

North Yorkshire County Council

Planning and Regulatory Functions Committee Sub-Committee

Minutes of the meeting held on 13 April 2012, commencing at 10.00 am at Bolton Abbey Village Hall.

Present:-

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

Eight members of the public were present.

68. Appointment of Chairman and Vice Chairman

Resolved –

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

County Councillor Robert Heseltine in the Chair

Copies of all documents considered are in the Minute Book

69. Minutes

Resolved -

That the minutes of the meeting held on 2 March 2012, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record, subject to the alteration of the spelling of Heseltine within the Minutes.

70. Public Questions or Statements

The Democratic Services 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.

71. Application to add a Bridleway to the Definitive Map and Statement at Hawber Lane, and to Upgrade Footpath No 05.41/11 (Part) and Footpath No 05.41/16 (Part) to Bridleways, Thornton-in-Craven

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, the effect of which, if confirmed, would be to add a Bridleway along the route known as Hawber Lane and to upgrade Footpath No 05.41/11 and Footpath No 05.41/16 (Part) to

a Bridleway, within the parish of Thornton-In-Craven. A location plan was provided with the report along with details of the route.

The application was supported by 14 evidence of use forms, claiming usage of the route as a Bridleway from 1961 to 1994 with the combined claimed usage in excess of 20 years. Details of the historical evidence in support of the application were outlined in full.

Evidence provided against the application was submitted by the land agent acting on behalf of the Earby Estate which acknowledged the existence of the track on historic maps but considered that this had never been identified as a Bridleway nor had it been used as such.

The report was introduced by James Perkins, the County Council's Definitive Map Officer, who gave a presentation of photographs of the route and summarised the legal issues to be determined.

Members discussed the report outlining the following issues:-

- Issues relating to the right of way over the County boundary in Lancashire had yet to be resolved.
- Photographic evidence indicated that some parts of the route appeared impassable, however, it was indicated that where historical documentary evidence gave rights, despite these looking over grown, the rights remained.
- Confirmation was provided on where the road to the farm ended.

Mrs Carol England, former Bridleways and Access Officer for Pendle Borough Council, addressed the Committee in support of the recommendation proposed in the report. She outlined the historical evidence in support of that and gave details of the routes use both by horse riders and on foot. She noted that the gate situated on Part B on the route had not been locked for a substantial period.

The Chairman referred to a sworn affidavit from representatives of the Earby Estate, which had been provided by the manager of Rectory Allotment, which had been circulated to Members of the Committee prior to the determination of the application. The evidence provided was acknowledged, but it was emphasised that there was an overwhelming weight of evidence in support of the application.

The officer concluded that although the application was for the route to be recorded as a Bridleway, the documentary evidence, particularly the enclosure award and map, suggested higher rights, indicating that the application route, in full, should be shown on the Definitive Map and Statement as a Restricted Byway.

Resolved –

That the Corporate Director of Business and Environmental Services be authorised to make a Definitive Map Modification Order for the route shown as A - B – C – D – E – F - G on Plan 2 of the report to be shown on the Definitive Map and Statement as a Restricted Byway; and, in the event that formal objections are made to that Order, and are not subsequently withdrawn, authorisation be given to the referral of the Order to the Secretary of State for determination and permission given to 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.

72. Application for Diversion of Public Footpath No 05.30/37, 1. Gallaber Farm, Long Preston

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 Footpath No 05.30/37, 1 Gallaber Farm, Long Preston.

A location plan was attached to the report providing details of the section of footpath proposed to be deleted and the section of footpath proposed to be added.

The report was introduced by Andy Hunter, the County Council's Diversions Officer, who gave a presentation of photographs of the route and summarised the legal issues to be determined. He noted that the proposal for the diversion was submitted due to the landowners' acquisition of a parcel of land to the north of the dwelling and their wish to encompass this land within their existing boundary.

An informal consultation on the proposal was undertaken with the statutory consultees, which provided objections from Long Preston Parish Council and two residents of Hellifield. The objections related to there having been a number of changes already to the line of the footpath, the route was historic and ancient, and had previously been diverted to allow development at the caravan park.

During discussion of the application, a Member noted that the footpath had previously been diverted in 2007 and wondered why the current diversion application had not been applied at that time. He raised concerns that granting the application could set a precedent in respect of continual diversion applications, whenever any applicant wished to. Members emphasised that the application before them satisfied the appropriate criteria for making a Diversion Order.

The officer concluded that the application satisfied the criteria of Section 119 (1) of the Highways Act 1980, with the owners' interests to have the footpath moved to the boundary of their property, without being substantially less convenient to the public.

Resolved –

- (i) That the Corporate Director, Business and Environmental Services be authorised to make a Diversion Order for the route shown A-B on plan 2 to be diverted to the alignment shown as B-C on plan 2;
- (ii) That in the event that formal objections are made to that Order, and are not subsequently withdrawn, the referral of the Order to the Secretary of State for determination be authorised and Corporate Director, under powers delegated to him within the County Council's Constitution, be permitted to decide whether or not the County Council can support the confirmation of the Order.

73. Application to Upgrade Footpath No 05.41/23 (Part) to bridleway status and to record the lane known as Dodgson Lane and Dark Lane on the Definitive Map and Statement as a Bridleway

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 Dodgson Lane and Dark Lane, and to upgrade Footpath No 05.41/23 to a Bridleway, within the parishes of Thornton-In-Craven and Lothersdale.

A location plan was attached to the report highlighting the route.

The application was supported by six evidence of use forms, claiming that the route referred to was a Bridleway. Three signatories claimed to have used the route from 1921 to 1994, which combined showed usage of above the 20 year required period, but as individuals only one of the signatories had used the route for a period in excess of 20 years. The three signatories also claimed to have used the route on horseback or by horse and cart. None of the witnesses had ever been prevented from using the route until the route had become overgrown. Historical evidence was provided in support of the application.

Evidence against the application was provided by the landowner of Windlefield Farm affected by the application. Details were outlined within the report. Earby Town Council had also objected to the application again the details were provided in the report.

The report was introduced by James Perkins, the County Council's Definitive Map Officer, who gave a presentation of photographs of the route and summarised the legal issues to be determined.

Members discussed the report and the following issues were highlighted:-

- Clarification was provided on the status of Section A-B of the route in respect of it being on the "list of streets".
- Details of how a restricted byway could be used were provided.
- A Member noted the small number of persons that had indicated they had used the route, however, it was stated that there was also significant historical evidence in relation to this route being as suggested and there was no specified number of users of a route had to be identified for that to be designated as a public right of way.

Mrs Susan Beresford addressed the Committee and spoke in opposition to section B-D of the application, indicating that she had no objection to section A-B. In relation to section B-D she suggested that there had been little use of the route and there was very little evidence of use provided. There was no knowledge in the area that this had been used as a right of way previously. She noted that Earby Parish Council strongly objected to the application.

Mrs Carol England addressed the Committee and suggested that there were some inaccuracies within the report highlighting additional historical evidence that discounted issues set out within the report. She provided details that the Draft Map, issued as part of the process for the production of the Definitive Map in 1953, showed that there was a public route along the route shown, which contradicted what was set out in the report. She highlighted other historical details that pointed towards the route in the application having been a public right of way for a substantial period of time. She considered,

therefore, that the whole of the route (A-D) should be recommended for the making of a Definitive Map Modification Order.

Details of the historical evidence were provided to the Public Rights of Way officer, who indicated that these showed that section B-D of the route had higher rights than a footpath. He considered, however, that with the removal of section 9.5 of the report the recommendation could continue as stated, as the additional evidence provided was the Draft Map which was subsequently superseded by the Definitive Map.

The Committee's Legal Adviser, Simon Evans, suggested that it was difficult for Members to draw an appropriate conclusion to the application without having sufficient opportunity to consider the new evidence provided. He also suggested that it would be appropriate for all parties involved to be provided with details of the new information, to allow them to comment, and submit these back in to the consideration process, before a decision was reached.

Resolved –

That the application to upgrade Footpath No 05.41/23 (Part) to Bridleway status and to record the lane known as Dodgson Lane and Dark Lane on the Definitive Map and Statement as a Bridleway be deferred to allow all the additional information detailed above to be published and challenged appropriately, as part of the application process, with the application submitted to a subsequent meeting of the Sub-Committee for determination.

74. Application to add a Footpath to the Definitive Map and Statement from Abbey Road to Abbey Road via the bank of the River Nidd, Knaresborough

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, the effect of which, if confirmed, would be to add a Footpath, which runs from Abbey Road to rejoin Abbey Road via the bank of the River Nidd in Knaresborough. A location plan providing details of the route was provided with the report.

The application was supported by 20 proforma statement forms submitted in 1985 and a further 14 user evidence forms submitted between 2010 and 2012. The forms claimed uninterrupted use of the route, on foot only, from 1925 until 1985. Of the 14 newer forms submitted 10 were disregarded as they were not directly supportive of the application, leaving four signatories supporting the application in terms of the evidence of use forms submitted between 2010 and 2012.

Objections to the proposals were submitted by legal representatives of the current owner of the Abbey. Details of the objections were provided within the report and it was emphasised that the application had been raised over 25 years but had not been pursued until now.

The report was introduced by James Perkins, the County Council's Definitive Map Officer who gave a presentation of photographs of the route and summarised the legal issues to be determined.

Following the initial report Members discussed the issues raised and highlighted the following:-

- The alignment of the proposal and whether it mattered whether users deviated from that.
- The issues regarding the erection of the fence that prevented full use of the route.
- Whether higher rights than public right of way existed.

A number of speakers addressed the Committee in relation to the application as follows:-

County Councillor John Batt, one of the County Councillors for Knaresborough and also a District Councillor and Town Councillor for that area spoke in support of the application highlighting that this was one of the few places in Knaresborough where the public could get access to the river and that the access would assist with tourism in Knaresborough. He noted that he had not been able to use the path in recent years because of the fencing having been put in place, but he and family members could recall when the route was fully open to the public, without interference or barrier.

A Member of the Committee considered that although tourism was important to Knaresborough, the fencing was also an important feature due to health and safety concerns.

Members were reminded by the Committee's Legal Adviser that issues such as tourism and health and safety were not within the criteria on which they were to base their determination of the application.

Mr Andrew Willoughby, the current Mayor of Knaresborough, representing the local community and the Ramblers Association, spoke in support of the application, stating that he had known the Abbey Road area all of his life and had ridden his bicycle along the route between 1967 and 1972. He has also frequently walked the route, when walking his dog and had been able to walk down to the river bank and back to the road. This had been the case until the 1980's when the fence had been put in place by the then landowner. He suggested that the full width of the route highlighted had been used as a public right of way for the appropriate period of time by many local people and that they would like to see it restored to the same level of access. He noted that most people would have used the full width of the route. Since 1985, however, access had not been undertaken due to the erection of the fencing.

Mr A Noble, legal representative of the landowner, Mr Brown, addressed the Committee and spoke in opposition to the application. He suggested that not all of the evidence had been supplied in relation to the application, which made it difficult for the Committee to make an informed decision.

He stated that between 1965 and 1985 the ownership of the land was unknown. It was not known, therefore, if there had been any consultation with the public in relation to the right of way and he suggested that the burden of proof in respect of that lay with the applicant. He considered that the user evidence was not substantial, nor informative enough on which to base the decision. He also expressed concern as to who would take responsibility for the upkeep of the footpath and also concerns over health and safety in relation to people using the full widened route, with access to the river bank.

Members discussed the issues raised by those who had addressed the Committee. Members noted that the pro-forma evidence of use forms that had been submitted gave little evidence in terms of the application as they had been "leading" in terms of the information sought.

It was noted that the right of way had been signposted and had been indicated on various maps. Clarification was sought on the defined line/width of a public right of way. In response the Committee's Legal Adviser indicated that a judgement could be formed on the width of that order. He noted that people could have strayed from the route, but there was enough evidence to indicate that a precise route was used and suggested that the reasonably defined route along the application site should be considered. It was emphasised that the width of the defined route allowed for flexibility for people to fully utilise the area surrounding the route. A Member asked for clarification as to whether this could be considered to be a public open space, and in response, the Committee's Legal Adviser stated that it was not the role of the Committee to determine that issue as the application was submitted in relation to a public right of way.

A Member expressed concern about the erection of the fence and whether that had been done in accordance with the law. The Committee's Legal Adviser emphasised that planning permission had been sought for the erection of the fence, therefore, this had been undertaken on an entirely appropriate basis. He considered that there was no reason for the Committee to speculate why this had been put up as it was not part of the process.

Members acknowledged the concerns of the landowner's legal representative in terms of the evidence considered. They suggested, however, there was sufficient evidence provided within the process to reasonably determine that the route existed, at this stage. It was emphasised that the next stage of the process, should that be sought, would require more detailed evidence to be provided.

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 Footpath, and, in the event that formal objections are made to that Order, and are not subsequently withdrawn, that the referral of the Order to the Secretary of State for determination be authorised and the Corporate Director, under powers delegated to him within the County Council's Constitution, be permitted to decide whether or not the County Council can support the confirmation of the Order.

The meeting concluded at 12 noon.

SL/ALJ