

North Yorkshire County Council

Planning and Regulatory Functions Sub-Committee

Minutes of the remote meeting held on 24 February 2021 commencing at 11.00 am via Microsoft Teams

Present:-

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

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

Apologies were received from County Councillor Zoe Metcalfe.

Copies of all documents considered are in the Minute Book

21. Minutes

Resolved -

That the Minutes of the meeting held on 7 February 2020, having been printed and circulated, be taken as read and confirmed and signed by the Chairman as a correct record.

22. Declarations of Interest

There were no declarations of interest.

23. Public Questions or Statements

The representative of the Assistant Chief Executive (Legal and Democratic Services) stated that there were no questions or statements from members of the public.

24. Application to amend the register to record an historic event Commons Act 2006, Part 1 – Schedule 3 The Commons Registration (England) Regulations 2014 Schedule 4 Paragraph 19 - Application Reference Number CA14 047 - Right entry 17 exercisable over West Scafton Moor (CL 105)

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.

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 dated the 9 November 2018 and received by the County Council on 14 November 2018. The Application was accepted as being duly made on 8 January 2019.

The application sought to amend the Register of Common Land to reflect that rights recorded at right entry 17 exercisable over West Scafton Moor 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 17, 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 state that the conveyance between Thomas Handley and Angela Hammond in 1976 did not transfer any common rights. They argued further that this must have been the intention of the conveyance as Mr Handley went on to transfer his common rights in later conveyances to the applicants' father. The letter further stated that the applicants' father then exercised these rights and now the applicants did. The Open Spaces Society continued with their objections arguing that under Section 62 of the Law of Property Act 1925 there was a presumption that when land was conveyed all rights and easements were included in that sale. The Open Spaces Society also objected to the application seeking to record a severance in relation to the sale of what it considered a relatively insignificant part of the land to which the rights were recorded as being attached. The Applicant responded by stating that they recognised that when determining an application, it was difficult not to apply current legislation to events that happened in the past carried out under different legislation but restated that at the time of the historic event, grazing rights were treated as a form of land and as such they would have been specifically mentioned in a conveyance if they were to be transferred. Therefore, if they were not mentioned they were not included in the sale. The Open Spaces Society restated that it did not agree that the historic events in this instance constituted a severance. It also stated that the CRA should give clearer guidance to applicants regarding historic events.

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)(c) of the Act - sub-paragraph (2)(b).
- ◆ Schedule 4, paragraph 19 of the Act.

It was concluded that, on the balance of probabilities, and for the reasons set out in this report, the legal tests as set out in Schedule 3, paragraph 2(b) of the Act and Schedule 4, paragraph 19 of The Regulations are met by the Application and that consequently the

Application should be approved

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

- ◆ Clarification was provided on the rights of the Open Space Society to respond and object on these matters.
- ◆ Members were satisfied that, on the balance of probabilities the appropriate Regulations were met by the application.

Resolved -

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

The meeting concluded at 11.10 am.

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