

# North Yorkshire County Council

## Planning and Regulatory Functions Sub-Committee

Minutes of the remote meeting held on 26 July 2021 commencing at 10.00 a.m. via Microsoft Teams

### Present:-

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

Officers: Jayne Applegarth (Commons Registration Officer), Kelly Dawson (Legal Services) and Patrick Duffy (Democratic Services).

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

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### 31. Welcome, introductions and apologies

The Chair welcomed everyone to the meeting and made the following statement:-

*You will have seen the statement on the Agenda front sheet about current decision-making arrangements within the Council, following the expiry of the legislation permitting remote committee meetings. I just want to remind everyone, for absolute clarity, that this is an informal meeting of the Committee Members. Any formal decisions required will be taken by the Chief Executive Officer under his emergency delegated decision-making powers, after taking into account any the views of the relevant Committee Members and all relevant information. This approach has been agreed by full Council and was reviewed at its July meeting.*

Members and officers introduced themselves.

### 32. Minutes

#### Resolved -

That the Minutes of the meeting held on 14 June 2021, having been printed and circulated, be taken as read and confirmed and signed by the Chairman as a correct record.

### 33. Declarations of Interest

There were no declarations of interest.

### 34. Public Questions or Statements

None received.

### 35. 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 119, Right entry 6 and entry 13, exercisable over Satron Moor, Grinton and Muker (CL158)

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 as attached to an area of land split from that land by means of a suitable legal instrument (e.g. a conveyance) and/or 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.

The application was submitted by Gunnerside Estates, dated 7 February 2019 and received by the Council the following day. The application was accepted as being duly made on 2 April 2019. A copy of the application including all supporting documentation was appended to the report.

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.

The report also outlined the Application Land and Rights Timeline (according to documentation held by the CRA and submitted by the applicant.)

The details of officers' comments on each of the statutory provisions in relation to the application were set out at Section 5 of the Report.

Officers felt that, on the balance of probabilities and for the reasons set out in the Report, the legal tests at Schedule 3, paragraph 2 (b) of the Act and Regulation 42 and Schedule 4, paragraph 19 of the Regulations were met by the applicant.

The Commons Registration Officer highlighted the following points:-

- The applicant submitted a deed of exchange from 1987, which showed that the previous owner had swapped land with trustees of the land at that time. Since then, both subsequent owners of the rights – Gunnerside Estates, for Right Entry 6 and 13 and David Waggott, for Right Entry 4, have gone onto use all the rights that had been attached to the land before the land was transferred and leased them to other parties, indicating, they believe, the rights were separate to the transferred land.
- The application sought to record that historic severance had occurred with regard to grazing rights for 80 sheep currently registered as attached to Swale Farm and 150 sheep, attached to East Farm, being exercisable over Satron Moor.
- 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 on 2 April 2019.
- There was one representation received in response to the Notice, from The Open Spaces Society, who objected to the application on the grounds that no evidence of severance had been demonstrated. Whilst the Deed of Exchange made no clear indication as to the intention with regards to rights, officers are satisfied that the subsequent actions of the parties involved show that the rights were treated as severed following the Deed of Exchange.

- In their objection, The Open Spaces Society also referred to Section 9 of the Act which prohibits severance. However, the Deed of Exchange occurred in May 1987. The prohibition of severance came into effect on 28 June 2005. Therefore, officers concluded that it is not relevant to consider Section 9 when reviewing this application.
- Officers are satisfied that the Deed of Exchange in 1987 is evidence of a relevant disposition of severance within time period allowed and that the criteria has been met and recommend that the historic event be recorded in the Common Land Register and the 230 grazing rights for Rights Entry 6 and 13 is shown as rights held in grace by the applicant.
- The right of Turbary, associated with Right Entry 6, is not capable of being severed. These rights remain registered to land at Swale Farm, registered in Dennis Metcalfe's name, until such time as the CRA receive an application to claim them.

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

- ◆ A Member referred to the objection by The Open Spaces Society who refer to there being no evidence that severance has been illustrated – rather than, say, some or little evidence. Why would they say there is “no evidence”? The Commons Registration Officer advised that their main argument is that there should be an apportionment application. However, this cannot be achieved when there is a disproportionate apportionment. Therefore, it was a difference of interpretation - but historic severance is the case here.
- ◆ A Member also stated that he had found it helpful to know that land can be sold, yet whilst still retaining rights.
- ◆ A Member commented that he had found the Case Law referred to in the report to be informative and, in response to his request, the Commons Registration Officer restated the Case Law used in this matter.

The Senior Lawyer reiterated that the report took Members through the legal tests and how officers had applied the evidence to the tests. It was now a matter for Members to decide if they agreed with the recommendation. Their recommendation would be forwarded to the Chief Executive Officer for determination.

Members congratulated officers on the clarity of the report.

#### **Resolved –**

That the following recommendation of this Sub-Committee be referred 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.

#### **36. Such other business as, in the opinion of the Chairman should, by reason of special circumstances, be considered as a matter of urgency**

The Chair confirmed that there was no other business on this occasion.

The meeting concluded at 10.12 a.m.

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