

North Yorkshire County Council

Planning and Regulatory Functions Committee Sub- Committee

Minutes of the meeting held on 26 April 2013, commencing at 10.00 am at Community House, Portholme Road, Selby.

Present:-

County Councillors John Blackburn, David Blades, Robert Heseltine, Bill Houlton and Peter Sowray (as Substitute for Cliff Trotter).

There were ten members of the public present.

111. 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.

County Councillor David Blades in the Chair

Copies of all documents considered are in the Minute Book

112. Minutes

Resolved -

That the minutes of the meeting held on 8 March 2013, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

113. 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.

114. Application to record a public footpath from the Eastern End of the Former Railway Viaduct to Wighill Lane, Tadcaster

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 footpath between the eastern end of Tadcaster Viaduct and Wighill Lane, Tadcaster. A location

plan was attached to the report; together with details of the route referred in an additional plan 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 Committee's responsibilities and the legal issues pertaining to the implementation of modification orders.

Mr Varley outlined the background to the applications stating that on 26 March 2012 a local resident submitted an application to add the route shown A-B on Plan 2, to the Definitive Map and Statement as a footpath. The route crossed land forming part of a property which in the past was a Barnardos Home. The application was supported by user evidence forms, a statement from the former Barnardos Care Home Superintendent and three historic maps. The application was submitted as a reaction to the obstruction of the western end of the route with a substantial fence and on the eastern end of the route with the walling up of a gap in an existing stone wall boundary. The fence and walling were put in place around February 2012. Mr Varley provided a visual presentation to demonstrate the route of the application and of the fence and walling that had been erected.

In terms of the evidence in support of the application 267 evidence of use forms alleging use between 1954 and 2012 had been submitted. Of those forms, nine had been disregarded for reasons set out in the report, leaving 258 signatories that had demonstrated use of the route, "as of right". All of the signatories had used the route on foot, 90 claimed to have used the route on pedal cycle and foot and two claimed to have used the route on pedal cycle, by horse riding and on foot. The reasons given for using the route were all bona fide in terms of the use of a public right of way.

Details of a statement made by the former Barnardos Care Home Superintendent, who was in post between 1962 and 1988, indicated that local residents had used an unofficial path across the Spinney to get from Wighill Lane to the viaduct without challenge unless anyone strayed into areas where the children played and then they would be reminded that they should not be there.

Historic maps indicated that a track existed linking the eastern end of the viaduct with Wighill Lane.

In terms of the evidence against the application the County Council had received one objection from the single affected current landowner. The objector claimed that the requirements of the Wildlife and Countryside Act 1981 had not been satisfied by the evidence presented in support of the application. Furthermore it was stated that the fencing erected across the route during the 2000's was broken down by people trying to access the route. It was considered that the erection of fencing should have been seen as an indication that the then landowner had no intention to dedicate the route. The objector also stated that the previous owners of the site, Marshalls of Eland, gave permission for people to use the route, therefore, "by right".

The report provided an assessment of the evidence provided and in conclusion it was stated that there was sufficient evidence of use of the way during the relevant period to allege that the route outlined on Plan 2 attached to the report had been dedicated as a public path.

Following the initial presentation a Member of the Committee sought clarification as to where the path, that ran adjacent to that outlined on Plan 2 attached to the report, led to.

Clarification was provided by Mr Varley and Members of the public present at the meeting. It was noted that access to this route involved a number of steps.

The local County Councillor for the Tadcaster area, County Councillor Chris Metcalfe, also a Town Councillor addressed the Committee and spoke in favour of the application. He outlined his involvement with regards to requests to formalise the footpath between Wighill Lane and the viaduct. He noted that the route was valued by the community in Tadcaster as it gave access to the local school and access to work for many people. The route also gave an alternative access when flooding occurred. He noted that the Town Council had engaged in consultation on the formalisation of the route for a number of years and had been involved with Doctor Barnardos in attempting to formalise the footpath along the route. He noted that Doctor Barnardos had been willing to do that. Following the transfer of the land, Councillor Metcalfe met with the new landowner and made them aware of the footpath. He noted that there had been support for the community's wishes and support for a cycle route, in that area, at the time. However a decision was made to sell the land before those factors could be put in place. Councillor Metcalfe noted that several site visits had taken place involving the County Council, the District Council and the landowners with a view to establishing the route as a footpath. He emphasised that the route was well used, that the evidence in favour of the route was reasonably large and those that had used the route in the past had not been challenged.

Mr Patrick Tunney, Chairman of the Local Footpath Society, addressed the Committee and spoke in favour of the application. He noted that he had been a user of the footpath every day until it had been blocked off. Many people in the area chose to use that route and it had been well used for over 20 years with substantial evidence submitted to corroborate that. He noted that local residents had asked for a meeting in relation to this matter, with the landowner, but had been met by the Company Secretary who had stated that there was no possibility of a footpath being put in place there. That was the current situation in terms of the footpath. As a result an application had been sent for a Definitive Map Modification Order which was before the Committee today. The Action Group set up to oversee the development of a footpath on the route had been overwhelmed by the community's response with over 400 evidence of use forms submitted following the application. He emphasised that the blocking off of the footpath was unwarranted and that the route required reinstatement as before, as use of that had always been "as of right".

Mr David Binns, local resident, addressed the Committee and spoke in favour of the application. He outlined how persons with health problems, those using cycles, wheelchairs, pushchairs, etc, were currently disadvantaged through the present situation, as the alternative route required access down a flight of 38 steps. The stopping off of the original route from Wighill Lane to the viaduct had led to this. He considered that this was leading to people travelling more in vehicles, rather than walking. He suggested, therefore, that the problems, related to the stopping off of the route were two fold in that it was discriminatory and detrimental to the environment.

Mr Neil Jacobi of Peter Lyn and Partners Solicitors, representing the landowners, Wharfe Bank and Samuel Smiths, addressed the Committee and spoke against the application. He asked Members to focus on matters on which such applications should be decided. He stated that for the application to be approved the route had to have been used for a 20 year period, without force and without permission having to be given. He considered that this was not the case. He noted that there were fences obstructing the path, which had been shown in the photographic evidence during the officer's presentation. He noted that there was evidence to suggest that those using the route had been guided away from the site at the former Barnardos Home, that there had not been 20 years of

use and suggested that Members take account of the evidence that had been disregarded as that stated that permission had been required for use of the route. He noted that 28 evidence of use forms had been disregarded as such. He stated that the existing fences had been broken down by people continuing to use the route and considered that over the last 20 years people had to either break down or climb over the fences to obtain use of the route. He considered, therefore, that the route had not been used for the 20 year period without force or permission having to be given.

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

- Members gave consideration to the photograph showing the original fencing in place and considered that a bottom rung could be placed on the fence and had not necessarily been broken for people to obtain access.
- Clarification was provided as to where the steps were located in terms of the alternative footpath.

Resolved –

- (i) That authorisation be given to the Corporate Director of Business and Environmental Services to make a Definitive Map Modification Order for the route shown as A – B on Plan 2 of the report to be shown on the Definitive Map as a Public Footpath; and
- (ii) That in the event that formal objections are made to that Order, and are not subsequently withdrawn, authorisation be given to the referral of the Order to the Secretary of State for determination, and in doing so 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.

115. Public Footpath 35.74/16 and 35.74/17 Pinfold Hill to Carr Lane, Wistow

Considered –

The report of the Corporate Director Business and Environmental Services advising Members of an opposed Definitive Map Modification Order, the effect of which, if confirmed, would be to add public footpaths 35.74/16 and 35.74/17 to the Definitive Map and Statement at Wistow, Selby. A location plan outlining the routes was attached to the report. Members were requested 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 support 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 provided a visual presentation giving photographs of the route and outlining the objections lodged in relation to the application.

Mr Varley outlined that an application to add the route A – B – C – D – E shown on the plan attached to the report, to the Definitive Map and Statement, as a footpath, had been submitted by Wistow Parish Council on 20 September 2004. Additionally A–B of the route was shown in an additional plan within the report and the northern section of the

Diversion Order, shown as F – G was also highlighted on an additional plan. The application was supported by user evidence forms. The application was submitted in reaction to the obstruction of the northern end of the route by a wall and fence constructed across the claimed route.

Mr Varley highlighted the evidence in support of the application stating that 27 evidence of use forms alleging use between 1914 and 2004 had been submitted. Five forms had been disregarded for reasons set out in the report leaving 22 witnesses alleging use of the route as a footpath. The reasons for their use of the route were all bona fide for the use of a public right of way. Additionally examination of the 1908 edition of the Ordnance Survey Map showed the existence of a track that generally corresponded with the route claimed by the evidence of use forms. The claimed route became partially obstructed by newly laid out gardens of houses constructed in the early 1980s but it seemed that the public continued to make use of the majority of the route avoiding the obstruction by walking within the land of the south west of the gardens.

In terms of the making of the order Mr Varley stated that an initial consultation was carried out in September 2010 and one objection was received at that time. Following negotiations with both the objector and the Parish Council it was agreed that if the Definitive Map Modification Order was successful the route shown as A-B on the Plan attached to the report would be immediately diverted on to a new alignment crossing the open space at the centre of the village owned by the Parish Council. The open space was already crossed by a suitable path with a tarmacked surface. The path was shown as F-G on the Plan attached to the report. The proposal allowed the objection to be withdrawn and the Definitive Map Modification Order and the agreed Diversion Order were made by the authority in January 2012. Both Orders were advertised between May and June 2012 and an objection was received in relation to the Definitive Map Modification Order from a local resident. There were no objections to the Diversion Order. The objection was based on the grounds that the Parish Council had not allowed the objector to erect an access gate from his property directly on to the open space to the south west of the property. Full details of the objection including plans and photographs were provided by the objector, however, this evidence did not present any suggestion that the route was not a public right of way.

Mr Varley provided an assessment of the evidence submitted in relation to the application and concluded that the evidence supporting the Definitive Map Modification Order was sufficient to justify the addition of the route shown in the plan attached to the report as a public footpath on the Definitive Map and Statement.

Mr John Verity, local resident, addressed the Committee and spoke in opposition to the application. Mr Verity outlined how he was the objector referred to in the officer's presentation and that his right of access outlined in his objection had been cut off for what was now a period of more than 25 years. He stated that he had spoken to the Parish Council and had expected some action to be taken over this matter during that time but to no avail. He noted that he had withheld his payment of his Council tax for a short period during that time, as a protest in relation to this matter, but still no solution had been provided. He considered that he should have a right of access from his property and that the matter should be addressed.

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

- It was clarified that the footpath on the land referred to by the objector was owned by the Parish Council.

- Members noted that, unfortunately, the matter referred to by the objector was not relevant in the case of the DMMO application and was a matter to be taken up by the local resident and the Parish Council between themselves. It was emphasised that the Committee had no legal remit on this matter and could not take it into account when determining 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 and for the Authority to support its confirmation.

116. Bridleway No 25.28/18 Lingy Plantation, Givendale Head, Ebberston and Yedingham Creation Order 2008 Reviewed

Considered –

The report of the Corporate Director - Business & Environmental Services advising Members of the change in circumstances affecting the opposed Creation Order which was reported to the Planning and Regulatory Functions Sub-Committee meeting on 13 January 2012. Members were requested to advise the Corporate Director of Business and Environmental Services not to pursue confirmation of the Creation Order and that consequently it not be submitted to the Secretary of State for determination.

The County Council's Definitive Map Officer, Penny Noake, presented the report, highlighting the Committee's responsibilities and the legal issues pertaining to the non-pursuance of a Creation Order.

Ms Noake highlighted that in 2008 the Corporate Director had been satisfied that it was expedient that a bridleway should be created on the route shown as A-B on Plan 2 attached to the report, which was made, but was opposed and was, therefore, reported to the Sub-Committee on 13 January 2012. Members resolved that the opposed Order should be submitted to the Secretary of State for determination. Subsequent to the meeting, and before the Order was submitted to the Secretary of State, details emerged that a change had arisen regarding the circumstances affecting the Creation Order.

Since the resolution had been made Highways Officers had examined archived highways records and had concluded that the route had been recorded in earlier versions of the List of Streets and in associated documents. There was no record of any legal event to support the deletion from those records and it was concluded that an error had occurred during an update of the List of Streets and that the route subject of the Creation Order was in fact already a highway maintainable at public expense and should be returned to the former record. The consequence of that was that there was now no legal basis for confirmation of the Creation Order given that the County Council now acknowledged a highway existed.

Ms Noake outlined the options available as follows:-

- That the Creation Order was forwarded to the Secretary of State, with support for the confirmation of the Order.
- That the Creation Order was forwarded to the Secretary of State, with the Authority taking a neutral stance as to the confirmation of the Order.

- That the Creation Order was forwarded to the Secretary of State requesting that the Order was not confirmed.
- That the authority made a formal resolution not to proceed with the Order in effect abandoning the Order.

In conclusion she stated that as the route was now recorded as public highway maintainable at public expense it was considered inappropriate to pursue the confirmation of the Creation Order, in any event, it was unlikely to be capable of confirmation. She noted that the authority could be open to criticism if it were to pursue the confirmation of the Order in such circumstances. It would be possible for the Authority to forward the Order to the Secretary of State, either choosing to take a neutral stance or alternatively requesting that the Order was not confirmed, but the action was not necessary as it was open to the authority to resolve not to pursue the Creation Order. In line with the DEFRA "Guidance for Local Authorities" the authority had the discretion to make a formal resolution not to proceed with certain Orders, including Creation Orders and this was considered to be the most appropriate course of action of the authority to take in this instance.

Mrs Janis Bright addressed the Committee and spoke in relation to the recommendation being put before Members. She stated that she was a local resident who lived near to the route and considered that there was still need for a Creation Order in relation to the route. She asked that Members consider continuing with the Creation Order to ensure that a right of way was recorded on the route which would allow structures to be placed along there, in line with those required for a bridleway, at the public's expense. She suggested that the matter relating to the List of Streets was a separate issue to that of the Definitive Map. She emphasised that the route had been on the List of Streets did not determine the clarification of the route and suggested that the two factors were entirely separate. She noted that the British Horse Society had applied for a Definitive Map Modification Order, which would have provided the status for the route, whereas merely leaving this on the List of Streets did not define that status. She requested that Members stick to their previous decision in relation to this matter.

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

- It was clarified that the DMMO application was for a bridleway and that this application which was waiting to be processed would deal with the Definitive Map issue.
- A Member noted the concerns of the local resident that asked for clarification as to whether a "street" had higher rights than the other routes suggested, for example the bridleway. In response it was stated that the issue before Members was in fact a technicality, as a Creation Order could not be promoted where a route already legally existed. As this had now been found to be the case within the List of Streets it would be inappropriate to submit the Creation Order to the Secretary of State for confirmation. It was noted that the DMMO application process could still be undertaken to clarify the status of the route.

Resolved –

That the Authority does not forward the Creation Order to the Secretary of State, and does not proceed with the Order; and that the Corporate Director of Business and Environmental Services follows the statutory requirements for notification of interested parties of that resolution.

117. DMMO and Public Path Order Update - March 2012 - April 2013

The County Council's Definitive Map Officer, Penny Noake, gave a verbal report outlining the progress made on DMMO and Public Path Order applications that had been considered by the Committee from March 2012 to April 2013. She stated that eleven new cases had been considered by the Committee during the year, however, some of those had been to the Committee more than once.

She provided details on the applications that had been to the Committee as follows:-

- Application to add a bridleway to the Definitive Map and Statement at Hawber Lane and to upgrade Footpath Number 05.41/11 (Part) and Footpath Number 05.41/16 (Part) to Bridleways, Thornton-in-Craven – no objection had been received and the Orders had been confirmed.
- Application to upgrade Footpath Number 05.41/23 (Part) to Bridleway status and to record the lane known as Dodgeson Lane and Dark Lane on the Definitive Map and Statement as a Bridleway – no objection had been received and the Order had been confirmed, with Section A-B being shown as a restricted byway, with no modification to the Definitive Map and Statement in relation to points B-D.
- 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 – the Order had now been advertised with notices on site.
- Downgrading of public Bridleway Number 15.29/38 (Part) to Footpath, Monk Ing Road, Dacre Modification Order 2012 – The Order is opposed and Members had resolved that the Authority should support the downgrading of the public Bridleway. The Order was now awaiting submission to the Secretary of State.
- Upgrading of Footpath Number 15.39/16 and Footpath Number 15.39/4 (Part) to Bridleway, Horsemans Well, Felliscliffe Modification Order 2012 – objections were still in place in relation to the Order and this was awaiting submission to the Secretary of State.
- Application to add a Footpath to the Definitive Map and Statement from Abbey Road to Abbey Road via the bank of the River Nidd, Knaresborough – the Order was made and is opposed: therefore this was awaiting submission to the Secretary of State.
- Application for diversion of public Footpath Number 05.30/37, Gallaber Farm, Long Preston – the Order was made, had not been opposed and was now confirmed.
- Application for diversion of public Footpath Number 10.19/21, Pear Tree Bungalow, Brompton – the Order had been made and had been opposed, therefore this was awaiting submission to the Secretary of State.

- Application for diversion of Bridleway Number 10.128/8, Sexhowe Grange, Sexhowe – the landowner had offered to make a number of alterations that would address the concerns of the objections raised at the meeting, however, the Order had not yet been advertised, therefore this case was ongoing.
- Application to divert public Footpath Number 15.89/21 (Part), Marfield Nature Reserve, Masham – the Order was about to be drafted and would be advertised shortly.
- Bridleway Number 15.111/10 (Part) East of Killinghall Bridge, Ripley Diversion Order 2012 – the Order was opposed and had been submitted to the Secretary of State who held a public inquiry in January 2013. The Order had subsequently been confirmed by the Secretary of State and work had commenced on the route. It was noted that the Diversion Order had affected a small section of much longer public right of way extending from Bilton to Ripley which was surfaced and well used. A Pegasus crossing was now in place to allow safe access across the A61.

Penny Noake referred to an application that had been dealt with previously by the Committee in relation to the addition of a Public Footpath to the Definitive Map and Statement from Manor Road to Spring Street, Easingwold. She noted that the public inquiry had been held in September 2012 and the Order had been confirmed by the Secretary of State. Works had now been carried out to open the route and the obstructions had been removed.

A Member asked about the backlog of applications to be submitted to the Secretary of State. In response it was stated that there were currently around 24 Orders waiting to be submitted to the Secretary of State and it was intended that the following municipal year would see a concentration on ensuring those applications were dealt with appropriately.

A Member of the Committee referred to an outstanding application from his own electoral division and asked what progress was being made on that. In response Penny Noake stated that there had been an issue with some Orders in relation to the line styles used on the plans due to the constraints of earlier computer mapping packages. She noted that the issue referred to was one of those applications and the Order had been required to be re-advertised. She noted that the Order was still opposed but with fewer objectors than previously. She stated that the Order had been submitted to the Secretary of State in the previous week.

Members welcomed the updates and thanked the officers for their details in relation to these.

Resolved –

That the update report be noted.

The meeting concluded at 11.45 am.

SL/ALJ