

North Yorkshire County Council

Planning and Regulatory Functions Committee Sub-Committee

Minutes of the meeting held on 10 August 2012, commencing at 10.00 am at Sneaton Castle, Castle Road, Whitby.

Present:-

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

There were two members of the public were present.

83. 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

84. Minutes

Resolved -

That the minutes of the meeting held on 22 June 2012, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

85. 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.

86. Application to register land as a Town or Village Green - Land at Prospect Hill, Whitby

Considered –

The report of the Corporate Director – Business and Environmental Services, on an application (“the Application”) for the registration of an area of land (identified on the

plan attached to the report at Appendix 1) known as Prospect Hill, Whitby as a Town or Village Green.

The report was introduced by Doug Huzzard, Highway Asset Manager, who highlighted that the application was made in January 2005 and brought before the County Council's Yorkshire Coast and Moors County Area Committee on 9 April 2009. He noted that the Committee had resolved to appoint an Inspector to hold a non-statutory Public Inquiry to hear evidence and to make a recommendation to the County Council in its role as Registration Authority.

Consequently a Barrister with extensive knowledge and experience of that area of law had been appointed and an Inquiry was held at Sneaton Castle Conference Centre on 26 and 27 July 2011. Details of the Inspector's extensive report dated 6 February 2012 were attached to the report at Appendix 3.

Following receipt of the Inspector's report, this was sent to the Solicitor acting for the applicant and to the Solicitors acting for the affected landowner. Response was received from the Solicitors acting on behalf of the landowner, which was attached as Appendix 4 to the report. There had been no response received on behalf of the applicants.

The report outlined how, for the application to be successful, Section 13 of the Commons Registration Act 1965 (as amended) had to be met, even though the Act had now been repealed and replaced by the provisions of the Commons Act 2006, as the application was made prior to the date of its repeal on 6 April 2007.

The section states that:-

"... land on which for not less than 20 years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, having indulged in lawful sports and pastimes as of right and either (a) continue to do so, or (b) have ceased to do so for not more than such a period as may be prescribed, or determined in accordance with prescribed provision".

For the application to be successful it was necessary for it to meet all the criteria set out in Section 13 and the Inspector found that the application failed to meet any of them. Officers of the Authority concurred with the Inspector's findings.

It is not obligatory for a Registration Authority to follow the findings of an Inspector though it must act lawfully in any decision it reaches. Arguments as to the merits or desirability of land being registered are not relevant.

Mr Huzzard explained that should the Committee resolve to accept the recommendation contained within the report then the applicant would be entitled to make application for Judicial Review, however, it was his opinion that there was insufficient reason before the Registration Authority to warrant a departure from the Inspector's finding and that the Authority proceeded appropriately and considered that any application for such a review would be unlikely to succeed.

Mr P Wills the Solicitor representing the landowner addressed the Committee speaking against the application. He too highlighted the vast experience of the Barrister appointed to undertake the inquiry and noted that all aspects of case law had been referred to in the final report that she had published. He considered that the application did not meet the appropriate elements of Section 13 of the Commons Registration Act

1965 and as such the application should be refused. He invited the Committee to reject the application.

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

- The report produced as a result of the independent Inquiry had been very thorough.
- Clarification was sought on the periods of time covered by the recommended refusal of the application, as it was noted that three periods of time had been outlined initially. In response it was stated that the report resulting from the independent Inquiry suggested that none of the periods of time indicated had met the necessary criteria, therefore, refusal of the application would be in relation to all the periods of time stated.

Resolved –

That the Application be refused because the Registration Authority was not satisfied that it met all the criteria set out in section 13 of the Commons Registration Act 1965, for the reasons set out in the Inspectors report dated 6 February 2012, attached as Appendix 3 to the report, and taking into further account the case law referred to in correspondence from BHP Law, set out in Appendix 4 to the report.

87. Application to register land as a Town or Village Green - Donkey Field, Whitby

Considered –

The report of the Corporate Director – Business and Environmental Services, advising Members of on an application (“the Application”) for the registration of an area of land at Donkey Field, Whitby identified on a plan attached as Appendix 1 to the report (“the Application Site”) as a Town or Village Green.

The report was introduced by Doug Huzzard, Highway Asset Manager, who provided details of the legal criteria relating to registering land as Town or Village Green and how that related to the application.

Mr Huzzard provided details of the application site and the ownership of the land concerned. He stated that the application had been submitted by a local resident on 11 April 2011, which had been received by the County Council on 28 April 2011 and accepted as duly made on the same day. When the application was submitted 32 questionnaires, which had been created by the applicant, had been provided which gave opinion as to whether to submit an application to register the land concerned as Village Green and what activities had been undertaken on the site. 26 of the persons completing the questionnaire lived within the area of Donkey Field, of the remaining six three resided in the Whitby area whilst three did not. Copies of the questionnaire were appended to the report.

There had been no objections received in relation to the application.

In terms of the evidence of use, Mr Huzzard stated that the application form referred to the application site as forming part of the domain of Whitby Abbey and that it had a status of Scheduled Ancient Monument. This had been confirmed by the Yorkshire and Humber Inspector of Ancient Monuments at English Heritage and he had also confirmed

that there were no objections in principal to the application. Details were provided in appendices to the report.

Of the 26 questionnaires referred to, 11 of those claimed 20 years or more of use of the application site. In combination with the other qualifying questionnaires these appeared to demonstrate qualifying use over the relevant 20 year period, particularly as there had been no challenge by the affected landowner.

19 activities had been cited as having either been conducted or witnessed on the application site. There was also a reference to the site being the location for an ancient well house dating from 1634.

The criteria in respect of a significant number of the inhabitants of a locality, or of any neighbourhood within a locality, appeared to have been met in this case.

With no evidence to the contrary supplied by the landowner it appeared that the site had been used without force or permission. It was also apparent that the use of the land by the residents had been open to observation by the landowner and not by stealth, therefore the land could said to have been used "as of right".

The evidence in support of the application indicated a variety of lawful sports and pastimes that had been conducted on the site.

The evidence in support of the application indicated regular use on the application site during the 20 year period running from April 1991 to April 2011 and the County Council had received no representations to suggest otherwise.

Mr Huzzard explained that the decision to determine the application rests with the County Council in its role as Commons Registration Authority. He stated that the Council had to direct itself only to whether or not all the relevant criteria set out in Section 15 of the relevant Act had been met. In relation to this application he suggested that on the balance of probabilities the relevant criteria of Section 15 (2) of the Act had been met and that the application should be accepted.

Members discussed the report and the issues raised by Mr Huzzard and highlighted the following:-

- It was noted that the landowner had not acknowledged any letters sent regarding the application and requests for evidence in relation to the application, even though these had been sent via recorded delivery and had been signed for them having been received.
- It was clarified that the land could have both Scheduled Ancient Monument status and Town or Village Green status co-existing at the same time.
- It was emphasised that every effort had been made to obtain an opinion from the landowner, not just by letter, but also through telephone and e-mail. Members noted that notice had been given to the landowners of the application within the statutory period.

Resolved –

That the Application be accepted on the grounds that the Committee was satisfied that all the the relevant criteria of Section 15(2) of the Act were evidenced by the Application for the reasons set out in the report and accordingly an appropriate entry in the Register of Town/Village Greens be made.

88. Application to Register land as Town or Village Green – Castle Park, Whitby – Update

Doug Huzzard, Highway Asset Manager, provided an oral update on the situation regarding the application to register land as Town or Village Green at Castle Park, Whitby, on behalf of the Corporate Director, Business and Environmental Services stating that a three day enquiry commenced on 30 April 2012. The Inspector had advised that she would produce a report and return it to the Council by 17 August 2012, thereafter, the views of the main interested parties would be sought, before the Corporate Director, Business and Environmental Services reported back to the Committee, with a recommendation, seeking a decision on the application.

It was noted that the process being followed was similar to that relating to the Prospect Hill application which had been considered earlier in the meeting.

Resolved –

That the update be noted.

89. Application to Register land as Town or Village Green – Helredale Playing Field, Whitby – Update

Doug Huzzard, Highway Asset Manager, provided a oral update on the application to register land as Town or Village Green at Helredale Playing Field, Whitby on behalf of the Corporate Director, Business and Environmental Services.

Mr Huzzard outlined how, following a non statutory public enquiry, the Committee had resolved to refuse this application, in line with officers recommendations, which in turn followed the conclusions of the QC who acted as Inspector. That decision had been the subject of a Judicial Review which was successfully defended by the County Council in the High Court last December. The applicants had then sought leave to appeal to the Court of Appeal on the day of that hearing and had been refused by the Judge in the High Court. Subsequently the applicants had exercised their right to seek leave directly to the Court of Appeal and had been granted leave. A hearing is scheduled for mid-September 2012. The point of issue is technical and revolves around whether or not the use of a recreation ground set out under the Housing Act powers had been used “as of right” or “by right”. There is significant interest in the outcome of the case nationally.

Following Members queries it was clarified that other decisions made by the Committee under similar circumstances would not be overturned by the final judgement, if this came down on the side of the applicants, but, future applications would have need to have regard to the decision in relation to this.

Resolved –

That the report be noted.

90. Information Provided to Sub-Committee

Members asked whether it was possible for uncontested decisions on Definitive Map Modification Orders, that were delegated to the Corporate Director, Business and Environmental Services, to be reported either to the Committee or the relevant local Member, or, ideally, both. It was noted that many Members were unaware of the approval of these Modification Orders and that it would be useful for them to have knowledge of these taking place, particularly in their own area.

Resolved –

That the Countryside Section be approached to determine whether a report could be provided to the Sub-Committee giving details of uncontested decisions having taken place in relation to Definitive Map Modification Orders and whether that information could also be provided to relevant local Members.

The meeting concluded at 10.25 am.

SL/ALJ