

# North Yorkshire County Council

## Planning and Regulatory Functions Committee Sub- Committee

Minutes of the meeting held on 8 March 2013, commencing at 10.00 am at The Galtres Centre, Easingwold.

**Present:-**

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

There were five members of the public present.

**102. Appointment of Chairman and Vice-Chairman**

**Resolved –**

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

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**County Councillor John Blackburn in the Chair**

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

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**103. Exclusion of the Public and Press**

**Resolved –**

That the public and press be excluded from the meeting during consideration of Minute Number 110 on the grounds that it involves the likely disclosure of exempt information as defined by paragraph 5 of Part 1 of Schedule A to the Local Government Act 1972 as amended by the Local Government (Access to Information)(Variation) Order 2006.

**104. Minutes**

**Resolved -**

That the minutes of the meeting held on 11 January 2013, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

**105. 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.

**106. Application for Diversion of Public Footpath No 10.19/21 Pear Tree Bungalow, Brompton**

Considered –

The report of the Corporate Director Business and Environmental Services advising Members of an application for a Diversion Order, the effect of which, if pursued, would be to divert Footpath No. 10.19/21 at Peartree Bungalow, Deighton Lane, Brompton. A location plan was attached to the report highlighting the section of footpath proposed to be deleted and the section of the footpath proposed to be added.

The request was for Members to authorise the Corporate Director, Business and Environmental Services, to make a public path Diversion Order.

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

Mr Hunter stated that a application had been submitted to the County Council on 20 June 2012 by the landowner of Peartree Bungalow, to divert the footpath as shown on the plan appended to the report. The proposal was to divert the path out of the garden area at the landowner's property in order to improve security and privacy. Details of the width of the proposed path and the installation of pedestrian gates and the surfacing for the path were outlined. An informal consultation on the proposal was undertaken with the statutory consultees on 19 July 2012. In response replies were received from the Parish Council and the Ramblers. A reply was also received from a neighbouring property. The Parish Council and the Ramblers did not raise any objections to the proposal, however, the neighbour objected on the grounds that:-

- The diversion would not improve the applicant's security and privacy.
- The path should remain on its current alignment.
- Instead of a diversion, a fence could be erected to provide privacy and security.
- A diversion would increase the likelihood that walkers could cut through the corner across his field and climb the existing fence rather than use the newly appointed gate.
- The footpath should remain on its current line where it crosses his access track.

The report provided comments in relation to the objection.

In conclusion Mr Hunter stated that the application satisfied the criteria of Section 119 (1) of the Highways Act 1980 as it was in the owner's interest to have the footpath moved within the boundary of her property and it was further considered that the proposal would not substantially less convenience the public.

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

- A Member noted that the objections stated that the application would not improve privacy, but he considered that it clearly would, having taken

account of the photographs provided and suggested that it was appropriate that the Order be made.

- Clarification was provided as to the route that the Diversion Order would take around the property.

**Resolved –**

- (i) That authorisation be given to the Corporate Director, Business and Environmental Services, to make a Diversion Order for the route shown A – B on plan 2 attached to the report to be diverted to the alignment as shown as A – C – D – B on Plan 2 attached to the report; and
- (ii) In the event that formal objections are made to that Order, and are not subsequently withdrawn, the Committee authorises 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.

**107. Application for Diversion of Bridleway No 10.128/8 Sexhow Grange, Sexhow**

**Considered –**

The report of the Corporate Director Business and Environmental Services advising Members of an application for a Diversion Order, the effect of which, if pursued, would be to divert Bridleway No. 10.128/8, Sexhow Grange, Sexhow. A location plan was attached to the report which outlined the section of bridleway proposed to be deleted, shown as A – B – C and the section of the bridleway proposed to be added, shown as A – D on an additional plan. Members were requested to authorise the Corporate Director, Business and Environmental Services, to make a Public Path Diversion Order.

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

Mr Hunter outlined how the owner of Sexhow Grange had submitted an application to the County Council to divert the bridleway to the north of the farmhouse and buildings, on the grounds of safety and security. The proposed path was to be recorded as three metres wide and run adjacent to a hedgerow. As the land was arable no gates would currently be required for stock control. An informal consultation on the proposal was undertaken with the statutory consultees on 16 February 2012 in accordance with the required procedure. In response to the consultation replies were received from the Parish Council, Byways and Bridleways Trust, British Driving Society, the Ramblers and the British Horse Society. Objections were raised by the Ramblers, and the British Horse Society intimated that they had some concerns but these had not been submitted.

The objections from the Ramblers were that the existing bridleway offered sufficient separation from occasional workings within the farmstead, since the existing bridleway had a width of four metres and had a hard surface; the proposed field side route was substantially less convenient to walkers; the proposed section would be soft grass, which would not be able to withstand equestrian use; the farmer may fence the proposed route as he had done with other bridleways on his land, thereby reducing the available width; and users would be required to negotiate a sort section of steep bank on the existing bridleway immediately north of point C on the plan.

Mr Hunter commented on the objections raised by the Ramblers. In terms of the separation from the occasional workings he noted that there were periods of the year when there was considerable activity involving the movement of heavy machinery and, therefore, the applicant considered that diverting the public from that area would improve safety. The Ramblers objections had been discussed with the applicant and it was agreed that whilst the surface of the proposed route was mostly robust enough to cope with equestrian traffic, one wet section, would benefit from having a surface made up with crushed stone or road planings. The applicant had agreed to carry out this work if a Diversion Order was made and confirmed. In terms of the width of the proposed route and the nature of the surface it was noted that three metres was a standard width for bridleways, however, when running through a pasture field on the farm that had been enclosed by fences it was considered reasonable that the landowner may wish to enclose the proposed bridleway at some stage. If this were the case the bridleway would be effectively reduced to a strip of around two metres which could cause the break-up of the grass and a deterioration of the surface. It was not unreasonable for the applicant to be requested to provide a route similar in nature to the existing bridleway. It was noted that the applicant had offered to improve the surface and it was proposed to record a four metre wide width for the bridleway within the Order. In terms of the steep bank overall it was not considered that the proposed route would be substantially less convenient to the public and although it fell outside the consideration of the merits of the proposed diversion itself it was proposed to explore the possibility of widening the sections between points C – D with the landowner to remedy the concerns in relation to that bank.

In conclusion, Mr Hunter stated that it was in the owner's interest to have the bridleway moved into a more convenient line for him and it was considered that the proposed new route would not be substantially less convenient to the public if the width of the proposed section were to be recorded as four metres wide.

Following the initial presentation, Mr Fletcher, the applicant, addressed the Committee in support of his application. He highlighted how the new route would be much safer for those using it and how he was willing to undertake the improvements suggested by the objector to make that route more appropriate.

Mr John Marshall, representing the Ramblers, spoke in relation to objections raised against the application. He suggested the route outlined at the Committee was not the same as that which had been consulted on. He noted that path A – D would replace a hardcore/hardstanding route, which would be sufficient for walkers, but would not be adequate when used as a bridleway. He noted that part of the route was too small when being used by both walkers and those on horseback because of the fencing and the overgrown hedges and stated that this had to be widened. He noted that some of the fencing was capped with barbed wire, which was unacceptable and dangerous to those using the route.

In relation to point C, within the proposed route, he noted that the Ramblers had commented that this was not in the wrong place and had asked the landowner to discuss the issues there. He noted that the landowner had indicated that improvements to that point were being proposed and he emphasised that should an acceptable solution be proposed for that area then the Ramblers objections could be withdrawn.

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

- A Member suggested that as the route was to be a bridleway then it would be sensible for the whole of the proposed diversion route to have a

stoned surface, otherwise, if this was left as grass, it would quickly become churned up.

- Noting the issues raised in objection to the diversion and the negotiations that were taking place to respond to the issues raised, a Member asked whether it would be more appropriate for the issues highlighted to be conditioned into an approval, if Members were minded to give that, in respect of section C – D of the route, rather than this being approved and then the negotiations taking place. In response to this matter the County Council's Legal Adviser, Richard Pennell, stated that the Committee was only able to place conditions on the Diversion Order and as section C – D was not part of this diversion then this would not be applicable. A Member contested that the Diversion Order would not affect that part of the route. He considered, therefore, that conditions should be placed into any approval to regulate the bridleway width along Section C – D of the route.
- A Member asked for clarification as to whether the route was well used. In response Mr Marshall from the Ramblers indicated that the path east to west of the route was well used, but was not as well used from the north as it was too narrow for horses. He stated that it would be difficult for two horses to pass side by side on that part of the path. The Member wondered whether it would be necessary to provide stoning to that lesser used point of the path. In response the County Council's Legal Adviser stated that should the Order be made then that would not have to be substantially less convenient to the public than should the existing route remain.
- In response to a number of the issues raised the landowner, Mr Fletcher, stated that he was prepared to remove the barbed wire from the fencing indicated, was happy to extend the width of the route to four metres in the places that had been highlighted and was also happy to move the boundary back to cut out the steep bank and have that as a four metre wide route. In relation to these issues Andy Hunter stated that the improvements at point C would benefit both walkers and riders. In terms of the surfacing he emphasised that it would be appropriate for stone surfacing to be provided on some of the route, but not the whole of the route, as that was not in existence currently.
- A Member suggested that a solution was near to being found with the main objector setting out the grounds for the withdrawal of those objections and the landowner indicating that he was willing to comply with those. He considered the application to be reasonable in terms of the diversion and understandable. In terms of the barbed wire fence along part of the route and the narrowing of that route, with the fence and hedge in place, he considered these to be inappropriate. In respect of those he suggested that unless they were addressed then enforcement action should be taken, however, he considered this to be a separate issue to the Diversion Order in front of the Committee.
- Clarification was provided as to the exact details of the diversion and which parts of the route would be affected.

## **Resolved –**

- (i) That the Corporate Director, Business and Environmental Services, be authorised to make a Diversion Order for the route shown as A – B – C on Plan 2 attached to the report, to be diverted to the alignment shown as A – D on Plan 2 attached to the report; and
- (ii) That in the event that formal objections are made to that Order, and are not subsequently withdrawn, authorisation be given to refer 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 could support confirmation of the Order.

**108. 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**

Considered –

The report of the Corporate Director, Business and Environmental Services advising Members of an application for a Definitive Map Modification Order to add a Bridleway along the track running from Moss carr Lane to the Leeds City Council boundary, in the parish of Bilton-in-Ainsty with Bickerton. A location plan was attached to the report as Plan 1 and the route referred to was shown as A – B - C on Plan 2 attached to the report. Members were requested to authorise the Corporate Director, Business and Environmental Services, to make a Definitive Map Modification Order.

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

Mr Varley stated that an application to add the route shown as A – B – C on Plan 2 attached to the report to the Definitive Map and Statement as a Bridleway was submitted by a local resident on 21 March 2000. The application was supported by historical information only. The application referred to a route which stopped at the County Boundary shown as point C on Plan 2, but subsequently the applicant had applied to Leeds City Council in 2009 for the continuation of the route into Leeds City Council's area, to be recorded as a Bridleway. That application was being dealt with separately by Leeds City Council. The application to the County Council was submitted in reaction to a gate at the beck, shown as point B on Plan 2, been locked in 2000, obstructing the application route.

Mr Varley highlighted the evidence in support of the application stating in total the authority had received 24 Evidence of Use forms and seven letters alleging use of the route as public right of way. Subsequent tests on that evidence had eliminated some of those received, resulting in 14 Evidence of Use forms and two letters providing evidence that the public had used the application route from 1969 to 2012. A chart was provided detailing the claimed use of the route. The date of challenge to the public's use of the route had been established as 10 January 1991.

The evidence had been examined and it was noted that seven witnesses had mentioned that they had been prevented from using the route by a locked gate at the beck, with dates given as 2000 and 1991. One witness had also noted that the gate had been locked in 2006 but had continued to use the route. The majority of signatories did not seem to regard the locking of the gate as a challenge to the public, as the evidence forms claimed continued use of the route until 2012. All had indicated they had observed other people using the route including those on horse-back and bicycle.

A number of historical documents had been submitted in support of the route including:-

- Extracts from the Turnpike Trust Act of 1826.
- Extract from a Quarter Session entry relating to the stopping up of the former Turnpike Road.
- Notes on the history of the old Wetherby to Bickerton Road.
- Extracts from the Tythe map of 1851.

Details of the relevance of that historical information were provided within the report.

Mr Varley stated that during the initial consultation and subsequent investigation the authority had received one objection and four statements from landowners whose holdings either crossed by the proposed right of way or were adjacent to the proposed right of way.

The previous owner of Ingmanthorpe Hall Farm submitted maps and statements in accordance with Section 31 (6) of the Highways Act 1980 on 10 January 1991 and this statement was renewed five years later. The submission of the declaration was a formal process to prevent the acquisition of highway rights by the public. The action by the then landowner clearly demonstrated a lack of intention to dedicate any further rights of way over his land from 10 January 1991. The action was the challenge to the public's use of the route and consequently the evidence supporting the application needed to demonstrate unhindered use from 10 January 1971 to 10 January 1991 in order for a Right of Way to have been brought back into being through the use.

Full details of the statement received from other landowners outlining their observations in relation to the route since 2005, since 2008, since 1972 and since 2004 were outlined in the report.

Mr Varley gave details of responses from other interested parties stating that Bilton-in-Ainsty with Bickerton Parish Council confirmed their support of the recording of the route as a bridleway and also that the British Horse Society confirmed their support of the application. It was noted that the British Horse Society were of the opinion that the route should be recorded as a restricted byway.

The report provided an assessment of the evidence submitted and concluded that whilst the evidence was finely balanced it demonstrated a reasonable allegation of the existence of a public right of way before the effective challenge being made by the then landowner in 1991. Although the original application was for the route to be recorded as a bridleway it was considered that, with reference to the evidence of use by pedal cycles, an order should be made to record the route as a restricted byway.

The land agent, representing the current landowner, Catherine Johnson, spoke in relation to the application. She noted that action had been taken in 1991, by the landowner at that time, to prevent further public rights of way being provided for along that route. She noted that those using the route had indicated that they had found locked gates and that the previous landowner had allowed people in the area to travel along that route "by right", but there was no "as of right" use of the route. She noted that people in the village may have thought that they were using "as of right" but that was not the case. She noted the historical evidence provided and considered that this did not indicate the route as a public right of way. She emphasised that there was not significant evidence in favour of the application, and noted the locked gates and the signs stating that there was no public right of way, together with the action taken to prevent the acquisition of highway rights by the public.

Local resident, Tricia Heaps, submitted a statement that was read to the Committee by the Clerk, which outlined the following:-

I first started using the old park road in 1975 to avoid using the busy main York to Wetherby Road. A permissive sign was put up in 1995 and finally the gates were locked in 1996. The point of putting a stopping order on this old road was to prevent people using it instead of paying to use the new road. It was never intended for local people to be stopped. Indeed there is a document informing a certain Joseph Cooper of Eelmires he was allowed "a free passage of occupation for all purposes and on all occasions to and from his Close called Eelmires occupied by Joseph Cooper... from and to the Turnpike Road leading from Wetherby to Boroughbridge. Point A on the said map (no longer apparently available) to and over the intervening lands of Richard Fountain Wilson". This track had been used for well over 20 years by walkers and riders for pleasure avoiding York to Wetherby Road. Since then a farm had been built over it which is probably why it was closed in the first place. I think as long as appropriately used re non-motorised vehicles, it should be reopened to stay off the very dangerous road where many horses and riders are killed or maimed each year.

Following the submissions Mr Varley drew the Committees attention to the application being for a restricted byway rather than a bridleway, should Members approve the application.

Members discussed the report and highlighted the following:-

- A Member considered the evidence was evenly balanced, but the issue of the landowner protecting the rights of the land should not be ignored. The landowner had been public spirited over a number of years by allowing locals permission to use the route, but those clambering over gates and fences and ignoring signs were trespassing on that land. As such the Member did not feel the case was proven for the application and that the granting of this would remove the rights of the landowner.
- A Member suggested that whether or not this was a public right of way if some rights to use the land had been allowed by the landowner then it had to be recognised that everyone could use that route and not just those chosen by the landowner. It was noted that many of those using the route had not found any obstruction.
- It was noted that the evidence was finely balanced and should objections remain in place to the application, should the Committee be minded to grant that, then it was likely that the matter would be submitted to a higher body for further, in depth, consideration.

#### **Resolved –**

- (i) 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 on Plan 2 attached to the report to be shown on the Definitive Map and Statement as a restricted byway; and
- (ii) That in the event that formal objections were made to that Order and, were not subsequently withdrawn, the Committee authorise the referral of the Order to the Secretary of State for determination and permit the Corporate Director, under the



powers delegated to him within the County Council's Constitution, to decide whether or not the County Council could support confirmation of the Order.

**109. Application to De-register Common Land – Ratton Row, Thruscross**

Considered –

The report of the Corporate Director – Business and Environmental Services, on an application to de-register part of an area of land as common land and to request that Members consider the grounds of the application and determine whether the land should be so de-registered.

The County Council's Legal Adviser, Richard Pennell, introduced the report highlighting the statutory authority of the County Council in relation to the registration and de-registration of land under the Commons Registration Act 1965 and the Commons Act 2006. Mr Pennell noted that this particular piece of land had been registered as Common Land prior to 2006 and therefore the Commons Registration Act 1965 was the relevant legislation in relation to this.

He noted that the application was made on the grounds that the land in question ceased to be common land by 31 December 1993 by virtue of its enclosure, following the development of part of the site. The application included a letter dated 12 October 2000 from Thruscross Parish Meeting and a copy of the Minutes of a Parish Meeting held on 2 November 1999 both stating that errors had been made in the original application by the Parish meeting to register the land as common during the late 1960s.

The application to de-register had been advertised accordingly and no objections had been received.

**Resolved –**

That the application to de-register part of the area of land known as Ratton Row, at Ratton Row, Thruscross as common land be approved.

**110. Application to Register land as Town or Village Green – Castle Park, Whitby – Notice of intended application for the Judicial Review of a decision made on this matter**

Considered –

The report of the Assistant Chief Executive (Legal and Democratic Services) on a notice of intended judicial review proceedings against the decision made by this Committee on 11 January 2013 in respect of an application to register land at Castle Park, Whitby as Town or Village Green.

It was noted that the report contained exempt information of the description contained in paragraph five of Part One of Schedule 12A to the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006 and as such was exempt from public participation. As an exempt item the Minutes reflect the nature of that item.

Members discussed the implications of the notice of intended judicial review submitted following their decision on the application to register land at Castle Park, Whitby as Town or Village Green at the Committee held on 11 January 2013.

The implications of the application for judicial review and the options open to the Committee were outlined in full by the County Council's Legal Adviser, Simon Evans.

**Resolved –**

That, the Committee supports the action proposed by the Assistant Chief Executive (Legal & Democratic Services) as set out in the report and in exercise of powers delegated to her by the Constitution the outcome of which will be that the application be considered by the Committee afresh at a future meeting, arrangements for that meeting to be left to the Assistant Chief Executive (Legal and Democratic Services) with Members being advised accordingly.

The meeting concluded at 12.45 pm.

SL/ALJ