

North Yorkshire County Council

Planning and Regulatory Functions Committee Sub- Committee

Minutes of the meeting held on 10 February 2012, commencing at 10.00 am at Knaresborough House, High Street Knaresborough.

Present:-

County Councillors John Blackburn, David Blades, Robert Heslestine, Andrew Goss (substitute for Bill Houl), and Cliff Trotter.

15 members of the public were present.

55. 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 David Blades be appointed Vice-Chairman.

County Councillor John Blackburn in the Chair

Copies of all documents considered are in the Minute Book

56. Minutes

Resolved -

That the minutes of the meeting held on 13 January 2012, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

57. Public Questions or Statements

The Democratic Support Officer reported that other than those persons who had registered to speak on the following item there were no questions or statements from members of the public.

58. Application to Register Land as a Town or Village Green – The Old Orchard, Blind Lane, Knaresborough

Note: Prior to consideration of this item of business, the following Members each declared a personal interest for the reasons indicated:-

County Councillors Andrew Goss and Cliff Trotter because they were Members of Harrogate Borough Council.

Considered –

The report of the Corporate Director – Business and Environmental Services inviting the Sub-Committee to determine an application received from Mrs E J Inman to register an area of land at Blind Lane, Knaresborough as a Town or Village Green. The application site was owned by Linden North Limited and was subject to construction work following the granting of planning permission for low cost housing. A location plan was attached 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 set out 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 Harrogate Area Committee for information and the report had been noted.

The item was introduced by Doug Huzzard, the County Council's Highway Asset Manager. He stressed the importance of strict appliance of relevant criteria 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 reminded of the merits of whether or not it might be beneficial for the land to be a town or village green were not material. Consequently any support in that vain should be disregarded and at the same time Members were not be influenced by the planning permission granted in respect of the site as it was not material. A series of photographs of the application site taken during the period 1981 to the present date were shown at the meeting. The photographs not all of which he acknowledged were taken during the relevant 20 year period gave a pictorial indication of the history of the site. Members were advised that the reason the report recommended refusal was because given the evidence submitted on balance the claim lacked credibility. Further the majority of the evidence submitted claiming use of the site was not specific enough and therefore little or no weight could be attached to it.

The Chairman then invited those Members of the Public who had registered to speak to address the Committee.

County Councillor Bill Hoult said that he had represented the division in which the application site was located for the last 12/13 years. Additionally he had also been district and town councillor for over 20 years. For several years during that time he had been the district councillor for the ward in which the application site was situated. He lived approximately a quarter of mile from the site. Throughout that period he had no recollection of the land being used to the extent claimed by the Applicant. He did not doubt that children had spasmodically played on the land but such use had not he said been sustained consistently across the site over a twenty year period.

Members of the Committee asked County Councillor Hoult if he had seen any evidence of paths on the site being made for example by people walking their dogs. County Councillor Hoult replied that the site was scrub land and very overgrown and that access was difficult. He said that he had no knowledge of the land being used intensively for any purpose.

The Applicant, Mrs E Inman spoke in support of the application she had submitted. She said she had collected 50 signatures from local residents who had personal experience of the land being used for recreational purposes as evidenced by the statements they had submitted. Throughout the relevant 20 year period the land had never been secured in any way nor had any maintenance work been carried out.

A Member referring to the letter at page 91 of the agenda papers asked what evidence Mrs Inman had to substantiate the statement she had made to the press that the land had been left by the Jacob Smith family for the benefit of local residents. Mrs Inman said that the land had been neglected for a long time. She acknowledged that her statement was based on hearsay and assumption and that there was no evidence to the contrary. She did however concede that she did not have any factual evidence to support her statement.

Reference was made to the photographs taken of the site before it was cleared for construction work. A Member asked how children had accessed the site which was clearly very overgrown and dangerous due to the fly tipping that had taken place. Mrs Inman replied that the site was not bounded by a fence or hedge and that there was no physical barrier to prevent access to the site. Certain parts of the site were from a health and safety aspect dangerous but that overall the land was a beautiful space where children had played and enjoyed nature. Public access to the land had only been denied after the developers had commenced construction work.

Members sought clarification of the activities children had undertaken on the land especially during the summer months when the vegetation would be very dense. Mrs Inman said that there were some clear areas. Activities included hide and seek and swings made in the trees. Lots of children played on the land which was also used by dog walkers. Local residents had told her that children, parents and grandparents of the same family had all used the land for recreational activities.

Harrogate District Councillor Ivor Fox then addressed the Committee. He said that he lived in the vicinity of the application site and had regularly walked along Blind Lane for over a decade. If action had been taken earlier he considered there may have been a case for registering the land as a town or village green. As things stood he very much doubted that the evidence was sufficient to meet the required legal criteria.

Mr Matthew Barker on behalf of Linden Homes North spoke against the application. He said he had visited the site in 2010 and had seen no evidence of it having been used for recreational purposes. The very dense undergrowth made the land inaccessible. He referred Members to the evidence collected by Linden Homes North and said the evidence submitted in support of the Application contained no details of specific activities or any detailed dates of claimed use.

A Member asked when the site was cleared if any evidence of use had been discovered or the remains of children's swings uncovered. Matthew Walker said that he had walked around the perimeter of the site and had struggled to gain access. During his inspection he confirmed that had not seen any evidence of tree swings or ropes.

In light of earlier questioning of the Applicant by one Member Simon Evans, Legal Officer, advised members that trespass of land in itself would effectively amount to use of the land 'as of right' one of the criteria required by the Commons Act 2006. This assuming that entry had not been by force.

The Chairman invited Members to comment on the report and the evidence presented at the meeting.

County Councillor Hesletine said that after reading the papers and listening to the speakers that day he was not convinced that the requirements of Section 15 (2) of the Commons Act 2006 had been met. The evidence submitted by Harrogate Borough Council was very clear and he referred to paragraph 6.5 of the report which stated that the Applicant had not challenged that entry was forced. He did not consider that usage had been 'as of right'. The report itself was very strongly worded to an extent he had not previously witnessed and he was mindful of the reasons given for the recommendation. Also the evidence submitted via sworn affidavits carried great weight. All of this when coupled with the response of the Applicant that she was unable to substantiate the statement she had made to the press was why he supported the recommendation in the report. He thanked the Applicant for her honesty and said that the application was a case of 'the heart leading the head'.

County Councillor David Blades supported the comments expressed by County Councillor Hesletine and added that the photographic evidence was enlightening. He was not convinced that the claimed usage took place over the required 20 year period.

County Councillor Andrew Goss agreed with the comments made earlier and said that there was no evidence that the land had been used by dog walkers or as a playground by children over a 20 year period. At best this use was sporadic due to the overgrown and derelict nature of the site.

Resolved –

That the Application to register land known as The Old Orchard, Blind Lane, Knaresborough as a town or village green is refused on the grounds that not all of the relevant criteria in Section 15(2) of the Commons Act 2006 are satisfied.

The meeting concluded at 10.45 am.

JW/ALJ