

North Yorkshire County Council

Planning and Regulatory Functions Committee Sub-Committee

Minutes of the meeting held on 23 November 2012, commencing at 10.00 am at Ripon Community House, Ripon.

Present:-

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

Also in attendance: County Councillor John Fort.

There were three members of the public present.

91. Appointment of Chairman and Vice-Chairman

Resolved –

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

County Councillor Bill Hoult in the Chair

Copies of all documents considered are in the Minute Book

92. Minutes

Resolved -

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

93. 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 are no questions or statements from members of the public.

94. Upgrading of Footpath No 15.39/16 and Footpath No 15.39/4 (part) to Bridleway, Horsemans Well, Felliscliffe Modification Order 2012

Considered –

The report of the Corporate Director – Business and Environmental Services, advising Members of a direction from the Secretary of State which caused the County Council to make a Definitive Map Modification Order, the effect of which, if confirmed, would be to upgrade footpath No. 15.39/16 and footpath No. 15.39/4 (part) to bridleway, at Horsemans Well, in the parish of Felliscliffe. A location plan was attached to the report and provided details of the route which was shown as A – B – C – D – E – F – G – H – I – J on Plan 2 of the report.

The request was for Members to authorise the Corporate Director of Business and Environmental Services to refer the opposed Order to the Secretary of State for determination, allowing the Authority to retain a neutral stance towards its confirmation.

The County Council's Definitive Map Officer, Russ Varley, presented the report highlighting the Committee's responsibilities and the legal issues pertaining to the implementation of Modification Orders.

He noted that when the report had been presented for information at the Harrogate Area Committee, County Councillor Geoff Webber had raised an issue regarding the process undertaken by the Planning and Regulatory Functions Sub-Committee, which had been answered directly at the time.

He noted that the Members were being requested to determine the stance of the Authority when the order was referred to the Secretary of State for determination.

Mr Varley stated that an application was submitted on 1 December 2005 by the Harrogate Bridleways Association to modify the status of footpath No. 15.39/16 and part of footpath No. 15.39/4 by changing it to the status of bridleway on the Definitive Map and Statement. The applicant believed that the route was incorrectly recorded as a bridleway during the original production of the Definitive Map and Statement. The application was supported by documentary evidence only, with no user evidence being supplied. Details of the documents submitted were provided. Details of the draft Definitive Map in North Yorkshire County Council's possession were also sought.

The evidence was considered by officers along with information already in the Authority's possession in the context of the relevant legal provisions and it was decided that although the initial evidence was compelling it was not sufficiently cogent to call into question the depiction of the route. Consequently the application was formerly rejected in August 2010. Subsequently the applicant appealed the decision to the Secretary of State and a Member of the Planning Inspectorate was appointed to determine the appeal. As a result the appeal was allowed and the Secretary of State directed the County Council to make an order as was provided for in the legislation. Details were provided as an Appendix to the report. The order was duly made by the Authority on 3 April 2012 and was advertised on 4 May 2012. During the formal consultation period the Authority received 18 letters of support for the Order and a single objection.

It was noted that no additional evidence had come to light as a result of the consultation process. The historic evidence shown in the 1770 survey of the Forest of Knaresborough and the 1778 Forest of Knaresborough enclosure award and plan appeared to highlight a footpath same as the application and all of the maps submitted showed a way that appeared to be coincident with the application route, but none gave a clear indication of the status.

The evidence submitted in objection to the application provided no material evidence to refute the evidence submitted with the application. However this gave details of associated case law with the objective of demonstrating that the evidence supplied by

the applicants did not meet the required standard to justify the making of an order. A number of documents indicating that the 1778 Forest of Knaresborough Inclosure Award and Plan had already been taken into account by West Riding County Council after the draft map had been produced in 1953, during the preparation of the Definitive Map and survey during the 1950s and as such could not now be considered to be new evidence. A further submission was provided following the making and advertising of the order which called into question the Secretary of States reasons for directing the Authority to make the order, claiming that the submission demonstrated that the order should not be confirmed and requesting that the matter be determined by a local public inquiry. Letters of support provided did not give any new evidence.

In conclusion Mr Varley stated that the evidence submitted by the applicant was not particularly strong in determining the status of the route and relied on assumptions about the ancient highway network around Felliscliffe depicted but not clarified within the Inclosure Award. He noted that the objectors submitted no evidence that directly refuted the evidence of the applicant. As the evidence was not compelling for the support of the order and no evidence had been provided in objection to the order it was considered appropriate for the Authority to take a neutral stance when the matter was determined by the Secretary of State.

Following the initial presentation Mr Chris Ballam of LDP, representing the objecting landowners addressed the Committee opposing the application. He provided details of Counsel's opinion that had been sought by the objectors to the application and highlighted those to the Committee. Full details were circulated for Members information. He considered that the objections provided were valid and that the application should not be supported. He considered that legal errors had been made by the Inspector which had resulted in the Order being made. Overall he suggested that the application should not be supported when the matter went to public inquiry.

Members discussed the report and information provided and the following issues and points were highlighted:-

- It was clarified that it was expected that the application would be referred for Public Inquiry, particularly as the evidence was finely balanced. Members suggested that it would be appropriate for the matter to go to Public Inquiry and considered that as part of their recommendation, they should include that.
- A Member considered that, when weighing up the evidence, on the balance of probabilities, the higher rights could exist and agreed with the Secretary of State, however, because of the disagreement between applicant and objectors he considered it appropriate for the matter to go forward to Public Inquiry.
- It was clarified that should any new evidence come to light in relation to the application it was likely that the matter would have to be brought back before the Committee to provide those details and for Members to reconsider the application.

Resolved –

That authorisation be given to the Corporate Director of Business and Environmental Services to refer the opposed order to the Secretary of State for determination, with a

strong recommendation that the matter be the subject of a Public Inquiry and that the Authority be authorised to take a neutral stance towards the confirmation.

95. Downgrading of Public Bridleway No. 15.29/38 (part) to Footpath, Monk Ing Road, Dacre Modification Order 2012

Considered –

The report of the Corporate Director, Business and Environmental Services advising Members of a direction from the Secretary of State which caused the County Council to make a Definitive Map Modification Order, the effect of which, if confirmed, would be to downgrade the Bridleway known as Monk Ing Road (15.29/38) to a Footpath, in the parish of Dacre. A location plan was attached to the report, and a route plan shown as A – B – C – D – E – F – G was also provided.

The report invited Members to authorise the Corporate Director of Business and Environmental Services to refer the opposed Order to the Secretary of State for determination allowing the Authority to retain a neutral stance towards its confirmation.

The Authority's Definitive Map Officer, Russ Varley, presented the report and highlighted the Committee's responsibilities and the legal issues pertaining to implementation of Modification Orders. He noted that when the report had been presented for information to the Harrogate Area Committee County Councillor John Fort had raised issues regarding the application and it was noted that he was present at today's meeting to make representations in relation to these.

The application was submitted to the County Council on 22 July 2010 to modify the status of Bridleway 15.29/38 by changing it to a Footpath on the Definitive Map and Statement.

The application was supported by documentary evidence and four statements from local residents. Details of the documentation were provided.

The submitted evidence was considered by officers along with the information already in the Authority's possession in the context of the legal regulations pertaining to such applications and it was decided that the evidence was not sufficiently cogent to call into question the depiction of the route. As a consequence the application was rejected and the applicants were informed of this on 4 July 2011. The applicants exercised their right to appeal the decision to the Secretary of State and a Member of the Planning Inspectorate was appointed to determine the appeal. Consequently the Secretary of State directed North Yorkshire County Council to make an Order as was provided for in the legislation. A copy of the decision letter was provided. The Order was duly made by the Authority on 23 March 2012 and advertised on 22 April 2012. During the consultation period the Authority received five objections to the Order.

In respect of the evidence in support of the application it was noted that no additional evidence came to light as a result of the consultation process. The 1844 Dacre Pasture Enclosure Plan and Award made no specific reference to the route being a Public Footpath but the eastern end of the route was shown on the Inclosure Plan. 1950 Parish survey schedules showed the route in question was initially recorded by Dacre Parish Council as a Footpath when this was surveyed as the earliest part of the Definitive Map preparation process. The 1950 Parish map showed the route recorded as a Bridleway with two field gates and a stile shown along the route. All of the maps submitted showed a way that appeared to be coincident with the application route but did not give a clear indication of the status of the route. Photographs showed stiles obstructing the route

including a stone stile. A letter of support stated that horses had never used the route because there was a five feet high wall with a stile that prevented equestrian use. Four other evidence forms agreed that there had always been stiles on the route with two also mentioning cattle grids. One stated that a diversion had been made in the past and the Order referred to the route as a Footpath.

The evidence against the application stated that it was not believed that there was sufficient new evidence to challenge the presumption that the DMS was correct and thereby the application did not meet the test set out in the relevant Act.

Mr Varley provided the Authority's view of the evidence provided by both applicant and objectors to the application. He concluded that there was no single piece of evidence submitted by the applicant that was sufficient to challenge the presumption that the Definitive Map and Statement was correct. When considered as a whole there still seemed to be insufficient evidence "on the balance of probabilities" to challenge the presumption that the Definitive Map and Statement was correct and that the route should remain recorded as a Bridleway. He considered, therefore, that there was insufficient evidence to prove that the route should be recorded as a footpath. He also considered, however, that there was insufficient evidence for the Authority to rely upon to actively oppose the confirmation of the Order. He suggested, therefore, that there seemed to be little alternative for the Authority other than to take a neutral stance allowing the matter to be determined by the Secretary of State.

In clarification to a Members question Mr Varley stated that a mistake could have been made when the Definitive Map and Statement was drawn up, in the definition of the route, however, he noted that that designation had been through the appropriate statutory consultation and no objection had been received at the time. He noted, however, that this matter was not relevant to the decision being made by Members at today's meeting.

Following the presentation the applicant, Mr John Marshall, addressed the Committee in support of the application. He stated he had lived at Monk Ing Farm for around 60 years and had used the Footpath since 1957. He highlighted the stone stiles along the route and suggested that it would be difficult for horses to use because of those features. He stated that he had never witnessed horses along the route. He noted that his Father had undertaken the original survey as Chairman of the Parish Council at that time and suggested that the route had always been a Footpath. He also noted that the path was challenging to walk and would be difficult to negotiate, if not impossible, as a Bridleway. He considered that on the balance of probabilities and with the features along the route that this had always been and should be considered as a Footpath.

County Councillor John Fort addressed the Committee in support of the application for the downgrading. He stated that he had walked the route many times and had never witnessed a horse using the route. He noted that the route was part of a series of tourist guided routes called the Dacre Walls Walk and leaving the route as a Bridleway could affect the use of that. He noted that the only objectors to the downgrading were the British Horse Society and he suggested that the objections were not warranted. He provided a booklet giving details of the Dacre Walls Walk, which also gave pictures of the stone stiles along that route. He considered that the route had difficult terrain in parts and the infrastructure in place suggested that this should not be a Bridleway. He considered that the Planning Inspectorate had dealt with the matter appropriately by allowing the appeal and stating that the order should be made.

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

- The positioning of the local road in relation to the route was clarified.
- There was no evidence of use by horse riders from the British Horse Society.
- It was noted that the report of the Planning Inspectorate had referred to Derbyshire County Council, rather than North Yorkshire County Council and it was stated that this was a typographical error. It was emphasised that this had no bearing on the decision that had been made.
- It was considered that the route was more akin to a Footpath rather than a Bridleway, taking account of the infrastructure along the route and the difficult terrain and it was suggested that the Planning Inspectors decision had been correct.

Resolved –

That in view of the infrastructure along the route and the difficult terrain outlined, the Corporate Director of Business and Environmental Services be authorised to refer the opposed Order to the Secretary of State for determination, allowing the Authority to take a supportive stance towards the confirmation of the Order.

96. Application to Divert Public Footpath No. 15.89/21 (part), Marfield Nature Reserve, Masham

Considered –

The report of the Corporate Director, Business and Environmental Services advising Members of an application for the diversion of a public footpath, the effect of which if pursued would be to divert Footpath No. 15.89/21, Marfield Quarry Nature Reserve, Masham. A location plan was attached to the report and the section of the Footpath proposed to be deleted was shown A – B – C and the section of the Footpath proposed to be added was shown as A – D – E – F – G – H – I – J – K on an appended plan. Members were requested to authorise the Corporate Director, Business and Environmental Services to make a Public Footpath Diversion Order.

The Authority's Definitive Map Officer, Russ Varley presented the report and highlighted the Committee's responsibilities and legal obligations pertaining to the application.

He stated that an application was submitted on 10 October 2011 to divert the Footpath the aim of which was to correct the long standing obstruction of Footpath No. 15.89/21 by the quarry and subsequent landscaping. The Footpath had been temporarily diverted for five years in 1979 to allowing quarrying to take place. The route of the temporary diversion corresponded with the route of the current permissive path, however, when the temporary diversion expired in 1984 it was intended that Footpath No. 15.89/21 should revert to its original alignment through the quarry. The reinstatement of landscaping, however, did not allow for the Footpath to return to its original alignment on the ground and as a result of the quarrying the original route was obstructed by a lake. The land was now managed by the owner as a Nature Reserve who wished to divert the Footpath as currently shown on the Definitive Map to keep it as close as possible to the original route but avoid the standing water. A route which was as close as possible to the route currently walked by the public had been identified but reduced the disturbance to the

birds that the managers of the Nature Reserve were attempting to encourage. An initial consultation on the proposal was undertaken with the statutory consultees, landowners and other interested parties on 14 October 2011 in accordance with required procedure.

In response 12 replies were received of which nine either expressed support or gave no view. The remaining three responses objected to the proposals.

The Ramblers Association gave their support to the diversion, the Byways and Bridleways Trust made no comment, Masham Parish Council stated that they were content with the diversion and Harrogate Borough Council did not raise any objections to the proposal.

The County Council's natural Environment Team initially objected to the proposal on the grounds that the northern end ran through species rich deciduous woodland and the presence of a Public Right of Way would disturb the wildlife that could be attracted to such a habitat, however, they supported the rest of the diversion route because it moved the Footpath away from the important bird nesting areas. There were other objections to the application on the grounds that the new proposed route was used by nesting birds and that the water line that passed to the east of the southern most water body had a good surface which had been used for many years. It was also noted that a Memorial Bench would be inaccessible if the route was diverted.

Mr Varley provided an opinion on the objections raised and highlighted a number of photos giving details of the site, the current route and the proposed route.

In conclusion Mr Varley stated that it was considered that the application satisfied the legal criteria pertaining to the diversion of footpaths in, that it was in the owners interest to divert the footpath to improve the management of the Nature Reserve and it was in the public's interest that the path was diverted to avoid the bodies of standing water. It was considered, therefore, that the proposal would not be substantially less convenient to the public and made the legal route of the public Footpath useable for the first time in many years.

Members discussed the report and highlighted the following:-

- It was noted that assurance had been given that wheelchair access would be provided and that the Memorial Bench would be moved to an appropriate position on the diverted Footpath, but it was also noted that this did not have to be carried out for the diversion to take place.
- It was considered that this action would assist in returning the former quarry site to its natural beauty.

Resolved –

- (i) That the Committee authorise the Corporate Director, Business and Environmental Services, to make a Diversion Order for the route shown A – B on plan 2 of the report to be diverted to the alignment as shown A – D – E – F – G – H – I – J – K on plan 2 of the report; and
- (ii) That in the event that formal objections were made to that Order, and were not subsequently withdrawn, the Committee authorises the referral of the Order to the Secretary of State for determination, and permits the Corporate Director, under powers delegated to him within the County Council's

Constitution, to decide whether or not the County Council can support the confirmation of the Order.

97. Agenda items on Area Committees

Members raised concerns that the referral of items to be considered by the Sub-Committee was being held up by them having to be submitted for information to Area Committees prior to them coming to the Committee.

The Clerk stated that the current process for the determination of these matters required them to be reported to Area Committees prior to them coming to the Sub-Committee, as outlined in the Constitution. He noted, however, that the matter was being considered by the Constitution Working Party.

Resolved –

That the concerns of the Sub-Committee be brought to the attention of the Constitution Working Party.

The meeting concluded at 11.30 am.

SL/ALJ