

# North Yorkshire County Council

## Planning and Regulatory Functions Sub-Committee

Minutes of the meeting held on 7 February 2020 commencing at 10.30 am at Racecourse Lane, Northallerton.

### **Present:-**

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

Officers: Jayne Applegarth (Commons Registration Officer), Simon Evans (Legal Services), Frances Maxwell (Legal Services), Rudo Mudyarabikwa (Legal Services), Tracey Taylor (Commons Registration) and Steve Loach (Democratic Services).

There were three members of the public in attendance.

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**Copies of all documents considered are in the Minute Book**

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### **15. Minutes**

#### **Resolved -**

That the Minutes of the meeting held on 26 February 2019, having been printed and circulated, be taken as read and confirmed and signed by the Chairman as a correct record.

### **16. Declarations of Interest**

There were no declarations of interest.

### **17. 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.

### **18. Application to amend the Register to record an historic event Commons Act 2006 Part 1 – Schedule 3, The Commons Registration (England) Regulations 2014, Regulation 42 and Schedule 4, Paragraph 19**

#### **(i) Application Reference Number CA14 118 - Right entry 8, exercisable over Westerdale Moor, Westerdale (CL 8)**

Considered -

The report of the Corporate Director - Business and Environmental Services on an application seeking to amend the Register of Common Land to reflect the severance of rights registered from the land to which they were currently recorded as being attached and identified on the related supplemental map edged red at Appendix 1 to the report.

Severance occurs where rights previously considered and/or recorded were attached to an area of land were legally treated independently of that land and as a separate asset.

Amy Arnold, Solicitor, of Pinkney Grunwells Lawyers LLP, representing the applicant, addressed the Committee in relation to the application, highlighting the following:-

- ◆ There was clear evidence in support of her client's eligibility to have the rights recorded in her sole name.
- ◆ She was pleased to see the recommendation was for approval.
- ◆ There was no other person recorded on the current Register in relation to the rights and her, and her late husband, had exercised the sheep rights over the Westerdale Common being CL 8 entry 8 of the Register when purchased in 1998.
- ◆ Her client would be significantly affected should the application be not granted.

As the Commons Registration Authority (CRA) the County Council is 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 the balance of probabilities a severance occurred where an application claimed to be the case. An application was received by the County Council on 21 December 2018 and accepted as duly made on 1 February 2019 following a request by the County Council for clarification on the content of the original submission.

The application sought to amend the Register of Common Land to reflect that rights recorded at Entry no. 8 for Common Land Unit CL 8 (Westerdale Moor, Westerdale) were in the past severed from the land to which they were recorded as being attached which was identified on the associated supplemental map for Right Entry 8, a copy of which was appended to the report. A copy of the application including all supporting documentation was attached as an Appendix to the report.

In accordance with the appropriate Regulations the County Council publicised the application by issuing a notice on the County Council's website and by serving notices to all relevant parties.

There was one representation received in response to the notice, from the Open Spaces Society, which objected to the application on the grounds that insufficient evidence was submitted to show that the rights had been severed. In response to the objection the applicant provided further documentation to demonstrate how the rights had been used as if they had been severed from the land since their purchase in 1998. The Open Spaces Society requested a copy of the supplemental map and Register page for right entry 8 and restated that it felt there was no evidence of severance.

The details of officers' comments on each of the statutory provisions in relation to the application were set out in the report and reference was made to the following:-

- ◆ Schedule 3, paragraph 2(2)(b) of the Act.
- ◆ Schedule 3, paragraph 2(3) of the Act - sub-paragraph (2)(b).

- ◆ Schedule 4, paragraph 19 of the Act.
- ◆ Regulation 41(5) of the Regulation.

It was concluded that, on the balance of probabilities, a severance of the grazing rights occurred historically and that consequently the application should be approved and the Register of Common Land should be amended accordingly. The application did not seek to sever the unquantified rights of turbarry, stones and bracken listed in right entry 8 of Common Land Unit CL 8 and therefore these rights were unaffected by the application and would remain unaltered in the Register.

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

- ◆ A Member asked whether the actions taken by the applicant were correct and whether the documentation was all in order. In response it was clarified that there were no loopholes in the documentation and all issues had been addressed correctly.

**Resolved -**

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

**19. Application to correct the Register of Common Land - Commons Act 2006, Part 1 - Section 19(2)(b), The Commons Registration (England) Regulations 2014, Schedule 4, Paragraph 11**

**(i) Application Reference Number CA10 021 - Right Entry 5 attached to High Crossett, Chopgate, exercisable over Bilsdale East Moor (CL53)**

Considered -

The report of the Corporate Director - Business and Environmental Services on an application seeking to correct the Register of Common Land. In particular to remove two fields included on the supplemental map showing the extent of land registered as having 80 sheep gates attached to it (the dominant tenement) at Right Entry 5 of Common Land Unit CL 53 Bilsdale East Moor.

Mrs Sophie Bridges addressed the Committee in objection to the application, stating the following:-

- ◆ She considered that the position would be unfair should the application be granted.
- ◆ She considered that the applicant had been provided with ample time to correct the position, with previous opportunities having arisen to make representations in relation to this matter, but those not having been acted upon.
- ◆ The grazing rights had been bought by Mr and Mrs Bridges in July 2012, with no representations made against those rights at that time and they believed what had been bought by them should belong to them.

Mr Alan Caine, the applicant, addressed the Committee in support of the application highlighting the following:-

- ◆ He stated that the grazing rights were attached to High Crossett Farm.

- ◆ He suggested that information provided at the time the farm was sold in 1948 the two fields owned now by Mr and Mrs Bridges were not part of the farm purchased by Nathan Caine in 1965 as all 80 sheep rights were sold with the farm.
- ◆ He considered that Mr Edward Caine made a mistake in including the two fields as part of the dominant tenement as they were not part of High Crossett Farm in 1948 and the 80 sheep rights were referenced in Land Registry title documents which did not include those two fields.
- ◆ He suggested that what Mr Edward Caine stated in 1968 was not relevant as by then 80 sheep rights had been severed from the land now owned by Mr and Mrs Bridges.
- ◆ He suggested the Bridges should have checked with the Land Registry before purchasing the land as it would have shown that all 80 rights attached to High Crossett Farm without the two fields included.
- ◆ He also stated when Mr Caine ceased to be tenant of High Crossett Farm he made no attempt to graze eight sheep or claim payments for eight grazing rights from the Rural Payments Agency even though he retained the two fields that were later purchased by the Bridges.
- ◆ He considered it was not possible for the Common Land Register to be corrected for this type of error until the Commons Act 2006 came into force.
- ◆ He considered that Mr Edward Caine was backing the claim of Mr and Mrs Bridges as he was not on good terms with him.
- ◆ He suggested that the application should be either granted or deferred for further enquiries to be made around the history of the matter.

As the Commons Registration Authority (CRA) the County Council is responsible for maintaining the Registers of Common Land and Town and Village Greens for North Yorkshire. Part 1 of the Commons Act 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 of the elements of Part 1 - Section 19(2)(b), Schedule 4, paragraph 11 of the Regulations had been demonstrated to have been met by an application relying on those provisions, for it to be approved.

The application, originally submitted by Mr Alan Caine in January 2019, was accepted as being duly made on 2 April 2019 following an exchange of communications between the applicant and his representatives. A full copy of the application was provided as an Appendix to the report.

In accordance with Regulation 21 of the Commons Registration Regulations the CRA publicised the application by issuing notices on the County Council's website and also serving notices on relevant parties. As a result one representation was received in response.

Mr and Mrs Bridges objected to the application as owners of the land that the application sought to have removed from the dominant tenement as it was currently registered, on the grounds that the inclusion of their land was not registered mistakenly, as the two fields they

now own, were listed as belonging to High Crossett Farm as part of Lot 16 in a sales brochure in 1944. They further added that Mr Edward Malcolm Caine, the applicant's brother, who submitted the application to register the rights under the Commons Registration Act 1965 had said that the registration was in accordance with his father's wishes and not a mistake. Mr and Mrs Bridges stated that to amend the Register would be unfair to them as they purchased the land believing there to be grazing rights attached, relying on the information currently held on the Register as detailed in Appendix 3 to the report. The CRA had since received a letter from Mr Edward Caine confirming his view that a mistake was not made at the time of the initial registration.

During the notice period the applicant, through his representative, supplied additional information in the form of a letter and timeline in support of his application giving their history of the land and common rights. As required by procedures in the Regulations this was shared with Mr and Mrs Bridges. Further representations were submitted by the Bridges stating that they believed there would have been ample opportunity during the initial registration period for any errors to be raised as the original application plan was submitted on a shared plan which included several neighbour's land. They further stated that they were aware that there were grazing rights attached High Crossett Farm but they did not graze such a small amount and therefore did not claim subsidy payments until they had submitted their own apportionment application claiming that eight rights should be apportioned.

Further communication between Mr and Mrs Bridges and Mr Caine and his representatives, were set out fully in the report and in Appendices to the report.

Officers' assessment of the application was undertaken in relation to the following:-

- ◆ Section 19(2)(b) of the Act.
- ◆ Schedule 4, paragraph 11 of the Regulations - section 19(4)(b) of the 2006 Act.
- ◆ Section 19(5) of the Act.

A full description of those assessments was set out in the report.

In conclusion officers considered that there was no reason to disbelieve that the objectors, Mr and Mrs Bridges, had placed due reliance on the content of the Register and consequently it would be unfair on them to amend the Register of Common Land as proposed by the application. It was the officers' view, therefore, on the balance of probabilities, and the reasons set out in the report, that the application failed to demonstrate that a mistake as referred to in Section 19(2)(b) of the Act and Schedule 4, paragraph 11 of the Regulations had occurred. Further, in reference to Section 19(5) of the Act, even if it were the case that a mistake had occurred, that it would be unfair to correct the Register of Common Land in the way proposed by the applicant given the reliance placed on the Register by Mr and Mrs Bridges.

Members undertook a discussion of the report and the following issues and points were raised:-

- ◆ A Member asked how it could be proved that a mistake was not made as was claimed in the public statement by the applicant. In response it was stated that evidence was considered carefully and subjected to a balance of probabilities test, which, in this case, indicated that it was highly unlikely that a mistake had been made at the time. It was noted that there had been previous opportunities to rectify this matter, should a mistake had been made at the time, through the various regulatory bodies, however, this had not been taken. It was noted that

modifications had taken place for other entries to the land, therefore, it seemed unlikely that this would have been missed and that a mistake had been made in terms of this matter.

- ◆ A Member asked whether there should have been an obligation on the father of the applicant, when he originally purchased the land, to ensure that the registration of the land had been undertaken correctly. In response it was stated that the rights for the land were submitted on a joint map, with all details attached to the single map and could clearly be seen on that, therefore, it would have been expected that the appropriate rights for each entry would have been picked up at that time, as they could clearly be seen.
- ◆ A Member asked whether, initially, the Commons Commissioner had been provided with all the appropriate evidence required in terms of determining the land rights. In response it was stated that the Commissioner had to make a judgement on what was presented and had been satisfied with the details at that time.

**Resolved -**

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

**20. Application to apportion rights of common, Commons Act 2006, Part 1 – Section 8, The Commons Registration (England) Regulations 2014, Schedule 4, Paragraph 3) - Report of the Corporate Director – Business & Environmental Services**

**(i) Application Reference Number CA3 001 - Right Entry 5 attached to High Crossett, Chopgate, exercisable over Bilsdale East Moor (CL53)**

**Considered -**

The report of the Corporate Director - Business and Environmental Services on an application to apportion rights of common for common land unit Bilsdale East Moor (reference CL53) Right Entry 5. The rights being attached to High Crossett, Chopgate as identified on the supplemental map appended to the report (the dominant tenement) edged red.

Mr Alan Caine, objecting to the application was present at the meeting but indicated, in view of the resolution to the previous report, that he had no further statement to make to the Committee.

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

- ◆ She noted that she had been attempting to apportion the rights of common for the common land and allow the land to be used for around 3½ years so wished for the issue to be resolved as soon as possible.

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 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 Stephen 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 Caine objected to the application as owner of High Crossett Farm. Mr Caine claimed all the grazing rights were attached to High Crossett Farm and that 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 Councils Commons Registration Office in November 2017. In response Mr Caine 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 Caine in 1968 who was tenant of High Crossett at that 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 Caine submitted his final response to the Commons Registration Authority restating his previous reasons in a detailed letter. Mr Caine also submitted a separate application seeking to correct the extent of the dominant tenant first registered by Edward Caine in 1968. That application was considered at this meeting, prior to consideration of this application.

On 25 February 2019 a further email was provided by legal representatives of Mr Alan Caine. 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 Caine's own application to be heard first as it was deemed inappropriate to hear the Bridges' application before Mr Caine's. The communication indicated that should the Committee make a decision on the Bridges' application then Mr Caine's legal representatives would seek judicial review on the matter. The application by the Bridges' was considered at the meeting of Planning and Regulatory Functions Sub-Committee held on 26 February 2019 and subsequently deferred to allow further consideration of the issues highlighted and for Mr Caine's application to be determined at the same time.

Officers assessed the application to ensure that it met the tests set out in Section 8 of the Act and Schedule 4, paragraph 3 of the Regulations, with specific consideration of the following:-

- ◆ Schedule 4, paragraph 3(3)(b)(i) and (4)(a) - the applicants must show evidence of their capacity to apply as owning part of the land that the rights are attached to.
- ◆ Schedule 4, paragraph 3(4)(c)(ii) - the applicants must include description and details of ownership of the land belonging to the applicant.

It was concluded that all the relevant legal tests contained in Section 8 and Schedule 4, paragraph 3 of the Regulations, required to be met for an application of this kind to be granted, on the balance of probabilities had been met and that, consequently, the application should be granted.

Members suggested that the application and information provided was of sufficient detail for them to make a decision on the matter.

**Resolved -**

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

The meeting concluded at 11.25 am.

SL/JR