

North Yorkshire County Council

Planning and Regulatory Functions Sub-Committee

Minutes of the meeting held on 26 February 2019 commencing at 11.30 am at County Hall, Northallerton.

Present:-

County Councillors Peter Sowray (Chairman), David Blades, John McCartney, Zoe Metcalfe and Clive Pearson.

Officers: Jayne Applegarth (Commons Registration Officer), Simon Evans (Legal Services) and Steve Loach (Democratic Services).

There were ten members of the public in attendance.

Copies of all documents considered are in the Minute Book

10. Minutes

Resolved -

That the Minutes of the meeting held on 12 October 2018, having been printed and circulated, be taken as read and confirmed and signed by the Chairman as a correct record.

11. Declarations of Interest

There were no declarations of interest.

12. Public Questions or Statements

The representative of the Assistant Chief Executive (Legal and Democratic Services) stated that, apart from the people who had registered to speak in respect of the applications below, and who would be invited to do so during consideration of those items, there were no questions or statements from members of the public.

13. Applications to Correct the Register of Common Land/ Non-Registration or Mistaken Registration – Commons Act 2006 – Part 1, Section 22, Schedule 2 (paragraphs 7 and 9).

(i) Application Reference: Ca13 005 – Jimmy’s Field Crackpot, Grinton – An application seeking to remove from the Register of Town and Village Greens an area of land identified in the report

Considered -

The report of the Corporate Director - Business and Environmental Services on an application seeking to remove from the Register of Town and Village Greens an area of land at Crackpot, Grinton identified on the plan in Appendix 1 to the report.

As the Commons Registration Authority (CRA) the County Council was responsible for maintaining the Registers of Common Land and Town and Village Greens for North Yorkshire. Part 1 of the Commons Act 2006 took full effect in North Yorkshire in December 2014.

Details of the legal criteria in respect of the application were outlined in the report and it was noted that the CRA needed to be satisfied that, on balance of probabilities, all elements of Schedule 2, paragraph 9 had been demonstrated to have been met, in an application relying on those provisions, for it to be approved.

Details of the application site were provided and it was noted that it was an irregular shaped piece of land that formed the south western tip of a field known as Jimmy's Field.

In the application it was accepted as being duly made on 2 October 2017. A copy was included in the supporting documentation.

In accordance with the appropriate Regulations the CRA publicised the application by issuing notices on the County Council's website, at the application site and also serving notices on the relevant parties. One representation was received from the Open Spaces Society objecting to the proposal as they considered the application did not satisfy all the criteria set out in Schedule 2, paragraph 9 of the Act.

The applicant responded to the objection offering further evidence and explanation of the criteria being met which included two statements about the physical condition of the field over the years and a copy of an Inclosure Award for the application site.

The objector did not feel that the further evidence submitted by the Parish Council met the criteria regarding the physical condition of the application site. There were further exchanges between the applicant and the objector, and the Society continued to be of the view that the relevant tests had not been met.

In view of the evidence identified officers were satisfied that the application met the tests set out in Schedule 2 paragraph 9 of the Act and for the reasons that were set out in the report (section 6.1(a), (b), (d), (e) and (f)).

Councillor Geraldine Coates, Chair of the Grinton Parish Council, addressed the Committee in relation to the application, highlighting the following:-

- ◆ She had been Chair of the Parish Council for 28 years and noted that the Council were diligent in maintaining their responsibilities in relation to public rights of way and village greens.
- ◆ She highlighted details set out in Parish Council Minutes that had referred to a dispute with the Parish Council regarding the village green. The Minutes emanated from September 1993 and November 1993.
- ◆ She noted that the Minutes highlighted whether rent had been paid for grazing at the village green at Crackpot and it had been agreed that a mistake had been made in relation to the designation of this.
- ◆ She considered that this had been the first opportunity that had arisen, for a correction of the mistake that had been made, in a 25 year period.

Resolved -

That the application be granted on the grounds set out in the report.

(ii) Application Reference: Ca13 018 – Field number SE67626564, Flaxton (C154) – An application seeking to remove from the Register of Common Land an area of land identified in the report

Considered -

The report of the Corporate Director - Business and Environmental Services on an application seeking to remove from the Register of Common Land an area of land at Flaxton, known as Field No. SE67626564, identified on the plan in Appendix 1 of the report.

As the Commons Registration Authority (CRA) the County Council was responsible for maintaining the Registers of Common Land and Town and Village Greens for North Yorkshire. Part 1 of the Commons Act 2006 took full effect in North Yorkshire in December 2014.

Details of the legal criteria in respect of the application were outlined in the report and it was noted that the CRA needed to be satisfied that, on balance of probabilities, all elements of Schedule 2, paragraph 7 had been demonstrated to have been met, in an application relying on those provisions for it to be approved.

The application site consisted of a field situated in the Flaxton and was set back from the main road by a wide grass verge. The only access to the application site was across the verge to a gate and the rest of the land had a hedge boundary.

The application was accepted as being duly made on 12 April 2018. A copy was included in the supporting documentation. The applicant later acknowledged that there had been a typographical error in the Statement of Truth and that they had purchased the land on 18 June 1968, not 1965 as previously stated.

In accordance with the appropriate Regulations the CRA published the application by issuing notices on the County Council's website, the application site and also serving notices on relevant parties. Two representations were received in response to the notices and in accordance with the Regulations these were shared with the applicant. The representations were from the Open Spaces Society and a Mr S Byrne, a member of the public with no legal interest.

There followed several communications between the applicant and the objectors and although both sides agreed that the land rights and ownership of the provisional registration of common land had been made before a Commons Commissioner, there was a disagreement over the interpretation of DEFRA guidance and a Court of Appeal decision referred to in that guidance, as to the way in which an application might be affected by the tests set out paragraph 7(2)(b) of Schedule 2 of the 2006 Act.

The Open Spaces Society argued that the application should not be permitted because the land provisionally registered had been referred to the Commons Commissioner.

The applicant, through their solicitor, argued that the application should be considered for a number of reasons set out in the report. The Open Spaces Society continued to disagree with the applicant's representation of the DEFRA guidance and Court of Appeal case. There was further communication between the parties but no agreement was reached between them.

Similar communication also took place between the applicant's representatives and Mr Byrne.

In view of evidence submitted by all parties officers undertook a check against the tests set out in Schedule 2, paragraph 7 of the Act and the reasons for that were set out in the report (section 6.1(a), (b), (c), (d)(i), (ii), (iii), (iv), (v)). It was noted through the tests that (b), the provisional registration of the land as common land was not referred to a Commons Commissioner under Section 5 of the 1965 Act, had not been met, therefore, the application could not be supported.

Mr Simon Hudson addressed the Committee in support of the application stating the following:-

- ◆ He stated that his father had purchased the land in 1968 and had used this for 35 years before it became common land.
- ◆ He noted that two letters in relation to the area of land had been worded in error - these were from the local Parish Council and the County Council.
- ◆ Due to an error the land had been approved by the Commons Commissioner and accepted, despite that error.
- ◆ Should the application be not accepted then the matter would be referred to the applicant's solicitors.

Members discussed the report and the following issues and points were raised:-

- ◆ Members recognised that there had been an obvious mistake in this matter, however, as the issue had been signed off by the Commons Commissioner it appeared that there was little that could be done to rectify the position.
- ◆ A Member asked whether the Committee could reverse the obvious mistake. The Committee's legal representative indicated that those objecting to the application would likely refer the matter to Judicial Review, should be recommendation be overturned by the Committee, and it was unlikely that the County Council would be unable to uphold the decision if this case was the case.
- ◆ Should the application be refused, as recommended, it was noted that the applicant could also apply for Judicial Review.

Resolved -

That the application be refused on the grounds set out in the report.

14. Application to Apportion Rights of Common - Commons Act 2006, Part 1 – Section 8

(i) Application Reference: Ca3 001 – Bilsdale East Moor (C153) – Right Entry 5 – An application seeking to apportion rights of common for the common land unit identified in the report

Considered -

The report of the Corporate Director - Business and Environmental Services reporting on an application to apportion rights of common for common land unit Bilsdale East Moor (reference C153), Right Entry 5. The rights being attached to High Crossett, Chopgate as

identified on the supplemental map, edged red, within the report.

As the Commons Registration Authority (CRA) the County Council was responsible for maintaining the Registers of Common Land and Town and Village Greens for North Yorkshire. Part 1 of the Commons Act 2006 took full effect in North Yorkshire in December 2014.

Details of the legal criteria in respect of the application were outlined in the report. It was noted that the CRA needed to be satisfied that, on balance of probabilities, that all the elements of Section 8 and Schedule 4, paragraph 3, of the Regulations had been demonstrated to have been met by an application relying on those provisions, for it to be approved.

The application, submitted by Steven Bridges and Sophie Bridges through their representative was accepted as being duly made on 6 January 2017. A full copy of the application was provided as an Appendix to the report.

In accordance with Regulation 21 of the Commons Registration Regulation the CRA published the application by issuing notices on the County Council's website and those identified from Schedule 7 of the Regulations. As a result one representation was received in response.

Mr Alan Cain objected to the application as owner of High Crossett Farm. Mr Cain claimed all the grazing rights were attached to High Crossett Farm and the land that the applicants owned was not part of the farm, therefore, no rights were ever attached to that land. The applicants responded by resubmitting a letter that had been sent to the County Council's Commons Registration Office in November 2017. In response Mr Cain sent a copy of sales particulars for High Crossett Farm from when his father purchased it in 1965 along with a copy of the Land Registry plan dated 1948. In light of the information officers checked the original registration application and plans submitted by Edward Cain in 1968 who was tenant of High Crossett at the time. The application showed that the land, that the applicants now owned, was included in the land that the rights were registered as being attached to.

Mr Cain submitted his final response to the Commons Registration Authority restating his previous reasons in a detailed letter. Mr Cain also submitted a separate application seeking to correct the extent of the dominant tenant first registered by Mr Edward Cain in 1968. It was noted that it was intended to deal with that matter as a separate item.

On 25 February 2019 a further email was provided by a legal representative of Mr Alan Cain. It stated that due process had not been followed by the County Council in relation to the application by Mr and Mrs Bridges and sought deferral of the application, to allow Mr Cain's own application to be heard first, as it was deemed inappropriate to hear the Bridges' application before Mr Cain's. The communication indicated that should the Committee make a decision on the Bridges' application then Mr Cain's legal representative would seek Judicial Review on the matter.

Officers' assessment of the application indicated that they were satisfied that the application met the tests set out in Section 8 of the Act and Schedule 4, paragraph 3 of the Regulations for the reasons set out in paragraphs 5.2, 5.3, 5.4, 5.5, 5.6, 5.7 and 5.8.

Mr Alan Cain addressed the meeting in relation to the application, highlighting the following:-

- ◆ He indicated that he had evidence that the two fields owned by the applicants did not have any rights attached to them as they were never included as part of High

Crossett Farm.

- ◆ He noted that he had submitted an application to correct the Register under the 2006 Act and that was with North Yorkshire County Council.
- ◆ He considered the due process had not been followed in relation to the application being considered at this meeting as that had been submitted in December 2016 but he had not been notified of this and had found out by accident in July 2018.
- ◆ He suggested that his application should take precedent to the application at the meeting today.
- ◆ He stated that he would seek Judicial Review of the matter should the Bridges' application be approved at this meeting.

The applicant, Mrs Bridges, addressed the meeting in relation to the application, outlining the following:-

- ◆ She had purchased the land in 2012 with registered rights in place and the application sought to apportion rights of common for common land and allow the land to be used.
- ◆ The land was included in that registered by Edward Cain in 1968 as being attached to their land.

Members, officers, the applicant and the objector discussed the application and the following issues were highlighted:-

- ◆ A Member stated that he had seen a copy of the plan from the 1968 documents and considered that a mistake had been made at the time when the land was registered.
- ◆ It was noted that either application could be heard before the other in terms of this case, however, dependent upon which was determined initially, this could have implications for the other application.
- ◆ The objector emphasised, again, that he had not been informed of the application by Mr and Mrs Bridges and had found out by accident that this was to be determined. He considered that due process had not been followed in relation to this. It was noted that the objector had been provided with opportunity to consider the application and present his views to Members in relation to this.
- ◆ The applicant emphasised that they had followed correct procedure and wished for the application to be heard.
- ◆ Members questioned whether due process had been followed by North Yorkshire County Council in relation to the application. In response it was noted that, in terms of the publication of the application, due process had not been followed.
- ◆ Clarification was provided in relation to the effect that each application would have on the other, depending on which was determined first.
- ◆ Members suggested that, as it had been acknowledged that due process had not been followed, it would be appropriate for the matter to be deferred, allowing all appropriate information to be submitted, and the application process to be undertaken accordingly.

Resolved -

That the application be deferred for consideration at a subsequent meeting to allow all appropriate information to be submitted.

The meeting concluded at 12.05 pm.

SL/JR