

North Yorkshire County Council

Planning and Regulatory Functions Committee Sub-Committee

Minutes of the meeting held on 17 April 2015, commencing at 10.00 am at County Hall, Northallerton.

Present:-

County Councillors David Blades, Robert Heseltine and Bill Hoult.

Officers: Jane Wilkinson and Simon Evans (Legal and Democratic Services), Barrie Mason and Chris Stanford (Business and Environmental Services)

Apologies:-

Apologies were received from County Councillors Janet Sanderson and Cliff Trotter.

In attendance

County Councillor Helen Grant

There were three members of the public present.

25. Appointment of Chairman

Resolved –

That County Councillor Robert Heseltine is appointed Chairman of the Planning and Regulatory Functions Sub-Committee for the full term of the County Council until the County Council elections scheduled for May 2017.

County Councillor Robert Heseltine in the Chair

26. Appointment of Vice-Chairman

Resolved -

That County Councillor David Blades is appointed Vice-Chairman of the Sub-Committee for the full term of the County Council, until the County Council elections scheduled for May 2017.

Copies of all documents considered are in the Minute Book

27. Minutes

Resolved -

That the minutes of the meeting held on 7 March 2014, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

28. Public Questions or Statements

There were no questions or statements from members of the public in respect of items not listed on the agenda.

The Applicant and his brother had registered to speak at the meeting on the Village Green Application for Earls Orchard Field, Richmond.

29. Land at Earls Orchard Field, Richmond – Application to Register Land as a Town or Village Green

Considered -

The report of the NYCC Corporate Director - Business and Environmental Services, in which he invited Members to determine an application to register an area of land at Earls Orchard, Richmond as a town or village green. Photographs of the site were tabled at the meeting (copy placed in Minute Book).

The report was introduced by Barrie Mason, NYCC Assistant Director (Highways), who summarised the background to the application. He highlighted the findings of the independent Inspector and drew Members' attention to the responses of the Applicant and District Council (affected landowner). He outlined the role of Members that day and the legal tests to be applied when determining the application. The main issue appeared to be of the matter was whether use of the land was "by right" or "as of right" and he referred Members to the Inspector's conclusions on this issue as supported by recent case law.

Members were asked to disregard criticisms made by the Applicant of the District Council's management of the land concerned as such matters fell outside the remit of the County Council in its role as Commons Registration Authority.

In conclusion Barrie Mason said that the Inspector's view was that application had failed to meet to the relevant statutory tests; County Council Officers were satisfied that the non-statutory public inquiry had been conducted properly; in reaching his decision the Inspector had evaluated the evidence, and Officers saw no reason to depart from his view and recommended that Members refuse the application.

The Chairman then invited the Applicant, Mr Derek Clark to address the meeting.

Mr Derek Clark read out a statement he had prepared (copy in Minute Book) in support of the application. It was his contention that conduct of the non-statutory public inquiry had been unsatisfactory and improper. The Inspector had he said failed to challenge witness evidence some of which Mr Clark claimed was unreliable and lacked credibility. Mr Derek Clark did not agree with the Inspector's arguments in respect of use of the land and 'neighbourhood' and was again critical of the actions of Richmondshire District Council. Mr Derek Clark appealed to Members to uphold the application. He added that he had written to Richmondshire District Council prior to the public inquiry and requested a copy of the documentary legal title to the land, and had been advised at that time that none was available. The first knowledge he had of the existence of a conveyance of the land to Richmond Rural District Council

in 1968 was when evidence bundles were exchanged between parties to the non-statutory public inquiry.

In response to questions from Members, Simon Evans advised that witnesses at a non-statutory public inquiry were not under oath and any statements they made were to be taken at face value. If the application was refused that day the recourse available to the Applicant would be to seek judicial review of the decision.

In response to questions from Members, the Applicant Mr Derek Clark confirmed he had no legal qualifications, that he had not taken legal advice in respect of the application and that he was acting as a layman.

The Chairman then invited the Applicant's brother, Mr Raymond Clark to address the meeting.

Mr Raymond Clark read out a statement he had prepared (copy in Minute Book) in support of the application. In his statement Mr Raymond Clark endorsed the comments made by his brother in respect of the conduct of the Inspector and of the non-statutory public inquiry. Mr Raymond Clark disputed the conclusions of the Inspector and called upon Members to uphold the application. He added that the actions of the District Council were not in the interests of the public and questioned whether planning approval had been granted for the erection of the sports pavilion and fences.

The Chairman stated that the Inspector had in his report expressed doubts about the credibility of some of the evidence given at the non-statutory public inquiry and had indicated in his report that he attributed varying weight to that evidence accordingly.

Simon Evans confirmed that Richmondshire District Council was the legal owner of the land in question.

In summing up Barrie Mason repeated his earlier comments about the role of the Commons Registration Authority and application of the relevant legal tests. He said officers had no concerns about the Inspector and were satisfied that the non-statutory public inquiry had been conducted properly. The view put forward by the Inspector was well reasoned and supported by case law and he recommended that the sub-committee reject the application.

In response Mr Derek Clark said the view of the Inspector was that if the neighbourhood test could be satisfied the application would be upheld. Mr Clark said he had been trapped by the Inspector who he thought was being helpful when he had suggested the inclusion of Sleegill.

Simon Evans pointed out that for the application to be upheld all the statutory tests would have to be satisfied. The Inspector's finding was that this was not the case in this instance.

Mr Raymond Clark sought clarification of the legal position regarding enforcement of the covenants affecting the land.

Simon Evans advised that the County Council was not in a position to offer an opinion, enforcement of the covenants being a matter the Applicant would need to take up directly with the District Council. The significance of the covenants to the Application was that they had helped the Inspector form a view about the statutory power relied on by the District Council to purchase the land. However, he confirmed

that issues surrounding enforcement or otherwise of the covenants was not material to the decision before the committee.

Members discussed the evidence. The Chairman expressed disappointment that with the passage of time the main parties remained unable to resolve their differences as to the use of the land.

Members were advised that if the sub-committee chose to defer making a decision that day, the reasons for that would need to be recorded together with an action plan setting out what would be expected of officers prior to any reconsideration by the committee.

It was the view of Members that the matters concerning Richmondshire District Council raised by the Applicant fell outside the remit of the sub-committee. The criteria for determining the application were clear and must be applied. The Inspector was an experienced barrister and he had thoroughly examined the evidence. His conclusion was that not all the criteria for registration as a town or village green had been met and this conclusion was adopted unanimously by the members.

Resolved -

That the application to register Earls Orchard, Richmond as a town or village green be refused because the Registration Authority is not satisfied that all the criteria set out in section 15(3) of the Commons Act 2006 are met, for the reasons set out in the Inspector's report dated 20 October 2014.

The meeting concluded at 11.20am