

North Yorkshire County Council

Planning and Regulatory Functions Sub- Committee

Minutes of the meeting held on Friday 7 March 2014, commencing at 10.00 am at County Hall, Northallerton.

Present:-

County Councillors Robert Heseltine (Chairman), Bob Baker (as substitute for Cliff Trotter), David Blades, Bill Hoult and Janet Sanderson.

There were 11 members of the public present.

Copies of all documents considered are in the Minute Book

20. Minutes

RESOLVED -

That the Minutes of the meeting held on 15 November 2013, having been printed and circulated, be taken as read and confirm and signed by the Chairman as a correct record.

21. Public Questions or Statements

The Clerk outlined the following questions submitted by Mr David Rice of Gloucestershire:-

Is there any Member present here today who believed that the above resolution was being made, without any intention by the NYCC to amend or annotate the actual minutes of that meeting with the amendment that had been agreed?

Is there any Member present here today, who believes that it is valid or reasonable to expect the public to have to search later minutes of meetings, to validate whether previously approved minutes contain known and identified errors which have not been corrected or annotated in any way?

If any Member present here today believes that it is rational and reasonable to expect the public to have to search later meeting minutes, to validate whether previously approved minutes contain known and identified errors, please will they: Confirm whether they believe that an appropriate "health warning" should be published on all NYCC minutes, to explain that they should not be regarded as a reliable public record, without searching future minutes to identify whether any retrospective amendments have been approved?

In response to the issues raised through the questions the Clerk explained to Members how the Minutes of a previous meeting were signed by the Chairman at a

following meeting and therefore, legally, became a definitive document. As such, the Minutes that had been signed could not be amended and any amendments to those had to be outlined in the Minutes of the following meeting. Members noted the comments made by Mr Rice, and the explanation provided by the Clerk. They considered that the request for a “health warning” to be provided advising members of the public, via the County Council’s website, that checks should be made to subsequent Minutes of meetings to determine whether amendments had been made to any previous sets of Minutes to be reasonable, and requested that this be put in place.

22. Application for Public Footpath No 25.45/16, Helmsley, Ryedale Modification Order 2013

CONSIDERED –

The report of the Corporate Director of Business and Environmental Services seeking Members approval for the Corporate Director to refer the opposed Definitive Map Modification Order (DMMO) to record a public footpath between Pottergate and Bridge Street, Helmsley, Ryedale to the Secretary of State for confirmation.

Definitive Map Team Officer, Russ Varley, presented the report, highlighting the Committee’s responsibilities in terms of considering the DMMO application. He noted that, in this instance, a DMMO had been made in accordance with the powers delegated to the Corporate Director of Business and Environmental Services as no objections had been received within the time during the pre-order consultation.

The Secretary of State in determining whether or not the Order should be confirmed, would consider the relevant evidence and determine, on the balance of probabilities, whether the route should be recorded on the Definitive Map and Statement as a footpath.

Details of the legal implications, financial implications and implications for equalities were set out in the report.

Mr Varley outlined the background to the making of the Order stating that the application was submitted by Helmsley Town Council on 6 August 2012 and was supported by 27 evidence use forms. A further 30 forms were received after the application was submitted. Of the 57 forms received, 21 were not taken into account as material evidence, as outlined in the report, determined that they could be disregarded.

Of the 36 evidence of use forms, none of the witnesses reported ever being prevented from using the route until it was fenced off during construction work in 2011. It was noted by four witnesses that a chain had been erected across the route but that this had been easy to either bypass or step over. It was unclear as to when the chain had been put in place with 2005, 2007 and 2009 all being given as possible dates. Thirty five witnesses claimed to have used the route more than 10 times per year. The main reason given for using the route was as a short cut to and from the shops in Helmsley town centre.

Use of the route had continued until 2011, however, one of the owners of the land crossed by the route (the objector outlined later) had submitted a declaration made under Section 31(6) of the Highways Act 1980 in 2005 stating that they had no intention to dedicate any right of way across their property. In respect of that,

therefore, the 20 year period of use of the route had been considered in relation to the public's acquisition of rights and was therefore 1985 – 2005.

A consultation was carried out between 30 May 2013 and 10 June 2013 with no objections to the application being received during that period. Sufficient evidence had been received to reasonably allege that public pedestrian rights had been acquired by 2005, and as no objections had been received within the consultation period an Order to record the route was made on 15 July 2013 and was the subject of statutory notification between 31 July 2013 and 11 September 2013. During the notification period an objection was duly made.

The objection received during the consultation period was made by one of the landowners affected by the Order route. Documents included with the objection were: -

- A letter
- An updated photograph showing signs stating that there was private parking only
- A letter from Duncombe Park Estate enclosing a copy of a letter and map sent to another resident of Helmsley
- 41 witness forms giving evidence that they believed the route was not public

Details of the letter of objection were outlined in the report, together with the details of the other information provided.

Mr Varley provided comments in respect of the evidence submitted and its impact on the Order and those details were outlined in the report.

In conclusion Mr Varley considered that by submitting a Section 31(6) declaration the landowner demonstrated that they had no intention to dedicate a right of way across their property, however, such declarations did not act retrospectively therefore in this instance the declaration had no relevance to the use of the route prior to 2005. He suggested there was sufficient evidence to demonstrate that prior to the declaration being submitted, a public right of way on foot had been brought into being. He recommended, therefore, that the Committee authorise the Corporate Director of Business and Environmental Services to refer the opposed Order to the Secretary of State for a determination and authorise the Authority to support his confirmation in any procedure that may be prescribed by the Secretary of State.

Members received clarification on the following issues in relation to Mr Varley's report: -

- The objectors implied that the path had been blocked by a shed prior to 2000, however, confirmation of that being the case had been unable to be obtained
- Use of the car park to gain access to the Arts Centre would be considered as qualifying use

A number of public speakers addressed the Committee in respect of the application as follows: -

Statement by Councillor Elizabeth Barker – Helmsley Town Council

In September 2011 I was approached by residents of Pottergate, Rye Court and surrounding areas regarding the closure of the said footpath between Pottergate and Bridge Street, Helmsley. Being a Helmsley resident for over 60 years I have knowledge of the history of the footpath in question. It has always been a trodden path from Pottergate to the town centre. In 1990 an elderly relative in ill health was residing in Rye Court and I was a frequent user of the path to visit her until her death in 1998. At no point during those eight years was I challenged about using the footpath. I also recall the original owner, Mr J Wiltshire, of the property known as "Spoilt For Choice" – a carpet shop – erected the seat by the side of the footpath so that members of the public passing by could sit down on their way to and from the town centre.

Dr Paul Harris

Dr Harris stated that he had used the path regularly and supported the Order. He provided details of a planning application submitted by the owner of the property adjacent to the path, dated October 2010, which highlighted the existence of the path. He noted that during the construction that took place in relation to that property notices at each end of the path had stated that the through-way would be temporarily closed. He considered that a route was clearly in place and had been used "as of right" for well over the 20 year qualifying period. He suggested that the objector should withdraw her objection to enable confirmation of the right of way as the evidence in place clearly pointed to that being used for the 20 year qualifying period. He considered the objection to be unreasonable and felt that should the matter proceed to public inquiry then the County Council should seek costs from the objector in respect of that taking place.

Members sought clarification on the issues raised by Dr Harris and the following were noted: -

- It was within the remit of the County Council to pursue costs on such matters if that was considered to be appropriate, but was dependent upon how the Inquiry had proceeded
- The County Council could seek the withdrawal of an objection, however, it was entirely dependent upon the objector to make the withdrawal and could not be demanded by the County Council

Nigel Gray

Mr Gray stated that he had been a resident of Helmsley for many years and up until August 2011, when barriers were put in place, had used the route twice per day. He noted that access had never been prevented previously and also noted that when a planning application had been submitted in relation to the adjacent property the right of way had been referred to within that. He emphasised that he had not raised an objection to the planning application as the reference within it led him to believe that the right of way would be re-opened following the building work having taken place. He noted that in August/September 2011 access had been prevented and signs had been put up stating that the right of way had been closed temporarily. This was to

allow the building work to take place. He considered that the path existed in the timescale outlined for the qualifying period and that it still existed currently. He considered that the application should be supported by members of the Committee.

Committee members qualified the following issues with Mr Gray: -

- The closure of the footpath in September 2011 was not a temporary order made by the County Council but was put in place by the adjacent property owner whilst development took place at that property
- The sign that had been placed at the entrance to the footpath stating that the way through would be temporarily closed, had no legal standing
- The indication within the statement submitted alongside the planning application, noting the existence of the “cut through” had no bearing on that application and no subsequent action could be taken in relation to that
- The temporary closure of the path was discussed at the time of the planning application, to enable preparation work to be undertaken in relation to the alterations to the adjacent property
- It was noted that the erection of sign indicating that the path was to be closed and the planning application were outside of the relevant qualifying period and therefore had no relevance to the application

Nick Boyes

Mr Boyes stated that he had used the path since 1982, having worked in the area also and regularly used the path to gain access to Bridge Street. He noted that he and his wife had used the path around twice per week. He noted that he had never been stopped from using the path or parking in that area.

Les Hinchliff

Mr Hinchliff stated that he had been dealing with this matter for around 12 months and highlighted that he had purchased the adjacent property in 1988 and was landlord. He considered that the path had always been a right of way in the time that he had ownership of the property and noted that many people had gained access to the area through there without any problem. He noted that when the path had been obstructed he had challenged that, but despite being told this would reopen the path had remained blocked for a substantial period of time, with no effort to reopen it. He considered that the access should be open as this was of benefit to the people living in Pottergate, many of whom were elderly and required access to Bridge Street through there.

Members qualified the following with Mr Hinchliff: -

The access had been used by local residents for many years, mainly people from Pottergate gaining access to Bridge Street and the access had been in place since 1988 when he had purchased his property, which was in the qualifying period.

Pennita Wilshire

Pennita Wilshire stated that she lived in the property adjacent to the path. She had boarded off the walkway while development had been taking place at her property. She noted that the blocking off of the path had not been objected to by the local Town Council. She noted that a chain had regularly been placed across the access prior to the development taking place which had not been objected to. She noted that in the late 1980's a 4 foot wall had prevented people from using the access. She stated that the Duncombe Park Estate had indicated to her, when the property had been sold in 1986, that no public right of way had been established on that land. She stated that a physical barrier had prevented access from 21, 23, 25 and 27 Bridge Street. She noted that she knew of people willing to swear an oath that there was no right of way down the side of her property between Pottergate and Bridge Street. She noted that there was an alternative access north of the Arts Centre which took only 45 seconds longer walking time from Pottergate to Bridge Street. She outlined the difficulties that having the access alongside her property brought, with problems emanating from anti-social behaviour which had resulted in her having to call the police on occasions.

Members sought clarification on the issues raised, including the following: -

- Details of where the 4 foot wall was said to be positioned were provided, although, it was emphasised that there was no evidence available to corroborate that the wall was there.
- Details of Ms Wilshire's property location in relation to the access path were provided

Glenys Wilshire

Mrs Wilshire outlined how when her and her husband had bought the property in 1989 there had been no right of way identified alongside the property. She noted that the issue had been raised previously and that it had been identified that no public right of way existed along there. She suggested that use of the access was by permission. She highlighted a number of problems that had occurred in relation to anti-social behaviour and vandalism along the access way over the years, through allowing access to take place. She noted that a seat had been erected at that location for those using the access, but emphasised that they had been advised that if access, one day per year was prevented, then the route could not be considered to be a public right of way. Those using the access were advised of this and were aware of the matter. A chain had been put in place to prevent access at times for that reason. She recognised that the issue had caused a great deal of bad feeling within the community and emphasised that this was never intended.

Members clarified the following issues with Mrs Wilshire: -

- An explanation had been provided to those using the access route as to why it had been blocked off. It was noted that some people had continued to use the route when blocked off which Mrs Wilshire considered to be trespassing. She emphasised that when blocked off the route had been dangerous and that the car park was dangerous in terms of pedestrian access.

County Councillor Val Arnold

County Councillor Arnold explained that she was the local County Councillor for the Helmsley area. She stated that she supported the implementation of the footpath along the route highlighted in the application. She highlighted the issues raised in relation to the identification of the access route within the planning application that had been submitted in relation to the development of the adjacent property. She noted that the route was used regularly by the residents of an elderly person's home and was concerned that this was not available to them. She suggested that the boundary wall at the adjacent property provided privacy from those using the route. She considered that the walkway should be retained as a public footpath for public use.

Following the representations, Members discussed the report and information provided both with the officers and those present and the following issues and points were highlighted: -

- Whilst having sympathy with both parties, a Member suggested that there was sufficient evidence to support the recommendation and take the matter to the next stage
- Members supported the proposal that the recommendation be approved with the matter going to the next stage of the process, however, [she] emphasised that [she] was uncomfortable with the lack of understanding of each parties concerns and did not consider the pursuance of costs on this matter to be appropriate
- A Member suggested that the weight of evidence indicated that the route had been used "as of right" during the qualifying period

RESOLVED –

That authorisation be given to the Corporate Director, Business and Environmental Services, to refer the opposed Order to the Secretary of State for determination, and authorise the Authority to support its confirmation in any procedure that may be prescribed by the Secretary of State (Public Inquiry or similar) to assist in reaching their decision.

23. Proposed withdrawal of the Diversion Orders for Footpath No 20.49/6, Newsham Hall, Newsham

CONSIDERED –

The report of the Corporate Director, Business and Environmental Services, informing Members and seeking the formal resolution not to proceed to confirm the sealed Diversion Orders for Footpath No 20.49/6 Newsham Hall, Newsham. A location plan was attached to the report as an appendix and details of the effects of the Orders were shown in an additional plan.

Definitive Map Team Officer, Andy Hunter, presented a report highlighting the background to this matter. He noted that the County Council has the discretion to proceed with public path orders to which there had been representations or objections, or may withdraw an order for other reasons such as external factors making a scheme no longer appropriate. To bring the procedure to an end the

Council had to make a formal resolution not to proceed. The report was seeking such a resolution.

Mr Hunter noted that an application had been submitted to the County Council under Section 119(1) of the Highways Act 1980 to divert the footpath at Newsham Hall outlined in the attached plan. The application would divert the path from the route crossing the gardens of three proposed residential properties and three new routes along the access. The Order was made in 2006, by which time some of the new properties had been sold. The Orders were abandoned due to a procedural error relating to the public notification of the Order. The second Order proposing the same diversion of the footpath was made in 2007 and six objections were received. One letter in support was also received. In light of the objections and following consultation with the parish council it was considered there was little merit in pursuing the Diversion Order. In respect of this the Committee was being requested to authorise the withdrawal of the 2006 and 2007 Orders. The consequence of the abandonment would be to leave the footpath on the original alignment shown as A – B on Plan 2 appended to the report. It was noted that this route had been historically obstructed and, as there was a nearby alternative footpath, a further proposal was being considered to promote an Order to extinguish the original route.

In conclusion, Mr Hunter stated that there was adequate existing provision by the rights of way network close by to the Order route; therefore, there was no need for the Diversion Orders concerned. It was recommended, therefore, that a formal resolution was made that the Diversion Orders were not pursued to confirmation.

Members considered the report and agreed that there was no alternative other than to withdraw the sealed Diversion Orders. It was suggested that alternative proposals could be submitted by the objectors.

RESOLVED –

That authorisation be given to the Corporate Director, Business and Environmental Services, to withdraw the sealed Diversion Orders for Footpath No 20.49/6, Newsham Hall, Newsham as detailed in the report.

24. Outstanding applications

The Chairman requested that a report be provided to a forthcoming meeting of the Planning and Regulatory Functions Sub-Committee providing details of the current backlog of applications and the progress being made on those.

RESOLVED –

That the report, as detailed, be requested for consideration at a subsequent meeting.

The meeting concluded at 11.15 am.

SL/KAL

