

## North Yorkshire County Council

### Planning and Regulatory Functions Committee Sub-Committee

Minutes of the meeting held on 22 June 2012, commencing at 10.00 am at Tadcaster Sunday School, Kirkgate, Tadcaster.

**Present:-**

County Councillors Keith Barnes (as Substitute for Bill Hoult), David Blades, Robert Heseltine, Michael Knaggs (as Substitute for John Blackburn) and Dave Peart (as Substitute for Cliff Trotter).

There were seven members of the public present.

Apologies were received from County Councillors John Blackburn, Bill Hoult and Cliff Trotter.

**75. 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 Heseltine be appointed Vice-Chairman.

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**County Councillor David Blades in the Chair**

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**Copies of all documents considered are in the Minute Book**

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**76. Minutes**

**Resolved -**

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

**77. 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.

**78. Declarations of Interest**

**County Councillor Keith Barnes declared a personal and prejudicial interest in respect of him having predetermined his position in relation to the application for Bridleway No 15.111/10 (Part) East of Killinghall Bridge, Ripley Diversion Order 2012, as, at previous meetings of the County Area Committee for Harrogate he had**

voted to provide a grant for the project, and had also voted in favour of recommending to the Planning and Regulatory Functions Sub-Committee the County Area Committee's support for the proposed Order.

County Councillor Dave Peart declared a personal and prejudicial interest in respect of the application for a Village Green at Lumby, Selby in respect of him having predetermined his position as he had taken part in consideration of the matter at a Selby Area Committee meeting, with the Area Committee voting to advise the Planning and Regulatory Functions Sub-Committee that it supported the application to register the land at Lumby as a Town or Village Green.

At the time of the agenda items indicated the respective Councillors left the room and took no part in the discussion, consideration or vote on those.

**79. Application to add a Bridleway to the Definitive Map and Statement from Moss carr Lane to the West Yorkshire County Boundary, Bilton-in-Ainsty with Bickerton**

Members were advised that this item had been withdrawn from the agenda prior to consideration at this meeting.

**Resolved –**

That the withdrawal of the above item be noted.

**80. 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, in doing so 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 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.

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 of the evidence were outlined within the report. Earby Town Council had also objected to the application. Again the details were provided in the report.

At a previous meeting, the application had been deferred for consideration, to take account of historical evidence provided to the Definitive Map Officer at that time which indicated 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. In response to those issues it was noted that documents had been produced by the Parish Council during the surveying of the routes in the early 1950s towards the preparation of the Definitive Map, which were referred to as Parish Schedules. A Parish Schedule existed for the full application route, referring to the application route as a Bridleway. There was, however, an inconsistency between the Draft Map and the associated Draft Statement for the part of the route as shown between points B-D on the plan attached to the report. Although the route on the plan was shown as a footpath, in the Draft Statement the route was described as a Bridleway. The Provisional Map and Statement were consistent with the Definitive Map and Statement.

In conclusion Mr Perkins stated that on balance the recording of the section of the route A-B on the list of streets, and the historical documentary evidence, demonstrated that the part of the claimed route, shown as A-B on the plan, should be recorded on the Definitive Map and Statement as a restricted byway. He considered that there was insufficient evidence to show that the Definitive Map and Statement should be modified between points B-D shown on the plan to the report.

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 respect of Section B-D she highlighted how there had been little use of the route and that there was very little evidence of use provided. She considered that the route was impassable due to deep undergrowth and vegetation. She noted that there was no knowledge in the area that B-D had been used as a right of way previously and the historical evidence indicated that this had not been identified as a right of way. She stated that another Bridleway already ran from the same two points as those in the application. She noted that Earby Town Council had also objected to the application and details of their objections were set out in the report. She stated that in contradiction to the evidence shown in support of that part of the route, the County Council's Definitive Map Officer had walked the route. She emphasised her support for the recommendation as set out in the report.

Members discussed the report outlining the following issues:-

- It was confirmed that the presenting officer, James Perkins had walked the route indicated.
- A Member highlighted the last minute evidence that had been introduced at the previous meeting, leading to the deferral of the item. He noted that Part A-B of the route was on the List of Streets and wondered whether this indicated that this had Bridleway status. In response it was stated that the List of Streets did not define the status of the route. It was noted that should the route A-B be recorded as Restricted Byway this would allow use by non-motorised vehicles only.
- Clarification was provided as to the status of the different sections of the route and the issues that could be determined by the Committee.

**Resolved –**

- (i) That the Corporate Director of Business and Environmental Services be authorised to make a Definitive Map Modification Order for the part of the application route shown as A–B on Plan 2 of the report to be shown on the Definitive Map and Statement as a Restricted Byway;
- (ii) That in the event that formal objections are made to that Order, and are not subsequently withdrawn, the Committee authorise the referral of the Order to the Secretary of State for determination, and 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;
- (iii) That agreement be given that there should be no modification to the Definitive Map and Statement between points B-D on Plan 2 of the report.

**81. Bridleway No 15.111/10 (Part) East of Killinghall Bridge, Ripley Diversion Order 2012**

**Considered –**

The report of the Corporate Director – Business and Environmental Services, advising Members of a Diversion Order that had been made, but had been opposed. The effect of the Order, if confirmed, would be to divert a section of Bridleway No 15.111/10, east of Killinghall Bridge. A location plan highlighting the proposed diversion was attached to the report. The section of Bridleway to be deleted was shown as A–B and the section of Bridleway to be added was shown as A-C-B.

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

She outlined how the Diversion Order, which had been made, was being promoted by North Yorkshire County Council in the interests of the public, to provide a route that would be easier for use, but was a relatively minor amendment to the alignment of the existing definitive route. The proposed section of Bridleway would have the same recorded width and service as the existing Bridleway as recorded in the Creation Order confirmed in 2011. Following statutory consultations with the Ripley Parish Council and Harrogate Borough Council both confirmed that they were in agreement with the proposed diversion. The Diversion Order was made on 24 April 2012 and was advertised between 4 May 2012 and 1 June 2012.

105 letters of support from members of the public were received in support of the Bridleway as well as from Harrogate Bridleways Association and the British Driving Society.

Letters of objection were received from solicitors representing the landowner and from Nidd Parish Council. Details of their objections were set out in the report. A further four letters of objection were received from residents in the Parish of Nidd. It was noted that a further letter from the landowner's solicitors had been received prior to the meeting and had been circulated to Members, again setting out their objections to the Diversion Order.

It was noted that the main objection from the landowners was that to rectify the omissions and mistakes of the Creation Order in 2009, Creation and Extinguishment Orders should have been pursued instead of a Diversion Order. This would have allowed the Inspector to have regard to the full range of matters set out in Section 26 (1) (A) and (B) of the Highways Act 1980.

In response Penny Noake outlined how the circumstances adequately met the criteria required to promote a Diversion Order. Therefore, it was not accepted that there had been a misuse of the Authority's powers.

Details were provided of how the concerns raised by Nidd Parish Council and the four other objectors had been addressed.

It was concluded that the proposed diversion satisfied the criteria of Section 119 Highways Act 1980 in that it was in the public's interest to have the Bridleway moved to the alignment and it was considered that the realignment would not have a detrimental affect on the land crossed by the Bridleway. It was felt that the objections raised were not specific to the proposed diversion but related, in the main, to the lack of support for the original creation of the Bridleway. It was emphasised that there was a considerable proportion of the local community in favour of the proposed diversion. With six outstanding objections to the Order, it would need to be forwarded to the Secretary of State for determination, therefore, Members were requested to decide what stance the County Council should take in its submission to be made to the Secretary of State having given consideration to the objections.

Councillor Michael Harrison, Harrogate Borough Councillor for the Killinghall Ward addressed the Committee in support of the proposed diversion. He stated that the Bridleway passed through his Ward and he had sat on a Steering Group, which had brought about the Bilton to Ripley Bridleway, for around eight years. He noted that the construction of the route was fully funded, was being delivered on time and was working to budget. He suggested that the Diversion Order applied for was a minor re-routing of the Bridleway. He considered that the Diversion Order was being provided in the interests of the public to ensure their passage along the Bridleway was as easy as possible. He considered that the proposed diversion would provide an easier route and would also assist with the construction. He did not consider that the proposed diversion was detrimental to the landowner. He suggested that those that had objected to the Diversion Order were against the whole project in principal, rather than the Diversion Order. He noted that Ripley Parish Council were in favour of the application. He requested that Members support the Officer's recommendation.

Nidd Parish Council submitted a statement which was read out to the Committee by the Clerk.

The statement was in opposition to the Diversion Order. The statement indicated that an application for listed building consent was yet to be determined for the Nidd Viaduct. It was stated that the work carried out around four years ago, to the viaduct, was undertaken illegally and Harrogate Borough Council had confirmed that any works to the viaduct would require both Listed Building Consent and Planning Permission. To date there had been no planning application. Nidd Parish Council considered it premature to consider a Diversion Order, and any cost implications, before the planning status of the viaduct was determined. They suggested that no information had been given in support of the Diversion Order in respect of need or financial implications and noted that Harrogate Borough Council had given an open-ended commitment to underwrite any shortfall in funding for the construction of the Bridleway. They considered that all the

information should be submitted to Members and rate payers before a decision was made. They asked that support was not given to the Diversion Order.

Mr Spragg addressed the Committee and spoke in opposition to the Diversion Order.

He presumed that the County Council was aware that it was pointed out and acknowledged by both Sustrans and Harrogate Borough Council, at the Public Inquiry into the Bridleway held in February 2011, that there had been a major breach of planning regulations in that works had already been carried out to the Nidd Viaduct which required both planning permission and more importantly Listed Building consent. He understood that works which were carried out by Sustrans were done in collaboration with Harrogate Borough Council.

He stated that the works which had been carried out along the majority of the route, and the costs incurred, had been undertaken in the knowledge that planning permission was required and that it may be refused. If the necessary permissions had not been obtained then it would appear that the Bridleway could be aborted as there would be no means of crossing the River Nidd.

Last month, some 15 months after the breach of the planning became public knowledge, a Listed Building application was then submitted. A planning application, which was also required, had yet to be submitted. He considered, therefore, unless the County Council condones the abuse of the planning system, there was no alternative in the interest of the ratepayers but to stop all work on the project until the planning situation on the viaduct was resolved, which allowing for the appeal process, could take another year.

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

- It was clarified that there were no safety concerns in respect of rerouting the Bridleway nearer to the river.
- It was emphasised that the Diversion Order was a separate issue to the development of the Bridleway and, therefore, the legality of works on the Bridleway route was not an issue for consideration.

#### **Resolved –**

That the Committee authorises the Corporate Director, Business and Environmental Services, to support the confirmation of the Diversion Order within the County Council's submission to be made to the Secretary of State, and, in the event of any Public Inquiry that may be held, that officers maintain that stance.

## **82. Application for a Village Green - Lumby, Selby**

Considered –

The report of the Corporate Director – Business and Environmental Services, on an application (“the Application”) for the registration of an area of land at Lumby identified in a plan attached to the report (“the Application Site”) as a Town or Village Green.

The report was introduced by Doug Huzzard, Highway Asset Manager, who gave a presentation of photographs of the site and summarised the legal issues to be determined. Details of the application site were shown on a plan attached to the report

and it was noted that this had been identified as highway maintainable at public expense, however, the basis of that assertion had been challenged by the applicant's solicitor. Full details of the location and boundary of the application site were outlined.

The application had been submitted by South Milford Parish Council, through their solicitors, on 27 January 2011 and accepted as duly made on 9 February 2011. No witness letters or evidence of use proforma were submitted with the application.

The main objection to the application was received from the Head of Highways Operations for North Yorkshire County Council. The objection was based upon the fact that the application site was part of the highway maintainable at public expense.

The objection stated that the activities carried out, which could be regarded as having been undertaken pursuant to the public's use of the land as part of the highway, must be discounted as qualifying uses for establishing a village green. It considered that the applicant's evidence of use for the land was not strong enough to justify its registration as a Village Green.

Originally the land, which was the subject of the application, extended to a larger area than that currently under consideration and objections to that original application were received from solicitors acting on behalf of parties with an interest in the adjacent land. Both the objections included a legal opinion from Charles George QC which was included as an Appendix to the report.

Following negotiations between the applicant and the neighbouring objectors the extent of the application site was reduced to what was being considered at the meeting. Following the reduction of the application site objections were withdrawn, however, in both cases, the point was made that neither objector accepted that the application met with the necessary legal criteria to succeed.

It was noted that the applicant, through their solicitor, had questioned the assertion that the site was highways land and had sought evidence of when it was adopted. No documentation recording adoption of the road had been submitted by the Highway Authority (this is not unusual as formal 'adoption' records only exist for about 5% of the highway network). A number of comments from the applicant in respect of representations by the local Highway Authority were contained in a letter dated 17 April 2012, appended to the report. The response of the Highway Authority was also provided. It was noted, in the exchange, that the extent (or frequency) of works undertaken by a Highway Authority did not have a bearing on whether or not the land was part of the Highway.

In reviewing the evidence the following issues were noted:-

- It was acknowledged that Lumby was a small village, however, the evidence submitted in terms of there being usage by a significant number of local residents, could not, on balance, be said to have been met by the application.
- The application was relying on evidence of use by inhabitants of the neighbourhood of Lumby in the locality of the administrative district Selby.

- It was stated that where members of the public already had a right to use land then when taking part in lawful activities they did so “by right” rather than “as of right”. As the land was defined as highway maintainable at public expense, the use of the land would amount to use “by right” rather than “as of right”, meaning that the criteria for Village Green status would not be met.
- There was no first hand evidence included in the application to indicate that lawful sports and pastimes had taken place on the land.
- There was no evidence that offered any indication of the regularity of alleged use of the site during the 20 year period preceding the application.

In conclusion Mr Huzzard indicated that for the application to be approved the County Council had to be satisfied that on evidence all the criteria contained in Section 15 (2) of the Act were met. It was suggested that on the balance of probabilities, the relevant criteria were not met by the application.

Mr Bill Hobman, Chairman of South Milford Parish Council, addressed the Committee and spoke in favour of the application. He noted that the statement he was providing had been agreed by a meeting of South Milford Parish Council. He indicated that the application had been put forward so that a small piece of land could be allocated as Village Green for Lumby. The piece of land in question was the only area in Lumby that could be seen as public space and contained a seat, postbox, railings, etc. He noted that a petition had been undertaken in the previous year, requesting that the land be given Village Green status for use by local children and the public. Should the piece of land be granted Village Green status then further improvements to the application site would be made via the Parish Council including replacing the seat, painting the railings, etc. He noted that the wall had been retained and maintained by the Parish Council. He emphasised that the land in question had not been adopted, therefore, questions in respect of its ownership remained. He emphasised that the aim of the application was to protect the centre of the village for the benefit of the local community.

Mr Watson, whose property was adjacent to the application site, addressed the Committee and spoke against the application. He indicated that the application site was clearly highway verge, maintainable at the public expense, which assisted with site lines around the corner for those leaving the adjacent access points. He emphasised that it was clear that the application did not meet the legal criteria for Village Green status. He highlighted the opinion of an eminent QC, which had been provided alongside the report, which provided the legal definition of whether the application site was suitable. He noted the definition of “as of right” as opposed to “by right” as provided. He considered the application evidence to be weak and noted that a number of local adjacent landowners were not aware of the application. He considered that the Chairman of the Parish Council, Mr Hobman, had an interest in the land, as he lived directly adjacent to it. He supported the officer’s recommendation that the application should be refused.

The Chairman invited Mr Hobman to reply to the issue raised by Mr Watson in respect of his interest in the land. Mr Hobman stated that the application was not for his benefit, but had been undertaken by the Parish Council, with significant local support, for the benefit of the local community in Lumby. He noted that there were documents available, if required, to show this was the case.



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

- A Member considered the evidence for the application to be insufficient and highlighted the opinion provided by the QC, within the report, which clearly stated that there was no case to answer in terms of granting the application. He suggested a way forward was for the Parish Council was to submit a request for the land being gifted to them by the Highway Authority, for them to maintain, to provide a facility for the local community. He emphasised, however, that this was not within the remit of the Committee.
- The size of the area of the application site was clarified.
- A Member considered that the site was highway verge and did not meet the necessary criteria to be considered as Village Green. He also considered that granting Village Green status could be dangerous as the area of land was close to the road.
- A Member asked whether the improvements to the piece of land could be made by the Parish Council irrespective of a decision not to register this. It was stated that the Parish Council already maintained the piece of land and there would be no harm in a dialogue being conducted between the Parish Council, adjacent landowners and the Highway Authority to develop an agreement that was to the benefit of all of them.
- It was suggested that the Highway Authority could reduce the strip of land for highway resource purposes, if that was felt appropriate and necessary. The Chair of the Parish Council highlighted the concerns of a number of people in the local area in respect of potential development for that piece of land and stated that the aim of the application was to ensure that some control could be exercised over what was being developed there and to protect the green areas of the village. Mr Watson noted that there had been no reduction of the area of land for many years.
- The Chairman emphasised that the decision to grant Village Green status for the application site had to be based on whether the appropriate criteria had been met.
- It was clarified that the application site was in the centre of the village, on the main route through it, but was not at the entrance to the village.

#### **Resolved –**

That the Application be refused on the grounds that the Committee could not be satisfied that all the relevant criteria of Section 15(2) of the relevant Act are evidenced by the Application for the reasons set out in the report.

The meeting concluded at 12.15 pm.

SL/ALJ