

North Yorkshire County Council

Planning and Regulatory Functions Committee Sub-Committee

Minutes of the meeting held on 2 March 2012, commencing at 10.00 am at County Hall, Northallerton.

Present:-

County Councillors: David Blades, Robert Hesletine, Bill Hoult, Mike Knaggs (Substitute for John Blackburn) and Cliff Trotter.

Apologies were received from County Councillor John Blackburn.

20 members of the public were present.

59. Appointment of Chairman and Vice Chairman

Resolved –

That for the purposes of this meeting County Councillor David Blades be appointed Chairman and County Councillor Robert Hesletine be appointed Vice-Chairman.

County Councillor David Blades in the Chair

Copies of all documents considered are in the Minute Book

60. Minutes

Resolved -

That the minutes of the meeting held on 10 February 2012 , having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

61. Public Questions or Statements

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

62. Application for a Definitive Map Modification Order to Record a Public Footpath on The Definitive Map and Statement between South Duffield Road and Bennymoor Lane, Osgodby, Selby

Considered –

The report of the Corporate Director – Business & Environmental Services inviting the Sub-Committee to determine an application submitted by Barlby and Osgodby Parish Council to add a footpath from South Duffield Road to Bennymoor Lane, Osgodby, Selby to the Definitive Map and Statement. A location plan was attached to the report.

The application was supported by eleven user evidence forms. Following consultation one of the owners of the land over which part of the route crossed had submitted an objection but had not supplied any evidence.

The report was introduced by Russ Varley, the County Council's Rights of Way Officer who gave a presentation of photographs of the route and summarised the legal issues to be determined.

Members said that whilst they were sympathetic to the concerns of the objector, incidents of anti-social behaviour were not relevant grounds upon which the application could be rejected.

Resolved –

That the Corporate Director – Business and Environmental Services be authorised to make a Definitive Map Modification Order to record a public footpath between South Duffield Road and Bennymoor Lane, Osgodby on the Definitive Map and that 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 to permit the Corporate Director, under power delegated to him within the County Council's Constitution, to decide whether or not the County Council can support confirmation of the Order.

63. Application for a Definite Map Modification Order to Record a Public Footpath on The Definitive Map and Statement between South Duffield Road and Sand Lane, Osgodby, Selby

Considered –

The report of the Corporate Director – Business & Environmental Services inviting Members to determine an application received from Barlby and Osgodby Parish Council to add a public footpath from: South Duffield Road to Sand Lane, Osgodby, Selby to the Definitive Map and Statement. Attached to the report was a location plan.

The report was introduced by Russ Varley, the County Council's Rights of Way Officer who presented photographs of the application route and summarised the legal issues to be determined. He advised the Committee that the first part of the recommendation in the report had inadvertently been omitted and he confirmed that it was the recommendation of Officers that an Order be made.

Members noted that the application was supported by 16 user evidence forms and that following consultation the landowner at the northern end of the application route had objected.

Members sought clarification of the reason why the middle section of the application route veered away from the hedgerow into an arable field. Members were advised that the application route followed the original historic route. The middle section of the route was prone to water logging which was why it deviated in towards the centre of the field. The field in question was rough pasture and not arable farm land. Members noted that in order for the route to follow the line of the hedgerow then a separate application would have to be submitted.

Resolved –

That the Corporate Director Business and Environmental Services be authorised to make a Definitive Map Modification Order to record a public footpath from South Duffield Road to Sand Lane, Osgodby, Selby on the Definitive Map and that in the event that formal objections are made to that Order, that are not subsequently withdrawn, to refer the Order to the Secretary of State for determination, and to permit the Corporate Director, under power delegated to him within the County Council's Constitution, to decide whether or not the County Council can support confirmation of the Order.

64. Application to Upgrade Public Footpath No 10.140/19 to a Public Bridleway, Levenside to Rosehill Drive, Stokesley

Considered –

The report of the Corporate Director – Business and Environmental Services inviting the Committee to determine an application for a Definitive Map Modification Order, the effect of which, if confirmed, would be to upgrade Footpath No. 10.140/19, between Levenside and Rosehill Drive, Stokesley to a public bridleway. A location plan was attached to the report.

The report was introduced by Beth Brown, Definitive Map Officer who outlined the background to the application and summarised the evidence that had been submitted. It was reported that a further letter of objection had been received from Stokesley Parish Council. The letter from the Parish Council enclosed a copy of a letter sent to the British Horse Society dated 19 March 2003 in which it said that the status of the application route was that of a 'footpath not a bridleway and that horses were not allowed to use it'.. The Parish Council contended that this was new evidence of earlier challenge and that the 20 year period of usage required by S31 of the Highways Act 1981 had not been fulfilled and that the application should therefore be rejected.

Beth Brown tabled an addendum to her written report (copy placed in the Minute Book) which reviewed the application in the light of the letter sent by Stokesley Parish Council to the British Horse Society. She said that the new evidence could be interpreted in different ways as covered in the addendum report and which she summarised at the meeting. Members had to decide for themselves whether the letter dated 19 March 2003 sent to the British Horse Society constituted a relevant challenge to all horseriders generally using the route.

The following people addressed the Sub-Committee and spoke in support of the Order, Mr Alwyn Boulby, Anne Boulby, Judith Ratcliffe (British Horse Society), Penny Manuel and Terry Ratcliffe (Cyclist Touring Club) copies of statements and documents tabled at the meeting were placed in the Minute Book. Comments included:-

- Statements from adjacent landowners that they had witnessed horseriders regularly using the route since 1983 and that no signs prohibiting access had been erected or horseriders challenged during this period

- Personal statement from an equestrian that they had used the application route up to three times a week as it was part of a circular route and had never been challenged
- Regularly cycled along the application route since 1999 and never challenged

County Councillor Caroline Seymour who was also a member of Stokesley Parish Council and Andy Wake, Chairman Stokesley Parish Council addressed the meeting and spoke against the Application.

County Councillor Caroline Seymour said that the matter had a long history and the Parish Council had received complaints about people riding horses along the route for many years. She outlined the history of the route and said that the Parish Council had consistently opposed it being used as a bridleway but that advice given to the Parish Council by the County Council had not been clear. The number of complaints rose after 1999 when land was sold to Broadacre Housing for older peoples housing and the conflict between users increased. She said that the letter written by the Parish Council in 2003 to the British Horse Society was evidence of challenge and that it was generally known that the Parish Council did not support the route being used as a bridleway.

A Member asked how long the section of the route marked as 'B-C' on the plan appended to the report had been in existence. County Councillor Caroline Seymour said that the housing estate had been built in 1983 and that prior to that she presumed it had been a field. She said that the route passed through a housing estate and central Stokesley and in parts it was very narrow and that it was not suitable for horses.

Andy Wake, Chairman of Stokesley Parish Council objected on health and safety grounds and expressed concern about the conflict between users.

In response to a question from a Member about the bollards on the route Andy Wake replied that their purpose was to prevent vehicles from accessing the route.

A Member asked if the user evidence forms submitted with the BOAT application which dated back to 1940/50s had said that the whole of the route including the section B-C which did not physically exist until 1983 had been used. Beth Brown, Definitive Map Officer said that the plan attached to the BOAT application showed the entire route, but that individual user evidence forms did not include plans so it was unclear as to the exact route each person had used.

The Democratic Support Officer read out a letter sent in by Gareth Jones objecting to the application.

A number of comments were made about horse droppings on the route. Simon Evans, Legal Adviser reminded Members that the suitability of the route for the right being claimed was not relevant and that Members should restrict themselves to consideration of the evidence of usage.

County Councillor Robert Hesletine said that the evidence given by Penny Manuel had been very convincing. The objections in paragraph six of the report and those of the Parish Council on health and safety grounds were not relevant and should be disregarded. As the letter written by the Parish Council in March 2003 was addressed only to the British Horse Society it was not sufficient to constitute a challenge to equestrian use of the route generally, and he therefore supported the making of an Order.

Members said they were satisfied that the evidence presented at the meeting met the requirements of S 31 Highways Act 1981.

Resolved –

That the Corporate Director Business and Environmental Services be authorised to make a Definitive Map Modification Order to upgrade Footpath No 10.140/19, between Levenside and Rosehill Drive to a public bridleway on the Definitive map and that in the event that formal objections are made to that Order, that are not subsequently withdrawn, to refer the Order to the Secretary of State for determination, and to permit the Corporate Director, under powers delegated to him within the County Council's Constitution to decide whether or not the County Council can support confirmation of the Order.

65. Resolved – Application to add a Restricted Byway to the Definitive Map and Statement at Stanwick Park, Stanwick St John

Considered –

The report of the Corporate Director, Business and Environmental Services inviting the Sub-Committee to determine an application submitted by Stanwick St John & Carlton Parish Council to add a Restricted Byway along the track running from South Lodge, Stanwick St John, past Outer Lodge, to the Aldbrough St John road. A location plan was attached to the report.

The application was supported by 49 user evidence forms. Following consultation an objection had been received from the owner of Outer Lodge.

The report was introduced by Beth Brown, Definitive Map Officer who summarised the application and objection and gave a presentation of photographs of the application route.

Mr Michael Johnson, local resident and Mr Chris Dickinson, local resident and a member of the parish council spoke in support of the application. Both endorsed the findings of the report and confirmed people used the route 'as of right'. Mr Dickinson said he had spoken to many of the residents in the village the majority of whom supported the application. He said that he knew of only three people who were not supportive and this was due to the concerns they had about the security of buildings adjacent to the route. Their fears he said arose from a burglary ten years ago following which gates had been installed and there had been no repetition.

Members enquired if the electric gates shown on the photographs impeded access. Simon Evans, Legal Adviser said the introduction of electric gates outwith the relevant twenty year period and issues that might arise from their continued existence should the route become a public right of way was not relevant to determining the application. If management issues arose as a result of the gates in the future these would be dealt with by Officers from Countryside Services. Mr Dickinson added that the gates were only occasionally closed and that most residents knew that there was electric switch on the gate post that opened them.

Members were satisfied that the evidence presented met the requirements of S31 of the Highways Act 1981.

Resolved –

That the Corporate Director, Business and Environmental Services be authorised to make a Definitive Map Modification Order for a Restricted Byway along the track running from South Lodge, Stanwick St John, past Outer Lodge to the Aldbrough St

John road on the Definitive Map and that 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 to permit the Corporate Director under powers delegated to him under the County Council's Constitution to decide whether or not the County Council can support confirmation of the Order.

66. Application to Upgrade a Bridleway and Restricted Byway to a Restricted Byway, known as Stripe Lane, to the Definitive Map and Statement In the Parishes of Appleton East and West and Hornby

Considered –

The report of the Corporate Director, Business and Environmental Services inviting the Sub-Committee to determine an application for a Definitive Map Modification Order, which, if confirmed, would add a Restricted Byway along the route known as Stripe Lane, which runs from Tunstall to Hornby, via West Appleton, within the parishes of Tunstall, Appleton East & West and Hornby to the Definitive Map and Statement. A location plan was attached to the report.

The report was introduced by Penny Noake, Definitive Map Team Leader who summarised the background to the application and described the current legal status of each section of the application route. A number of photographs of the application route and signage erected along it were shown at the meeting.

Penny Noake said that the matter had a long and complicated history mostly relating to maintenance of the route. Previously it had not been possible to prove that the route was of *ratione tenurae* route. She referred to further research undertaken by the County Council described in the report which indicated the historic status of the route to be a *ratione tenurae* road and which she claimed was supported by documentary evidence. As the documentary evidence showed the application route to be a *ratione tenurae* road this gave weight to the likelihood that it was a public highway. It was reported that Officers had been unable to collaborate claims that users of the route had been challenged and were therefore satisfied that the requirements of S.31 Highways Act 1981 had been met. With regard to the sign erected by the County Council's Highways section advice received from that section indicated that the sign was advisory only and did not reflect the status of the route. Taking all of these things into consideration Officers therefore recommended that an Order be made.

The meeting was addressed by Mr Haslam and Caroline Bardley (British Horse Society) who spoke in support of the application. Mr Haslam said that he had occasionally used the route and had never been challenged. Caroline Bradley said that user evidence dated back to 1939 and that she supported the findings in the report that the route was a *ratione tenurae* road.

Mr Stephen Metcalfe, the principal objector and owner of West Appleton Farm addressed the meeting. Mr Metcalfe referred Members to his two tabled written statements and copies of accompanying photographs and historic maps (Copy placed in the Minute Book). Mr Metcalfe said that the report presented to the Sub-Committee that day was factually incorrect for the reasons stated in his written statement. He strongly disputed the claim made by Officers that the application route was a *ratione tenurae* road and asked for the matter to be deferred to allow the report to be corrected. Mr Metcalfe disputed the user evidence in the report and referred to previous proceedings concerning the application route between himself and the County Council the results of which he said endorsed his position.

County Councillor Carl Les commended the report and said that given the history of the matter perhaps the only way it could be resolved would be to hold a public inquiry. Whilst he regretted the expense this would incur in the interests of all parties he was keen for the matter to be finally determined.

Penny Noake, Definitive Map Team Leader said that matter's long history was largely due to disputes concerning maintenance issues. She said that previous decisions were based on the evidence available at the time. The further research undertaken had clarified the situation and had revealed that the application route was a *ratione tenurae* road.

Simon Evans, Legal Adviser said that Members must be satisfied that the requirements of S31 Highways Act 1981 had been met if they were minded to resolve to make an Order. Members should not be said base their decision simply on it being a good idea to have a Public Inquiry to resolve the matter.

Members referred to the research undertaken and commended Officers on the extent and detail of their investigations. Members said they were satisfied that on the balance of probabilities the evidence presented was sufficient to warrant the making of an Order.

Resolved –

That the Corporate Director, Business & Environmental Services be authorised to make a Definitive Map Modification Order to record a restricted Byway along the route known as Stripe Lane, which runs from Tunstall to Hornby, via West Appleton, within the parishes of Tunstall, Appleton East & West and Hornby on the Definitive Map and Statement and that 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 to permit the Corporate Director, under power delegated to him within the County Council's Constitution to decide whether or not the County Council can support confirmation of the Order.

67. Application to Add a Footpath Between Mill Lane and Footpath No 20.56/6 Redmire

Considered –

The report of the Corporate Director, Business and Environmental Services inviting the Sub-Committee to determine an application received from a local resident to add a footpath, between Mill Lane and Footpath No 20.56/6 in Redmire to the Definitive Map and Statement. A location plan was attached to the report.

The item was introduced by James Perkins, Definitive Map Officer who said that the solicitors acting for the objector had written requesting an adjournment due to them receiving short notice of the meeting which had prevented them both from attending. It was reported that emails dated 16 January and 17 February 2012 respectively had been sent to the objector's solicitor informing them on the meeting date. Simon Evans, the County Council's legal adviser said Members should defer the application if they considered an interested party would be prejudiced.

Members considered the request and unanimously agreed to proceed that day as: -

- The period of notice given for the meeting was reasonable
- If the decision that day was to make an Order interested parties would have an opportunity to make further representations

- Members of the public had registered to speak at the meeting on this item

James Perkins then summarised the key issues in the application and showed a number of photographs of the application route. Details of the objection were outlined and a further letter received from Ian Blakey the owner of the Fishing Bothy/Barn dated 24 February 2012 was tabled at the meeting, (copy placed in the Minute Book). Two aerial photographs sent in by the objector along with one old photograph showing the boundary fence along Mill Lane submitted by a supporter were also shown at the meeting. Members noted that the application route on the two aerial photographs was obscured by trees.

Mr Price the current owner of Mill Farm spoke in support of the application. He said that over the course of the last 12 years he had witnessed thousands of people using the application route. The route gave users an uninterrupted view of the River Ure and was a well known local beauty spot. He said that in his experience walkers tended to use the application route as opposed to the original footpath as it allowed a better view of the river.

Members were satisfied that the evidence met the requirements of Section 31 of the Highways Act 1981.

Resolved –

That the Corporate Director, Business and Environmental Services be authorised to make a Definitive Map Modification Order to record a public footpath between Mill Lane and Footpath No 20.56/6 in Redmire on the Definitive Map and that in the event that formal objections are made to that Order, and are not subsequently withdrawn, to refer the Order to the Secretary of State for determination, and to permit the Corporate Director, under powers delegated to him within the County Council's Constitution, to decide whether or not the County Council can support confirmation of the Order.

The meeting concluded at 1.10 pm.

JW/ALJ