

North Yorkshire County Council

Planning and Regulatory Functions Sub-Committee

Minutes of the remote meeting held on 14 June 2021 commencing at 3.00 pm via Microsoft Teams

Present:-

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

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

Copies of all documents considered are in the Minute Book

25. Minutes

Resolved -

That the Minutes of the meeting held on 24 February 2021, having been printed and circulated, be taken as read and confirmed and signed by the Chairman as a correct record.

26. Declarations of Interest

There were no declarations of interest.

27. Public Questions or Statements

The representative of the Assistant Chief Executive (Legal and Democratic Services) stated that there were no general questions or statements from members of the public. There was a public statement to be read out by the Clerk in relation to Minute 29.

28. 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 045, Right entry 20 exercisable over Birkdale Common, Muker (CL 149)

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 8 October 2018 was received by the County Council on 9 October 2018. The Application was accepted as being duly made on 15 October 2018.

The application sought to amend the Register of Common Land to reflect that rights recorded at Right Entry 20 exercisable over Birkdale Common, Muker 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 20, a copy of which was appended to the report. A timeline relating to the background for the application was detailed in section 3.3 of 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 were two representations received in response to the notice: one from the current owners of the common land, Gunnerside Estate who had no objection to the application and one from The Open Spaces Society who objected to the application on the grounds that insufficient evidence was submitted with the application to show that the rights had been severed. In response to the Open Spaces Society's objection and officer's discussion with the Applicant regarding the criteria that such an application needed to meet, the Applicant provided further documentation to demonstrate the history of the land and rights. In particular, those being owned by his family and those parts which were conveyed in 1972. The Applicant demonstrated that the remainder of the rights and land then passed to the Applicant via his father's Will. These rights were then being exercised by the Applicant's brother granted through a tenancy agreement and his brother then claimed subsidy payments from the Rural Payments Agency ("the RPA") based on the grazing rights listed at right entry 20 exercisable over Birkdale Common. The Open Spaces Society continued with their objections asking for further explanations as to the relevance of the documentation. The Applicant did not wish to respond further to The Open Spaces Society's comments but did provide the Registration Authority with a narrative of events as he could recall it. Further information was requested on behalf of the CRA regarding the conveyance of a small parcel of land originally part of the property known as Crooked Seal and was received.

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 above were met by the Application and that consequently the Application should be approved.

However, it is not permitted for unquantified collection rights, in this case (the right of turbarry and to collect stones) that were traditionally attached to a dominant tenement, to be severed. The Land Registry Title document submitted by the Applicant showed that the

main dwelling as originally registered was not in the ownership of the Applicant. Therefore, the right of turbary and the right to take away stones described as part of the registered rights in column 4 for right entry 20 should remain in the register as attached to the land and registered in John and Margaret Alderson's name until such time as the CRA received an application claiming those rights.

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

- ◆ A Member asked what further information the Open Space Society required in relation to the application. It was noted that as part of the investigation following their enquiry further, relevant information was made available by the applicant
- ◆ Members were satisfied that, on the balance of probabilities the relevant tests had been met and the appropriate Regulations were met by the application.

Resolved –

That subject to any comments Members may have, the following be proposed to the Chief Executive Officer for consideration under his emergency delegated powers:-

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

- 29. Application to correct mistaken registration of buildings wrongly registered as common land - Commons Act 2006, Part 1 – Schedule 2, Paragraph 6, The Commons Registration (England) Regulations 2014, Regulation 42 and Schedule 4 Paragraph 14 - Application Reference Number CA13 022 - The Grandstand, The Zetland Stand and The Judges Box part of common land unit Richmond High and Low Moor (CL131).**

Considered -

The report of the Corporate Director - Business and Environmental Services on an application to remove from the register of Common Land buildings known as The Grandstand, The Zetland Stand and The Judges Box at the site of the former Richmond Racecourse, Low Moor, Richmond and identified on the related supplemental map edged red at Appendix 1 to the report.

The Earl of Ronaldshay – Chairman of the Richmond (Yorkshire) Burgage Pastures Committee submitted the following statement in respect of the application, which was read to the Sub-Committee by the Clerk:-

“Members of the Planning and Regulatory Functions Sub-Committee, will be well aware of the impact that the Commons Registration Act 1965 had on securing the legal status of many tracts of land that had informally served as commons and village greens over the centuries.

Unfortunately, in the rush to officially register many pieces of land in the threeyear period in which this could be done, as stipulated under the Act, a number of errors in the registration processes took place.

This is very much the case concerning the registration of the Low Moor in Richmond, (CL131), which from 1765 was the site of Richmond Racecourse. Members of the Planning and Regulatory Functions Sub-Committee, will be well aware of the impact that the Commons Registration Act 1965 had on securing the legal status of many tracts of land that had informally served as commons and village greens over the centuries.

In 1968, having convinced the guardians of the land, the Richmond Burgage Pastures Committee, that the value of registration would bring significant public benefits, the formal process of putting the paperwork together, began. This legal documentation was organised by Richmond Borough Council, who were the responsible local government body at the time. Sadly, perhaps due to the time constraints the Council were under (as noted above), the buildings on the old racecourse were wrongly incorporated in the registration of the land.

This was such a common error, made by many local authorities in the late 1960s, that when the Act was amended in 2006, one of the provisions of the new legislation was the introduction of a simple means whereby the landowners of commons and village greens could correct these earlier miscarriages of justice.

The application before you today, concerns just such an error, where the original grandstands on the racecourse and the judge's box, were included in the 1968 Commons registration (CL131) where obviously, as buildings, they shouldn't have been.

Besides correcting the registration error, which is important in and of itself, the Richmond Burgage Pastures Committee believe that once this matter has been rectified, their capacity to deal with the buildings in question will improve.

The main Grandstand at Richmond was designed by York architect John Carr. It has a Grade 11* listing status but sadly, due to negligence, it has fallen into a terrible state of disrepair. English Heritage have placed this building on their 'At Risk Register', Priority C which is to say, slow decay will continue until a solution is agreed that could bring this building back into use.

Whilst the buildings are still classed as 'part of the common' practical solutions for renovation are all but impossible to conceive due to the regulatory protections afforded Commons. The Burgage members are keen to see the erroneous inclusion of the racecourse buildings in the 1968 registration amended so that further consideration can be given as to how these historic buildings might be rescued. Doing so would also significantly enhance the value of the Common.

Henceforth, the decision of the Committee today has serious implications not only for the continued upkeep of the common land but as importantly, because a positive outcome will afford the Burgage Pastures Committee the prospect of addressing the serious decay of the buildings on the racecourse.

We hope you will respond favourably to our application and await your decision."

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 non-registration or mistaken registration occurred where an application claimed to be the case. The Application was received by the County Council on 4 May 2020 and was accepted as being duly made on 14 May 2020. A timeline relating to the background for the application was detailed in section 3.4 of the report. A copy of the application, as completed by the Applicant, together with relevant supporting documentary evidence, was provided 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 were four representations received in response to the notice: one in support of the application from Mr Bryn Roberts. Three representations were received objecting to the application. Although the Open Spaces Society did not object to the buildings being removed from the register, they objected to the extent of the curtilage around those buildings that the application was seeking to remove from the register. Baroness Harris objected to the removal of the land suggesting that the evidence submitted was not adequate to justify the deregistration of the land and buildings and that the area included as the Application Site extended beyond the footprint of the former building, diminishing the extent of the common land. The final objection was submitted by Town Councillor Harris who also objected to the Application on the grounds that it was not necessary to deregister the Grandstand building as it was an integral part of the Racecourse and so would have meant to be included in the original registration and expressing concern over any subsequent vehicular access across the common.

In response to the objections made by Baroness Harris and Councillor Harris, the applicant's representative argued that, the objections were misconceived as it was not correct that the buildings could have been registered as common land. The applicant also stated that Councillor Harris' concerns over any potential conflict between users of the common and vehicles accessing the buildings were not relevant to their application meeting the necessary criteria

In response to the Open Space Society's objection as to the extent of the curtilage, the applicant stated that they commissioned Dr Huggins' report (which was submitted with the Application), to assist in making an informed choice regarding the extent of the curtilage for these historic buildings and that the Open Spaces Society were taking a more minimalistic approach based only on an illustration of the Grandstand provided in Dr Huggins' report. The Open Spaces Society made further comments stating that Dr Huggins' conclusions did not take into account case law on the definition of curtilage and that any evidence of use of the land when the buildings were being used was not relevant to the use of the land between the date of registration and now. The Applicant confirmed that they had no further comments to add in response to The Open Spaces Society's representations. The Applicant provided further information and photographs regarding the extent of the curtilage.

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 2 paragraph 6 of the Act
- Schedule 2 paragraph 14(2) of the Regulations

It was concluded that on the balance of probabilities the Application Site comprised buildings and the curtilage of the buildings at the time of provisional registration and still was given there has been no material change in circumstances since the time of that registration. Consequently the Application should be approved and the application site be removed from the Register of Common Land for the common land unit CL131.

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

- It was clarified that vehicular access was not a relevant issue in terms of the application and should be disregarded.
- Members noted that the Open Space Society had acknowledged that the buildings should be de-registered and only had concerns in respect of the extent of the curtilage.
- Members were satisfied that the curtilage would have extended to the size outlined

in the application, as the evidence provided outlined.

Resolved –

That subject to any comments Members may have, the following be proposed to the Chief Executive Officer for consideration under his emergency delegated powers:-

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

30. Next Meeting

It was stated that further reports were currently being prepared and a further meeting would be required to consider these applications.

Resolved –

That Members be contacted with a choice of dates and times for the next meeting when the reports were ready to be considered.

The meeting concluded at 3.20 pm.

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