommended that the application be refused as the relevant criteria had not been satisfied.

The matter had been reported to the County Council's Ryedale Area Committee for information and the report had been noted.

Doug Huzzard introduced the report and gave a power-point presentation of photographs of the application site. He summarised key points in the report and stressed the importance of strict application of relevant criteria to be applied to the evidence when making a decision. Members of the Sub-Committee had he said to be satisfied that the claimed use over the relevant 20 year period had been 'as of right'. Members were directed to the review of evidence and conclusions in the written report and in particular to paragraph 12.5 highlighting a briefing note issued by the Applicant when collecting evidence.

The Chairman then invited County Councillor Janet Sanderson to address the meeting.

County Councillor Janet Sanderson declared a prejudicial interest in the application as it affected the financial position of her neighbour and friend Mr Alwyn Dudley Smith a joint owner of the application site. County Councillor Janet Sanderson spoke for three minutes and then withdrew from the room and took no further part in the proceedings.

County Councillor Janet Sanderson said she had empathy for both the Applicant and Objectors. The desire of local residents to protect amenities within the village was perfectly understandable. An exception to the rigid application of local planning policy had been in respect of part of the application land and this was hard for local residents to accept.

Mr James and Dr Turner addressed the Sub-Committee and spoke in support of the application. Comments included:

- The report was flawed, paragraph 8.3 was inaccurate. The method used to collect evidence was agreed with a County Council Officer and any mistakes made were as a result of ignorance and did not affect the validity of user evidence that had been collected.

- Witness statements had been collected using a standard form which no other local authority had objected to.
- The conflicting evidence between the parties demonstrated the need for an independent expert to be appointed to conduct a non-statutory inquiry
- Refuting claims that use of the application site arose from witnesses utilising public rights of way
- The existence of public rights of way does not preclude land from being registered as a town or village green as evidenced by the existence of 40 such village greens in North Yorkshire,
- Claims that a significant number of local residents had used the application site as community open space
- Details of their activities on the application site for a period in excess of 20 years

In response to questions from a Member it was acknowledged by Mr James that in as much use of the site might not have been a consequence of using public rights of way there was also the equal prospect that an activity might have been a consequence of using a public right of way and so effectively amount to use 'by right'. The example of a walker wandering off the precise line of the right of way to sit under a tree to take refreshment was cited by the Member.

The Democratic Support Officer read out a short statement from Sue Cowan expressing her opposition to the application and disputing evidence lodged by supporters of the application. A copy of her statement was placed in the Minute Book.

Members sought clarification from the legal officer on whether the picking of fruit from the hedgerow constituted a legal leisure activity or whether it would require a licence from the landowner. Simon Evans, Legal Officer replied that where a landowner had not granted permission to individuals to pick fruit it would be difficult to prove that it had been stolen. His advice was that as a general rule, fruit picking was likely to amount to a 'lawful sport or pastime'.

The Chairman sought comments from Members.

County Councillor Robert Hesletine referred to paragraphs 12.4 and 12.5 of the report and said that based on the evidence lodged with the application and what he heard that day he was not satisfied that use of the application site 'as of right' had been demonstrated and therefore supported the recommendation in the report. Rejection of the application that day would not he said preclude a further application from being submitted if new evidence presented itself at a later date.

County Councillor Blackburn supported the comments made by County Councillor Hesletine. He said that if the Sub-Committee were to appoint an independent expert to conduct a non-statutory inquiry it was likely that the application would fail because of doubts surrounding the credibility of user evidence.

County Councillor Hault said that he did not support the recommendation as he doubted that all of the people who had submitted user evidence could not be telling the truth. He thought that it would be appropriate to hold an inquiry.

As the recommendation had been moved and seconded the Chairman invited Members to vote.

RESOLVED –

That the Application to register land known as Aumun's Field, Thornton Le Dale as a Town or Village Green is refused on the grounds that not all the relevant criteria of section 15 of the Act are satisfied.

53. APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A PUBLIC FOOTPATH ON THE DEFINITIVE MAP AND STATEMENT AT WRELTON, RYEDALE

CONSIDERED –

The report of the Corporate Director – Business and Environment inviting Members to authorise the making of a Definitive Map Modification Order to record a public footpath from: Cropton Lane, Wrelton to Wrelton Cliff Road, Wrelton along Back Lane. A location plan was attached to the report.

The application was supported by 77 user evidence forms. Following consultation objections had been received by the County Council from people who either owned land adjacent to the track or had connections to the owners of the land adjacent to the track.

The relevant legislation and the legal issues to be determined were outlined in the report.

The report had been reported to the Ryedale Area Committee for information and had been welcomed and one Member had expressed personal support for the application.

Russ Varley, the County Council's Rights of Way Officer gave a power-point presentation of photographs of the application route. He drew Members attention to an error in paragraph 6.1 of the report which said that five objections had been received. This figure was incorrect, and it was reported that the actual number of objections received was eight. The grounds for objection in the three additional objections did not differ however from those described in the report. He summarised the application and emphasised that not all of the supporting evidence was relevant. The objections whilst reasonable were not sufficient to dispel compelling evidence of an intention to dedicate which was why the report recommended that an Order be made.

County Councillor John Clark in his capacity as the local elected member spoke in support of the application for five minutes. He described how in his youth when living in the locality he had frequently used the route and had been surprised to learn that it was not registered on the Definitive Map as a public right of way. Whilst being willing to submit formal evidence to this effect he thought he was prevented from so doing as he was no longer a local resident.

The following local residents addressed the Sub-Committee and spoke in support of the application:

Mr Peter Anderson, Mr Blyth, Mr John Lumley, Mr John Pickersgill, Mr Anthony Scaling, Mr Barry Pickering and Mr James Michael Coultman, Comments included:-

- A description of the history of the application route
- Details of their personal and frequent use of the route for a period in excess of 20 years
- Confirmation that adjacent landowners had only recently attempted to stop members of the public from using Back Lane and erected signs preventing public access

Copies of hand drawn maps, photographs and historic maps and a letter from a Mr George Harrison of Coppice Farm, Wrelton were tabled at the meeting to collaborate the comments recorded above. Copies were placed in the Minute Book.

A member of the local parish council stated that the application had their support.

Mr Massara and Carol Marsh addressed the Sub-Committee and spoke in opposition to the application. Comments included:-

- application route has never been a public footpath and this was accepted by the previous Parish Council
- Application route is a private access track
- Since purchasing property adjacent to the route have challenged users
- Back Lane is not frequently used, have granted permission to some users
- Status of route confirmed by Rights of Way Officers as not being a public right of way
- Signs erected preventing public access
- Route not shown as a public right of way on a walks leaflet produced by the parish council
- When purchasing adjacent property the deeds contained no indication that the application route was a public right of way
- Vandalised signs were a safety hazard to animals and people
- Route historically blocked by mound of earth that was not removed until 1992
- Route not a through route until 2002 following some drainage work to Back Lane

Members sought clarification of some aspects of the evidence presented in person. The following information was provided. That it was not the intention of adjacent landowners to make the route impassable but they did want to prevent access by the general public. They had no objection to some local residents of the village who were known to them using the track.

With regard to the possible presence of a barrier on the route Members were advised that the evidence was not conclusive and that legislation stated that an Order should be made if a right of way is 'reasonably alleged to subsist'. Simon Evans, the Legal Adviser added that a wall with a stile could not be classed as an obstruction. An obstruction had to completely bar all access in order for an application to fail. Members were directed to consider all the evidence and make a judgement for themselves about whether the alleged usage took place.

County Councillor John Blackburn and Robert Hesletine said that the evidence was overwhelming and supported the making of an Order.

County Councillor Bill Hoult expressed sympathy for Mr Massara who he said had acted in good faith. The route was not registered on the Definitive Map and it had not been properly explained to him that just because a route was not registered it did not mean that rights did not exist. The weight of evidence clearly pointed to the route being a public right of way and he therefore supported the recommendation in the report.

RESOLVED –

That the Corporate Director Business and Environmental Services be authorised to make a Definitive Map Modification Order to record a public footpath from Cropton Lane, Wrelton to Wrelton Cliff Road, Wrelton along Back Land 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 shall support confirmation of the Order in referring the matter to the Secretary of State.

54. CREATION ORDER TO RECORD A PUBLIC BRIDLEWAY ON THE DEFINITIVE MAP AND STATEMENT AT LINGY PLANTATION, EBBERSTON, RYEDALE

CONSIDERED –

The report of the Corporate Director – Business and Environment advising Members of an opposed Creation Order. If confirmed the Order would add public bridleway 25.28/18 to the Definitive Map and Statement at Ebberston, Ryedale. A location plan showing the route was attached to the report.

Members were invited to support confirmation of the Order and to determine what stance the County Council should adopt when the Order was referred to the Secretary of State.

The report was introduced by Russ Varley the County Council's Rights of Way Officer who summarised the legal issues pertaining to the application. He emphasised that the making of a Creation Order was based on need unlike Definitive Map Modification Orders that were often reliant on evidence of use. He contended that the approach and request from the North York Moors National Park Authority as set out in the report evidenced the requirements contained in Section 26 of the Highways Act 1980.

Following the advertising of the Order one objection had been received by the County Council from the British Horse Society. The objection was on the grounds that higher rights existed and that therefore the route should instead be made a restricted byway. Reference was made to paragraph 6 of the report and the relevant criteria for making a Creation Order which stipulate that an assessment of existing public rights is not required.

Members sought clarification on the difference between a bridleway and restricted byway and it was explained that non-mechanically propelled vehicles could be used on a restricted byway.

The following people addressed the Sub-Committee and spoke in support of the Order, Janis Bright and Liz Newbronner. Comments included:-

- As equestrians who frequently used the route they supported the creation of the bridleway
- Creation of the bridleway would provide a crucial link in an important route that was important to residents and visitors to the area
- Confirmation of the Order would secure the long term future of the route
- The making of the Order had the support of Ryedale Bridleways Group who had no concerns about the route being shared by cyclists and equestrians.
- The objection from the British Horse Society had delayed the making of the Order for four years
- The higher rights claimed by the British Horse Society should be the subject of a separate application

A copy of a letter dated 20 November 2011 from Ryedale Bridleways Group to the Chair of the Planning & Regulatory Functions Sub-Committee was tabled at the meeting and a copy placed in the Minute Book. The Democratic Support Officer read out a statement

from Karl Gerhardsen, Head of Recreation and Access at the North Yorks Moors National Park Authority in support of the Order. It was reported that the British Horse Society had now lodged a separate application for higher rights (restricted byway) in respect of the route.

Catriona Cook and Lady Kirk spoke on behalf of the British Horse Society and summarised their objections to the application. They raised the following issues:-

- The report did not properly reflect that the route had previously been registered on the List of Streets
- The availability of documentary evidence that supported the route being re-entered on the List of Streets
- Historic collection by the local authority of rate support grant on the basis of the route being recorded in the List of Streets
- The status of the route remains that of a public highway of higher status than bridleway and any subsequent change in status would be unlawful unless those higher rights had previously been the subject of a stopping up order
- That if the Creation Order went ahead future generations of carriage drivers would be prevented from using the route
- Calls for the route to be returned to the List of Streets
- Dispute that use of a Creation Order to create a bridleway is legal when higher rights already exist
- That paragraph 3 of the report 'legal issues' is misleading – contend that rights cannot be created where in fact higher rights already exist
- Contention that as the route is a public highway the local authority is therefore the owner and the report is therefore inaccurate when it states that the owner is unknown
- The waste of public funds seeking confirmation of a creation order when the route should alternatively be restored to the List of Streets

In response to questions from Members the Simon Evans, Legal Officer advised Members of the differences between a Creation Order and a Definitive Map Modification Order. He confirmed that prior to the meeting that day he had no knowledge of the route being included on the list of streets as claimed by the objectors. Russ Varley advised that he had undertaken some research into the matter. According to the County Council's Highways Section the route had in error been included on the list of streets but that as soon as the mistake was discovered it had been removed. It was confirmed that the route was at present not included on the list of streets.

Members enquired what works and the cost of those works would be needed to bring the route to an acceptable standard if a Creation Order was approved. It was reported that works to the route had been carried out by the National Park in 2008 to bring it to a suitable standard and that regular monitoring had revealed no ongoing problems.

County Councillor Bill Hoult reminded Members that in the report the British Horse Society had objected on the grounds that the route was a restricted byway. Calls made that day for the route to be returned to the List of Streets were unsupported and the Committee should make its decision based on the evidence in front of it that day.

Simon Evans said his understanding of what the British Horse Society had put forward that day was that the County Council had not exercised proper judgement when it had historically removed the route from the List of Streets. If it could be proved that the route had been removed in error then it may be appropriate to consider whether or not to proceed with the Creation Order.

Based on the evidence in the report and presented at the meeting Members expressed unanimous support for the recommendation in the report.

RESOLVED –

That the legal criteria required for confirmation of Bridleway No.25.28/18, Lingy Plantation, Givendale Head, Ebberston and Yedingham Creation Order 2008 are satisfied.

That Officers support confirmation of Bridleway No.25.28/18, Lingy Plantation, Givendale Head, Ebberston and Yedingham Creation Order 2008 within the County Council's referral of the matter to the Secretary of State, and, in the event of any Public Inquiry, Hearing or Written Representation procedure that may occur, Officers are to retain that stance.

The meeting concluded at 12.25 pm.

JW/ALJ