

# **North Yorkshire County Council**

## **Planning and Regulatory Functions Committee Sub- Committee**

Minutes of the meeting held on 11 January 2013, commencing at 10.00 am, at Sneaton Castle, Castle Road, Whitby.

### **Present:-**

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

Apologies for absence were submitted by County Councillor Robert Heseltine.

There were 38 members of the public were present.

### **98. Appointment of Chairman and Appointment of Vice-Chairman**

#### **Resolved –**

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

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**County Councillor Cliff Trotter in the Chair**

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

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### **99. Minutes**

#### **Resolved -**

That the minutes of the meeting held on 23 November 2012, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

### **100. 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.

### **101. Application to Register land as Town or Village Green – Castle Park, Whitby**

#### **Considered –**

The report of the Corporate Director, Business and Environmental Services, advising Members of an application for the registration of an area of land at Castle Park, Whitby as a Town or Village Green.

The report highlighted how the County Council, as responsible authority for maintaining the register of Town and Village Greens for North Yorkshire, had considered the application, made in May 2009, at the Planning and Regulatory Functions Sub-Committee meeting held on 3 June 2011. The decision had been made, in accordance with the officer's recommendation, to appoint an Inspector who would undertake 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 was instructed and an inquiry was held at Sneaton Castle Conference Centre, Whitby between 30 April 2012 and 2 May 2012. The Inspector's report dated 21 August 2012 was attached to the report. The Committee were asked to note that the Inspector had recommended that the application was refused on the basis that the application failed to meet all the relevant legal criteria necessary for an application to be successful.

The County Council's Highways Asset Manager, Doug Huzzard, whose responsibilities include management of Council's role as Registration Authority, presented the report highlighting the legal issues pertaining to a Town or Village Green application. He provided a series of photographs of the application site.

Mr Huzzard highlighted the Inspector's report, the recommendation for refusal of the application and representations in respect of that report from local supporters of the application, copies of which were appended to the report.

Following the initial presentation of the report the Chairman invited representations to be made to the Committee from those present at the meeting who had registered a prior request to speak.

The following local representatives addressed the Committee and spoke in favour of the application:-

Joanne Wood

Mrs Wood raised concerns surrounding the public inquiry due to a late objection having been filed by Yorkshire County Homes who had purchased the recreational land at auction on 27 May 2010 in the knowledge that a Village Green application was pending for the site. She considered that for the purchase of the land to adversely affect the application for Village Green status, which had been submitted 13 months previously, was unacceptable. The transfer of ownership of the land did not relate to the application as that had been submitted in early June 2009 and was being processed when the land changed hands. She considered that this matter was irrelevant to the application and should have not been allowed to affect it adversely. She considered that the objections put forward by the land owners legal advisers should be considered void, together with the Inspectors report from the public inquiry, as the objections raised were considerably later than the time when the application was submitted.

Kath Butler

Mrs Butler suggested that the previous meeting of the Sub-Committee held on 3 June 2011 had unanimously voted in favour of the application, but, due to the objection, suggested that it went forward to a public inquiry. She also noted that a meeting of the Yorkshire Coast and Moors County Area Committee had advised the Sub-Committee that the application should be allowed for the reasons stated in their Minutes which were appended to the report before today's meeting. She noted that the quality of the evidence submitted by the applicant was excellent, as was her response to the objections raised at the public inquiry and she urged the Committee to have regard to

that. She considered that the recreational land met the criteria for that of a Village Green and that it had been used for recreational purposes for over 50 years.

#### Pat Hopkin

Mrs Hopkin highlighted how she fully supported the Village Green application which had been submitted on behalf of the whole community of the Castle Park Estate. She considered that the application related to the people of the area fighting for what was rightfully theirs as families had used the green space in the area, "as of right", since the 1960s for lawful sports and pastimes, thereby meeting the relevant criteria as set out in Section 15 (2) of the Commons Act 2006 for Village Green status.

She highlighted the evidence given at the initial meeting held in Sleights on 3 June 2011 and considered the Sub-Committee had voted at that meeting in favour of the Village Green application by show of hands.

She emphasised the importance of the Village Green to the Castle Park community and considered that the requirements for Village Green status had been satisfied as it had been confirmed by witness statements that lawful sports and pastimes had taken place on the land indicated since the 1960s.

#### Tom Brown

Mr Brown indicated that he had previously had a Village Green application approved elsewhere in Whitby and was present at the meeting to appeal for as many green spaces to be provided in Whitby as possible, which was why he was supporting the application. He considered that there was already sufficient housing provided in the Whitby area and that the building of any further housing would be detrimental to local amenities, existing green space and the local utilities. He emphasised the need for sustainable green areas to remain within Whitby to benefit local people.

The Clerk read out the statements from supporters of the application who were unable to be present at the meeting:-

#### County Councillor Jane Kenyon

County Councillor Kenyon outlined her support for the residents' application to allow the land to be registered for Village Green status. She noted that many of the residents gave comprehensive evidence to the inquiry which was held over three days and she believed that the conclusions drawn by the Inspector ignored the compelling evidence given by the residents many of whom had lived and grown up in the area over many years.

As Ward Councillor for the area for over 25 years she totally supported the views expressed by the residents and the need to keep the land as open space for the benefit of the Castle Park community and urged the Members of the Committee to make a decision in favour of the local community. She noted the work that had been put into the application, the evidence of sustained community use which was compelling and the courage of the residents giving evidence over three days, which should be rewarded by allowing the continued use of the land for the benefit of that community.

### Councillor D Collins – Whitby Town Council

Councillor Collins highlighted the need for ensuring Whitby had sufficient green open spaces in an around the town and noted that Scarborough Borough Council was supportive of that. He noted that other areas of the town had been granted Village Green status and suggested that this area was just as deserving a case. He highlighted that alternative areas suggested for the community to use for sports and pastimes were not satisfactory, particularly as parents would not be able to observe their children whilst out playing. He also noted that there was a busy road to cross to access the alternative area.

In terms of development on the land he referred to difficulties for local sewers and drains not being able to take away existing water and how this could impact further on that. He noted that further development would also have a further impact on the demand for fresh water. He highlighted the impact that additional development was having on the ability for water to soak away, heightening flooding problems.

The Chairman invited those speaking in objection to the application to address the Committee.

### Emma Bingham of Walker Morris, Solicitors, representing the landowner

Emma Bingham referred to the public inquiry held between 30 April and 2 May 2012. She stated that the Inspector had been a highly experienced Barrister in this type of matter. A number of witnesses had been called to given evidence to the inquiry and their evidence had been the subject of cross examination. Everyone had been given an opportunity to provide their information to the inquiry and all details had been taken into consideration by the Inspector. She emphasised that the Inspector had then weighed up the evidence and had decided to recommend the rejection of the application. Her reasons for that were set out in Section 7.2 of her final report which was appended to the report presented to the Committee.

She highlighted the Committee's initial decision, to appoint an inspector to consider the evidence both in favour and against the application, and suggested that it would be perverse for the Committee to then ignore the conclusion of the Inspector, which was why the recommendation put to the Committee was for refusal of the application.

She emphasised that the evidence provided in support of the application at today's meeting had not been material.

She urged the Committee to reject the application.

Following the statements Members of the Committee considered the report and the following issues were highlighted:-

- A Member raised an issue regarding the ownership of the properties on the Castle Park estate. He considered that by the time of the qualifying period many of the properties had transferred from being Ministry of Defence owned to being under private ownership and, therefore, the land usage was "as of right" rather than "by right". He asked for confirmation that once a property had transferred into private ownership subsequent use of the application land by those residents was considered by the Inspector to be a use "as of right" notwithstanding that the resident might continue to be employed by the RAF. In response the County Council's Legal Adviser, Simon Evans, said he understood that the view taken by

the Inspector was that once the properties had transferred into private ownership then such usage of the land was “as of right”.

- A Member referred to the usage of the land during the 20 years qualifying period. He noted that the land had been well maintained and appeared to have had open usage prior to the signs being erected. He considered that anyone on the estate would be allowed to use that land, noting that dog walking had been offered as evidence of qualifying usage during that qualifying period. In response the County Council’s Legal Adviser considered that the Committee had, by resolving to hold an Inquiry, aimed to see that the nature of such evidence would be fully investigated by the appointment of an Inspector. He advised that dog walking, often was not considered a qualifying use but was thought to be more akin to a use which might be more likely to establish a public right of way, as someone walking a dog would often follow a linear route. He stated that the Inspector had come to that conclusion for this case within her report.
- A Member suggested that the witness statements and correspondence outlined that the area had been used for sports and leisure that qualified the area for Village Green status and considered that there was little monitoring evidence to suggest that this had not been the case. In response the County Council’s Legal Adviser stated that this highlighted the reason why it had been beneficial that a public inquiry had been held, allowing the chance for evidence to be fully investigated by an expert and for cross examination of that evidence to take place. He considered that the Inspector did not doubt that the land had been used for sports and pastimes, but did have doubts as to how much of that usage had been qualifying use. The Inspector had noted that the site and neighbourhood housing had been owned by the MoD initially and that who had been using the site during the qualifying period and where they had come from had required the degree of investigation offered by an inquiry.
- A Member referred to the different areas of land throughout the application site, with a number of them differing in type of usage. He referred to the tennis court requiring a key for access, which meant that usage of that area was in his view clearly “by right”. Other areas of the application land were totally open which allowed access for anyone. He considered it immaterial who owned the land as it could be accessed openly. He emphasised that every usage of the land could not be claimed as qualifying usage for Village Green registration and suggested that parts of the land were more likely to qualify as Village Green than others. He noted the issues set out by the Inspector and her interpretation of the qualifying usage and witness statements. He asked how the Inspector had come to make the assumptions she had in her final report. In response the County Council’s Legal Adviser stated that the Inspector did not doubt the evidence put forward by witnesses although she had noted that some of the written evidence had not been particularly detailed. She had concluded, however, that the usage did not meet all the required criteria for Village Green registration. He explained that the initial meeting of the Committee on 3 June 2011 had resolved that an inquiry be held to fully explore what had happened on the site during the qualifying period and for the Inspector to use her expert knowledge of the law in relation to Village Green applications to interpret that, which she had subsequently done.

- A Member considered that the use of the tennis courts within the application site was clearly “by right”, but suggested there were a number of assumptions made by the Inspector in relation to the remainder of the application site. He noted that the use of the space by the privately owned properties had deemed to be “as of right” and that at the beginning of the qualifying period over 50% of those properties were in private ownership. He considered that the whole of the land had been used for sports and pastimes and suggested that dog walking, if being used to exercise the dog, would not follow a specific path, as had been stated earlier. He suggested that the report provided by the Inspector made a great deal of assumptions, which could be contended. He noted that evidence had been given by a grandfather who had been playing with his grandchildren on the land, which had been ruled out by the Inspector as the children did not live on the estate. He considered that this was an example of the criteria being applied too rigidly and had some concerns as to the final recommendation within the report. He felt that the report implied that usage was not “by right” but then suggested that not enough of the usage was “as of right” and considered that the Inspector’s report was contradictory. In response to the issues raised the County Council’s Legal Adviser emphasised that the Inspector was an expert in this area of law and had based her findings on the evidence before her. He stated that evidence of qualifying use of a “significant number” from the neighbourhood/locality was required for the application to satisfy the legal criteria and that Inspector had provided her opinion in relation to that. He mentioned by way of example that there had been other applications in respect of areas which had attracted wide use but clearly from outside a neighbourhood or locality demonstrating that it is possible for a site to be the subject of use, but that this use may not necessarily be qualifying use. He noted that there was a great deal of evidence in this case which required close investigation to determine whether or not claimed use amounted to qualifying use which was why he thought Members, on 3 June 2011, had agreed to instigate a public inquiry, allowing the evidence to be investigated thoroughly.
- A Member sought clarification as to whether the qualifying period ended when the signs, as detailed in the photographic evidence, were erected or whether the people of the estate continued to use the application area “as of right”. The County Council’s Legal Adviser stated that it was clear that the Inspector had concluded the qualifying period ended when the signs were erected. The Inspector was satisfied that anyone using the site was aware of the signage from the time that this was put in place. It was also noted that the qualifying period was set out in section 7.1.2 of the Inspector’s report.
- Doug Huzzard, highlighted that a number of the public speakers had referred to the original meeting of the Committee, held on 3 June 2011 having unanimously given approval to the Village Green application, before referring that to public inquiry because of the objections. He stated that this was not the case as the Committee had agreed to refer the matter to public inquiry, rather than make a decision at that time. The Clerk confirmed this to be the case and read out the resolution of the previous meeting to the Committee highlighting those facts.

Mr Huzzard also noted that the public speakers had referred to support being provided by the Yorkshire Coast and Moors County Area Committee held on 31 March 2011 and also the support of the local

Member, County Councillor Jane Kenyon. He highlighted that although this support was provided, the County Council as Registration Authority could only take account of whether the application met all the appropriate qualifying criteria and could not take account of arguments on the merits or otherwise of the land being registered.

Members acknowledged the issues raised by Mr Huzzard and the original decision of the Committee held on 3 June 2011.

- A Member stated that he considered the decision on the application to be very difficult. He supported the view of the Inspector, that the tennis courts section of the application site had been used “by right” but did not share the Inspector’s view in respect of the remainder of the application site. He did not feel that the extent of qualifying usage of the remainder of the site had been such that it did not qualify for Village Green status in terms of usage. He noted that by 1986, the start of the qualifying period, over 50% of the housing on the estate was in private ownership and, therefore, suggested that the idea that the land had mainly been used by those residing in the Ministry of Defence owned houses was not believable. He, therefore, disagreed with the findings of the Inspector on that point.

The Member proposed an amendment to the recommendation attached to the report, stating that, other than the land comprising the former tennis courts, the remainder of the application site be granted Village Green status as the application met the criteria set out in Section 15 (2) of the Commons Act 2006 for land to be registered as Town or Village Green.

- A Member of the Committee raised concerns that the decision of the Committee held on 3 June 2011 was to hold an inquiry to enable cross examination of the witness evidence put forward in respect of the application so that her expert opinion could be provided to assist the final decision on the matter. He suggested that it would be unfortunate for the Committee to request that and then ignore the recommendation put forward by the Inspector. This was echoed by another Member of the Committee and he asked for clarification as to whether part of the site could be registered as Village Green or whether the whole of the site had to be taken account of.

In response the County Council’s Legal Adviser stated that it was open to the Registration Authority as to whether they registered some or all of the land that had been the subject of the application. Doug Huzzard highlighted that the conclusions of the Inspector had stated that she was unable to recommend that only a smaller part of the land should be registered as Town or Village Green as she found that the statutory criteria had not been met in respect of any of the land.

- The County Council’s Legal Adviser stated that any challenge to the final decision reached by the Committee in respect of the application would in all likelihood be by way of judicial review. He emphasised that Members be informed of this matter.

The amendment, as detailed above, was proposed and seconded and the Committee took a vote on that. Following a tie in the voting, the decision was made through the use of the Chairman’s casting vote.

**Resolved –**

Taking account of the former tennis court part of the Application Land identified in paragraph 3.1 of the Inspector's Report having been accessed via a locked gate and therefore taking the view use of that area had been "by right", that the Registration Authority is satisfied that part of the Application Land should not be registered as town or village green.

Given that, apart from in respect of the former tennis courts, the Registration Authority is satisfied the application meets all the relevant criteria set out in Section 15(2) of the Commons Act 2006, the remainder of the Application Land (i.e. excluding the former tennis courts) be registered as Town or Village Green.

The meeting concluded at 11.45 am.

SL/ALJ