North Yorkshire County Council

Thirsk and Malton Area Constituency Committee

Minutes of the meeting held on Friday, 29th September, 2023 at 10.00 am. at Ryedale House, Malton.

Members: Councillor Nigel Knapton (Chair) and Councillors Caroline Goodrick, Lindsay Burr MBE, Greg White, Joy Andrews, Sam Cross, Michelle Donohue-Moncrieff, George Jabbour, Steve Mason and Malcolm Taylor.

In attendance: Councillor Carl Les.

Local MP: Kevin Hollinrake (remotely)

Officers present: Daniel Harry, Lily Hamilton, Jos Holmes, Nicki Lishman, Matt Robinson, Jill Thompson and Adam Vaughan.

Apologies: Councillors Janet Sanderson, Dave Whitfield and Annabel Wilkinson.

Copies of all documents considered are in the Minute Book

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13 Welcome by the Chair - Introductions and Updates

The Chair welcomed everyone to the meeting and confirmed there were no updates.

14 Minutes of the Meeting held on 16 June 2023

Resolved

That the Minutes of the previous meeting of the Thirsk and Malton Area Constituency Committee held on 16 June 2023, having been printed and circulated, be confirmed and signed by the Chair as a correct record.

15 Apologies and Declarations of Interest

Apologies were received from Councillors Sanderson, Whitfield and Wilkinson.

16 Public Questions or Statements

Ann Meagher – local resident

My question relates to enforcement:

On 8th March 2023 CLEUD 1 was approved allowing vehicle movements from 6.30am.
On 21st June 2023 CLEUD 2 was submitted to allow vehicle movements from 5.30am (a period of 15 weeks)

I asked the North Yorkshire Council Planning Enforcement Officer why, in those 15 weeks, there was no enforcement action when there was vehicle movement to and from the mill starting at 4.30am nearly every day.

I received two emails on 9th May and 19th June stating - "the Local Planning Authority is considering how best to address the issues with regards to non-compliance and is in communication with our legal representatives with a view to ensuring compliance with the lawful hours of operation".

My question is - Why, in those 15 weeks, was the Planning department either unwilling or unable to commence enforcement action, and what was the result of the discussions with the legal representatives to ensure compliance?

Can I just add that I suspect Mosey will continue to submit CLEUDs on a regular basis, for however long it takes, as it seems to be the way they will eventually get what they want - 24/7 vehicle movements. Why don't Planning stop wasting time and money and just tell Mosey they are allowed vehicle movement 24/7? Mosey know that nobody can stop them. We are utterly powerless and this is why we feel there is no other alternative but to pursue a Traffic Regulation Order

Patrick Meagher – local resident

Please can you include the following question at Point 4 of the Agenda:

"Condition 1 of Planning Application 11/00498/73A (which was retrospective) is clearly no longer fit for purpose as it was never enforced and has now become obsolete through two Certificates of Lawfulness.

Condition 2 was always unenforceable as the Local Planning Authority ("LPA") and I quote: "cannot find a record of the operating capacity of the mill in August 2011".

The LPA no longer has the ability to influence mill expansion and the resultant increase in truck movements. The mill now has an Environment Permit for 850 tonnes per day 24/7 (25,854 tonnes per month). This equates to 126 forty-four tonne truck movements per day or 3,830 per month.

As the LPA is powerless, what avenues are available to nearby residents to preserve or improve the amenities of the area through which 44 tonne Heavy Commercial Vehicles run other than by applying for a Traffic Regulation Order?"

Edith Tucker (delivered at the meeting by Daniel Harry, Head of Democratic Services)

Re: CLEUD granted for increased operating hours re Ian Mosey Limited

Given the approval for increasing the operating hours at Blackdale Mill to 5.30am from 6.30am, I would be interested to question and understand the following.

As the application had been granted due to continued ‘violation’ of the existing operating hours over a number of years, why have local complaints of noise and disruption not been investigated/acted upon?

Why has no action been taken when admitted clear breaches of the regulations have been made?

The granting of the application would ‘appear’ to be a reward for an admission of violating the conditions of the original operating schedule.

Given this is the case, why would the ‘new’ operating hours schedule be adhered to at all? If any checks had been carried out prior to the granting of the new schedule, it would be apparent that the HGV’s operate at any time from around 4am, Bank holidays etc etc currently. A simple check of movement records would show this.

These movement records are the ones that Ian Mosey Limited has used a proof of violation when requesting the new CLEUD!

Finally, if these checks are made (it could be as simple as requesting a vehicle movement record on a monthly basis by the Officer in charge) what sanctions would be placed on Ian Mosey Limited for non compliance?

It would appear that violations are rewarded and local voices are ignored.

Mark Wilson – local resident

When Moseys were granted their first CLEUD in March 2023, they straight away breached the new operating hours that they had been granted. I sent 4 emails to Martin Macbeth (Jill Thompson copied in) in April, May and June with pictures showing a Mosey wagon in the village on a Sunday. Each time I got a reply saying they were discussing it with their legal representatives about how best to address it. As we know they messed about until CLEUD 2 was submitted when they claimed breaches could not be investigated.

My question is "why when CLEUD 1 was approved in March 2023 is he still allowed to go back to 2011 to show evidence of breaches to ask for more operating hours in another CLEUD application? Surely the granting of a CLEUD with new permitted hours should be a line in the sand to move forward from that point and can we now expect any new breaches to be investigated and enforced?"

Peter Allen – local resident

'Will the councillors explain how a fresh certificate of lawfulness can be granted within six months of one being granted? The same information that had been used to secure the first was used again to apply for the second. Common sense would assume that the clock would start ticking in 2023 not 2011 as the applicant seems to be saying. It should be borne in mind that complaints about the breaching of the certificate of March 2023 were not allowed whilst another application was being considered.

Jim Tucker – local resident

Can the Ryedale residents of Hovingham, Gilling, Oswaldkirk and surrounding villages look forward with confidence, based on the evidence of the past decade, to the same erosion of amenity from that previously enjoyed living in a tranquil rural location?

The basis for this question is the apparent inaction over the past decade by planning compliance officers following any complaints regarding the operation of HGVs by Ian Mosey Limited (IML) outside of permitted hours, only for those same breaches of planning conditions to form the basis of a decision to grant a Certificate of Lawful Development.

The operating hours for HGV movements was increased to 06.30 - 21.00 Mon - Fri in March and has just been increased again to an 05.30 start. Vehicle movements are regularly taking place earlier than this so I have to assume that it is only a matter of time before NYC grants a further extension if IML were to apply for another CLEUD.

What sanction does NYC have that could be applied in the event of proven breaches of planning conditions?

Chris Hamlin, Brigit Hannigan and others – local residents

"Ian Mosey Ltd. is now operating - unchecked - on an industrial scale. Lorries often now begin travelling through Oswaldkirk village from 3.30am weekdays and can still be running at 10.00pm at night. Sundays and Bank Holidays also.

The LPA appears incapable of enforcing any of the movement or production restrictions previously imposed on the company. In allowing the latest extension to Ian Mosey's operating hours - already breached - they also seem to have abandoned their previous commitment in the first CLEUD application to "protect those living in the locality from the harm which could arise as a result of unrestricted HGV movements".

As a Traffic Regulation Order seems the only option now open to residents living on affected routes, can we count on our Councillors' backing and support in implementing this?"

The Chair thanked everyone for their questions and advised that the following response, provided by the Planning and Development Manager (Ryedale area), would address matters raised.

Response - Planning and Development Manager (Ryedale area)

Thank you for your questions. The questions raise a number of issues which I will respond to. These relate to:The lack of action/ apparent lack of action by the planning department to investigate breaches and take enforcement action.

- The Lawful Development Certificate process
- The options available to protect the amenities of residents.

The Council has acted on complaints that it has received. However, there is a context which has influenced the actions taken.

Prior to the company submitting the first CLEUD application, the Council had received two planning enforcement complaints. One in March 2012 and the other in August 2020. The first complaint was investigated and the file closed to be reopened in the event of further complaints of breaches of control. The second complaint was received eight years later. The case was set up and the company was contacted and provided some explanation in response to alleged concerns. In the absence of further complaints, this remained as an open enforcement case when the first Lawful Development Certificate application (CLEUD) was submitted in December 2021. To that point these were the only complaints that were received as planning enforcement complaints by the Council and logged on the planning enforcement file.
Once the first CLEUD was received and the scale of breaches became known, the level of enforcement complaints increased considerably. These, together with the evidence provided as part of the CLEUD applications, have been used to justify the Council starting formal enforcement proceedings.

A Certificate of Lawfulness is a statutory document certifying the lawfulness of operations or the use of land and an application for a certificate can only be determined by the Local Planning Authority on the basis of the lawful position. In planning, once the time period for taking enforcement action has expired, a breach of planning control becomes lawful. For a breach of a planning condition this is a period of ten years beginning with the date of the breach.

In determining the first CLEUD, the LPA took the view that there was sufficient evidence to demonstrate that vehicle movements within specific periods of time were lawful. It did not grant a certificate for unrestricted vehicle movements which the applicant had sought. The decision to grant a certificate was made on the basis of the lawful positon. A CLEUD is not a planning application and the Council cannot determine a CLEUD on the basis of planning merits.

The second CLEUD application sought to evidence that an additional hourly period was lawful. It did not rely on evidence from 2011 but evidence for the ten-year period June 2013

– June 2023. In making the second CLEUD, the applicant challenged the Councils approach to assessing the continuity of the breach which applied the same factors to a half hour period in the morning to assessing breaches over whole hours. This is a valid and reasonable point which the Council has had to address as it determined the second CLEUD application. This is also a key reason why the lawful position has changed since the first CLEUD decision was issued in March 2023.
The Planning Department was not unwilling to commence enforcement action in the fifteen-week period between the determination of the first CLEUD and the submission of the second. It took legal advice in relation to planning enforcement from the Councils legal team and a planning barrister which included advice in relation to the form and content of an Enforcement report and a draft Enforcement Notice. A draft enforcement report recommending enforcement action and draft Enforcement Notice were prepared following a series of discussions within this period. The Council was not in a position to prepare and serve the notice any earlier. The second CLEUD was submitted just before the Council had the opportunity to serve the notice. The Council's barrister advised that the second CLEUD application should be determined before formal enforcement action was taken.

The Council does not believe that it is powerless in respect of the breach of planning control. Planning Enforcement action remains an important way in which it can seek compliance with lawful hours of operation in order to protect amenity. An Enforcement Notice was issued on 26 September and will come into effect on 31 October 2023. Local Communities can and should continue to report any continued breaches.

The Planning Enforcement Notice will 'stop the clock' in terms of a rolling ten-year immunity period. The applicant has the right of appeal and an appeal must be lodged with the Planning Inspectorate before the date on which the notice is effective. It should be noted that if an appeal is made, compliance with the planning enforcement notice is held in abeyance pending the outcome of the appeal.

In the event that an appeal is not made or an appeal is dismissed and the notice upheld, failure to comply with the notice would be a criminal offence and can lead to prosecution in the courts.

In respect of concerns relating to capacity at the mill (and the frequency and volume of associated vehicle movements) the LPA has some control over the expansion of the mill if continued expansion involves development. Local communities will be able to submit views on any planning applications for future development at the site.
Councillors cannot commit to supporting Traffic Regulation Order. Class B roads are naturally expected to carry a significant proportion of heavy traffic and any HGV ban on a Class B road would inevitably divert traffic onto smaller, less suitable rural roads.

17 MP - Question Time

Kevin Hollinrake joined the meeting virtually and highlighted the following;

- As the Minister for Business for Enterprise and Markets he assured the Committee and the public that he will always be a constituency member of parliament representing the constituency first and foremost. The impending boundary change will remove Easingwold from the constituency but he was delighted that Bedale and surrounding villages have been brought into the constituency.
- His focus would be the local economy, as jobs and business opportunities support everything across the constituency and he was keen to make sure the local economy stayed vibrant and that business was force for good.
- With reference to the matter raised in the public questions, he had an interest in the

issue and stated that, although business was a force for good, it should comply with relevant planning applications and relevant regulations that apply and he would hold businesses to account where he could.

- Our local economy relied on food and farming and it had been a great year which included two visits from the King and Queen to Malton, Yorkshire's food capital and Pickering, where the NY Moors Railway was a major part of the visitor economy. Events have been held in Westminster to draw attention to North Yorkshire's produce and he was keen to promote this around the country.

- Farming remains hugely important. He acknowledged that the new system of direct payment for farmers was causing some pain but it is becoming more generous. He wished to represent the views of the food and farming sector in terms of the impacts of any change eg. the sustainable farming incentive and stewardship schemes becoming more generous and hopefully easier to access.

- Solar power was important to some farmers, communities and residents and was something that required further clarity from Westminster in terms of solar applications on productive farmland. He was keen to ensure that we didn't sacrifice food security in name of energy security.

- Tourism – working closely with towns across the patch including Pickering who was trying to reshape the offering to make it more compelling. Pickering Community Interest Company was doing good work and Totally Locally (a not-for-profit organisation which seeks to promote the high street) was working at a ministerial level.

- Racing sector was in good health. Went to Malton Open Stables. He was aware of concerns in sector on reforms to gambling and wanted to make sure it doesn't impact on the sector and that people who gamble responsibly can continue to do so. There was clearly revenue stream for racing from gambling receipts.

- Engineering –This was a strong sector across patch. There was a very successful engineering apprenticeship fair at the Milton Rooms, Malton and it was hoped this would become an annual event. It brought potential new apprentices into local companies, who had issues recruiting people into the area.

- A64 – It was disappointing that the roads programme been delayed by 5 years. Assuming that A64 gets the go ahead, the outcome should be known sometime next year. If it did, it wouldn't start until 2030 but it was positive news that it was still "in the game".

- Devolution – Supportive of the deal representing York and North Yorkshire rather than wider Yorkshire area, making sure the economy was vibrant, attracted inward investment and focussed on crime and policing.

- Local links into the MP's work as a Minister – Focussed on the hospitality sector, retail sector, access to finance, business support, removing barriers to make it easier to do business. He stated that it was easier to do business when there was growth in the economy, so the news on the economy recently published was welcomed.

- Work continued with local charities and constituents – The recent constituency surgery was well attended and was hugely varied. Mr Hollinrake assured the Committee that he would continue to fully represent his area, alongside his ministerial duties.

Members then questioned the MP as follows;

- A member reported that there as an ongoing issue in the constituency area with Post Office van breakdowns causing delays in deliveries. It was felt that the reason for this was that repairs were not undertaken locally and Mr Hollinrake was asked if, as Minister for Business and the Post Office he could encourage the Post Office to arrange for repairs at local garages to minimise disruption to the service. In response, the MP asked to be copied into any correspondence on this matter. He advised that government was taking legislation called the Procurement Bill which sought to make it easier for SMEs to access public sector contracts from such as the NHS, education and local authorities amongst others. He was supportive of a local first approach to procurement at public sector level as it can have a huge local impact and would encourage NYC to seek local suppliers and service providers.

- A member explained that there were local issues with HGV movements in rural areas and asked what support the government could give to local authorities to address this. The MP stated that this was not always easy as responsibility lay with different bodies. The Local Planning Authority was there to enforce conditions etc but he would always offer support where possible and was happy to help.

A member raised the following questions with the MP;

- Businesses were struggling uncertainty at the moment and would like clarity on planning applications.

- The duelling of A64 remains uncertain, which impacts the levelling up agenda – when will this happen?

- There are worries about the lack of staff in social care, which was impacting on care homes. Does the MP have any comment?

    - Mr Hollinrake advised that he was happy for businesses to contact him directly if any business was in a period of uncertainty regarding a planning application. He was aware that there were resourcing issues and it was hoped that LPAs would be able to increase fees to address this.

    - Levelling Up - £600 billion would be made available over this parliament and the method of allocating monies had changed to ensure it went to areas like North Yorkshire. The A64 had its own case to make but, although the MP was disappointed that roads programme had been put back, budget issues were a reality. He hoped that next year would be easier as inflation fell.

    - Social care staff - We have full employment in the UK, which was a good thing and way we find and attract staff has changed due to Brexit. There was now no free movement but immigration was high and most businesses were finding it easier due to net migration but there was need to make sure that match the skills required. Mr Hollinrake felt that most difficulties were behind us. North Yorkshire had made huge investment in social care but the reality is that there are staffing problems across the country but it was easing. A member of the Committee raised concerns that providers were experiencing difficulties training staff to the standards required and a Council officer explained the recruitment and training opportunities provided by the Council.

- A member asked what could be done at a national level to improve the CLEUD system and the MP responded that businesses should be compliant and should respect legislation and law. He welcomed ideas on how to prevent abuse of the system.

- A member asked for an update on the Linton-on-Ouse site and Mr Hollinrake

confirmed that he would support the Council and/or the new mayoral authority to find the best solution.

- A member asked if the recent government announcement on the roll back on commitments to net zero would create uncertainty in investment? The MP advised that he did not believe that uncertainty would be created and there followed a discussion on the energy efficient options for domestic dwellings, particularly in rural areas and the energy efficiency of new developments builders and other businesses.

18 Area Constituency Committees and their role in Community Resilience

Considered;

A report by the Head of Resilience and Emergencies regarding the Council's role in responding and recovering to emergencies.

The key points in the report were;

- Responsibilities of multi-agency partners
- Responsibilities of North Yorkshire Council
- Elected Members role in emergencies
  A profile had been produced for each division focussed on flooding and officers welcomed feedback on where proactive community resilience plans were in place and therefore where there were gaps. Elected Members had the local knowledge and contacts in place to offer support when incidents occur.
- Community Resilience within the Area Constituency Committee Area

This was followed by a discussion and suggestions passed to officers.

Resolved:

1. That the Head of Resilience and Emergencies provides an annual update to the Area Constituency Committee to update Members on Community Resilience in their divisions.
2. That the Resilience and Emergencies Officer for the constituency contacts Members to gather information on good practice, identify issues and links to other groups in their divisions.
3. That the Head of Resilience and Emergencies circulate electronic copies of the Elected Members Handbook.

19 Verbal update on Helmsley Post Office and wider services throughout the area

Cllr Jabbour gave thanks to the Area Constituency Committee and the Chair for allowing the June meeting to take place in Helmsley, as there was great interest from residents in the matter. A temporary solution was now in place for 3 hrs per day, 3 days per week. A long-term solution was still being sought and Cllr Jabbour was working with Helmsley Town Council to work with any interested local business to achieve this.

Members discussed how their Locality Budgets might be used in such circumstances.

Resolved

That the update be noted.

20 Let's Talk Climate - Results by ACC level: Thirsk and Malton

The Climate Change and Environmental Project Officer and the Climate Change Policy Officer gave a presentation on the key feedback from the Let's Talk Climate campaign. The information provided would be used to inform the council's decisions, policies and services moving forward.

There were a number of key findings obtained from the 1,531 responses to the Let's Talk Climate survey and 249 responses to the Young People's survey which covered subjects such as;

- climate change awareness and worry
- what actions people could take
- plan to slow down climate change
- plan to prepare for a changing climate
- plan to help nature to help us
- priorities for key actions
- priorities for key actions by ACC

Members discussed the findings of the survey and made a number of comments and suggestions that the Council could introduce to encourage and support the community to take action.

21 Appointment to Outside Bodies

Considered:

The report of the Assistant Chief Executive (Legal and Democratic Services) regarding appointments to vacant positions on the Vale of Pickering Internal Drainage Board.

The Chair introduced the report and advised that there were four vacant positions to be appointed by the Committee.

Members noted that they would appreciate the appointees advising the Committee of any precepting decisions that the Drainage Board may consider in future.

Resolved

That the following nominations were agreed.

- Mr M Potter, Pickering Town Council
- Mr S Arnold, Helmsley Town Council
- Councillor G Jabbour, North Yorkshire Council

22 Work Programme

Members considered a report by the Assistant Chief Executive (Legal and Democratic Services) which contained the Committee's current work programme for the remainder of the municipal year (2023/24).

Resolved

1. That the work programme for the remainder of 2023/24 be noted.

2. That reports on "Planning and the role of the ACC", "The Policy of Member involvement in Public Questions and Statements" and "The impacts of HGVs and speeding in villages" be brought to a future meeting of the Committee.

23 Other business which the Chairman agrees should be considered as a matter of urgency because of special circumstances.

There were no items of urgent business.

The meeting concluded at 1.35pm.

NL