

North Yorkshire County Council

Planning and Regulatory Functions Sub-Committee

Minutes of the meeting held on 12 October 2018 commencing at 10.00 am at County Hall, Northallerton.

Present:-

County Councillors David Blades, Zoe Metcalfe, Clive Pearson and Peter Sowray.

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

There were five members of the public in attendance.

1. Appointment of Chairman

Resolved -

That County Councillor Peter Sowray be appointed Chairman of the Planning and Regulatory Functions Sub-Committee until the Annual Meeting of the County Council in May 2019.

County Councillor Peter Sowray in the Chair

2. Appointment of Vice-Chairman

Resolved -

That County Councillor David Blades be appointed Vice-Chairman of the Planning and Regulatory Functions Sub-Committee until the Annual Meeting of the County Council in May 2019.

Copies of all documents considered are in the Minute Book

3. Minutes

It was noted that the Minutes had previously been approved by the Planning and Regulatory Functions Committee on 12 May 2015 and, as the membership had significantly changed since the previous meeting of the Sub-Committee, the Minutes were for noting only.

Resolved -

That the Minutes of the meeting held on 17 April 2015 be noted.

4. Declarations of Interest

There were no declarations of interest.

5. Public Questions or Statements

There were no questions or statements from members of the public in respect of items not listed on the agenda. A speaker had registered to speak on an agenda item and would be invited to do so at that time.

6. Applications to correct The Register of Common Land - Non-Registration or Mistaken Registration – Commons Act 2006 – Part 1, Section 22, Schedule 2 (paragraph 7)

(a) Application Reference: Ca13004 - East and West Sandpits, Tally Hill, Huby - Application to remove from the Register of Common Land an area of land identified in the report.

Considered -

The report of the Corporate Director - Business and Environmental Services on an application seeking to remove from the Register of Common Land an area of land at Huby, identified in Appendix 1 to the report.

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 and it was noted that the CRA needed to be satisfied that, on the balance of probabilities, all elements of Schedule 2, paragraph 7 had been demonstrated to have been met, in an application relying on those provisions, for it to be approved.

Details of the application site were provided and it was noted that it was an elongated, unusually-shaped strip of land situated to the east of the property known as "Tally Hill Cottage".

The application, was accepted as being duly made on 5 January 2016. A copy was included in the supporting documentation.

In accordance with the appropriate Regulations the CRA publicised the application by issuing notices on the County Council's website, at the application site and also serving notices on relevant parties. Three representations were received from Huby Parish Council, Natural England and the Open Spaces Society, in response to the notice.

Huby Parish Council and Natural England did not object to the application, however, the Open Spaces Society objected as they considered the application did not satisfy all the criteria set out in Schedule 2, paragraph 7 of the Act.

The applicant responded to the objection offering further evidence of the criteria being met which included two statements of truth by longstanding residents of Huby.

Officers contacted the County Council's Archivist Department to ascertain whether the application site had been the subject of the Enclosure Award and, on finding that it had, took legal advice on the content of the Award. It was found that the application site had

been divided up and bestowed to individual parties which had the effect of extinguishing any common rights that might have existed over the application site and ruled out the possibility of it falling within the description set out in Section 11 of the Enclosure Act 1845. The applicants and the Open Spaces Society were notified of the view taken by officers and had not raised issues with the conclusions arrived at.

In view of the evidence identified officers were satisfied that the application met the tests set out in Schedule 2, paragraph 7 of the Act and the reasons for that were set out in the report (Section 6.1(a), (b), (c), (d)-(i), (ii), (iii), (iv)).

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

- ◆ It was clarified that the County Council, as CRA, were able to undertake pro-active action to ensure that the application met the appropriate tests. The historic details held in the County Council's Archivist Department enable that clarification to be undertaken.
- ◆ A Member noted that, having visited the location, on District Council business, and having spoken to local residents, on the balance of probabilities, the legal tests of the application had been met.

Resolved -

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

(b) Application Reference: Ca13003 - Oliver Allotments, High Laithe, Stean - Application seeking to remove from the Register of Common Land an area of land identified in the report

Considered -

The report of the Corporate Director - Business and Environmental Services on an application seeking to remove from the Register of Common Land an area of land at Stean Moor, Stonebeck Down known as Oliver Allotments, High Laithe, Stean, identified in Appendix 1 of the report.

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 and it was noted that the CRA needed to be satisfied that, on the balance of probabilities, all elements of Schedule 2, paragraph 7 had been demonstrated to have been met, in an application relying on those provisions, for it to be approved.

The application site consisted of two fields situated directly west of the village of Stean and was located within a remote area known as West End, which formed part of Oliver Allotments. The application site formed part of a dominant tenement for Right Entry 9 in the common land Unit CL118 registered in July 1968. The site was also registered as being part of the common land Unit CL 118 in December 1967. Both provisional registrations were undisputed and both entries, therefore, became final.

The application to remove the register of Common Land on the area was accepted as duly made in December 2015. Details of the application and supporting documentation were included with 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, at the application site and also serving notices on all relevant parties. As a result there were two representations received. Those were shared with the applicant, who in turn responded to those making representations.

Natural England offered general comments with regard to the management and usage of common land.

Mr S Byrne, a member of the public with no legal interest made representations on Part 1 applications to CRAs across the country, claimed the application did not demonstrate sufficiently that the application site had not been wasteland of a manner immediately before its provisional registration. Details of the objection were provided within the report.

Several exchanges of communication between Mr Byrne and the applicant resulted in acceptance that the application land had not been registered as common land by the previous owner of Stean Moor in error and that they indeed did not own the application land, that it was not the subject of any common rights, that it was not the land which fitted the description of land defined in Section 11 of the Enclosure Act 1845 and that it was not a village green. The issue of whether the land was wasteland of a manner immediately prior to it being provisionally registered as common land was not accepted by Mr Byrne, however. Further evidence was submitted by the applicant in relation to this, however, they were still unable to agree with Mr Byrne on the definitions of wasteland of the manner or the term uncultivated.

Having assessed the application, officers of the CRA were satisfied that it met the tests set out in Schedule 2, paragraph 7 of the Act for the reasons outlined in the report (Section 6.1(a), (b), (c), (d)-(i), (i), (ii), (iii), (iv)).

Members discussed the report and the following issues were outlined:-

- ◆ Members considered that evidence within the report indicated that the land had been more than likely cultivated at some point. It was therefore concluded that there was sufficient evidence for the application to be granted.

Resolved -

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

7. Application to correct the Register of Common Land - Commons Act 2006, Part 1, Section 19

- (a) Application Reference: CA10006 Land forming of Oxenber (Otherwise Austwick Wood) - Application to correct an alleged mistake made by the Commons Registration Authority, and seeking to remove from the Register of Common Land, an area of land identified in the report**

Considered -

The report of the Corporate Director - Business and Environmental Services reporting on an application to correct an alleged mistake made by the Commons Registration Authority and seeking to remove from the Register the area of land identified on the plan within the report.

The Commons Registration Officer outlined the report stating that under the provisions of the Commons Act 2006 the County Council was the CRA and 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 from December 2014.

Details of Section 19 of the Act were outlined and it was noted that this included mistakes made by a Commons Registration Authority in making an entry and the definitions of those. In relation to the application the CRA needed to be satisfied that, on the balance of probabilities, there was an administrative error made by a CRA for Section 19, paragraph 2(a) to apply.

The application site was a triangular shaped strip of land forming the southern-most tip of the property known as "Wood England Farm, Austwick". The land was a small fraction of the land currently registered as CL 84 and known as Oxenber.

The application was accepted as being duly made in June 2017. A copy of the application including the supporting documentation was included in the report.

In accordance with Regulation 21 of the Commons Registration Regulations 2014 the County Council issued public notices of the application on its website, on the application site and also by serving notices on relevant parties. As a result five representations were received from Mr D S Mallalieu, Austwick Parish Council, Ingleborough Estate, the Open Spaces Society and Mr Byrne, with the Open Spaces Society and Mr Byrne suggesting that the application did not demonstrate that a mistake had been made as required by Section 19(2)(a). Further exchanges between the applicant and the objectors followed, with evidence submitted by the applicant, however, the two objectors maintained their objection to the application.

Following assessment of the application officers were satisfied that it met the tests set out in Section 19, paragraph 2(a) of the Act for the reasons set out in Section 6.1(a)(i)(ii), (b), (c), (d), (e), (f), (g), of the report.

Mr Simon Smith of WBW Surveyors Limited, representing the applicant, addressed the Committee and outlined his support for the recommendation of officers, as stated in the report.

Members discussed the application and the following issues were highlighted:-

- ◆ An original copy of the plan referred to in the report was made available and viewed by Members.
- ◆ Members suggested that the original line drawn on the Register map had been too thick, which had resulted in the discrepancy and the application in relation to a mistake having been made.
- ◆ A Member suggested that the area of land being considered appeared to be out of place in terms of the registered area.

Resolved -

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

8. Application to Register Land as Town or Village Green - Commons Act 2006 - Sections 15(1) and 15(2)

(a) Application Reference: NEW VG53 - Land between Westway and Ryefield Road, Eastfield, Scarborough - Application for the registration of two areas of land identified in the report at Eastfield, Scarborough, as Town or Village Green

Considered -

The report of the Corporate Director - Business and Environmental Services on an application for the registration of two areas of land at Eastfield, Scarborough, as Town or Village Green, as identified on the plan in an Appendix to the report.

The Commons Registration Officer presented the report highlighting that under the provisions of the Commons Act 2006 the County Council was a Commons Registration Authority (CRA) and was responsible for maintaining the Register of Town and Village Greens for North Yorkshire. The CRA needed to be satisfied on the balance of probabilities that all elements of Section 15(2) of the Act had been demonstrated to have been met on an application relying on that provision for it to be approved. The onus of proof rested on an applicant.

Details of the application site were outlined, within an Appendix to the report, as two pieces of irregular shaped land which fell between Westway and Ryefield Road, both being areas of grassland.

The application, submitted by Eastfield Parish Council was received by the County Council in November 2010 and accepted as duly made in December 2010. 12 letters of support by Eastfield residents were also provided alongside the application. A full copy of the application was provided as an Appendix to the report.

An objection had been received from Scarborough Borough Council which relied on the legal point that the use of the application site had been "by right" and not "as of right" and so the tests set out in Section 15(2)(a) had not been met. The case was that the public already had a right to use the application site and so any use which took place was "by right". The applicant was provided with an opportunity to comment on the objections and it was noted that previous applications, by the applicant, to register similar land as town or village green had been successful with no objection lodged and that the application which was the subject of the report was no different.

Full copies of the representations received from both parties were provided in the report.

Officers' assessment of the application utilised the decision made by the Supreme Court in the case of *Barkas v North Yorkshire County Council* (2014). In this case it had been determined that where land was used by the public in exercise of its statutory right then use was "by right". In the case of the application, the land was owned by Scarborough Borough Council and must have been acquired in exercise of a statutory power, however, the Borough Council had been unable to trace documentation recording its purchase of the land, but it was fair and appropriate to adopt a legal presumption that it would have been purchased in exercise of powers contained in the Housing Acts and that in turn the open areas, that were now the subject of the report, were provided as either recreational land or open space under those Acts. Consequently any public use of the land must have been "by right" and not "as of right" as was required by the Act and consequently the application should be refused.

It was correct that the Parish Council had pointed out the previous application to register similar types of areas was approved by the County Council, however, the legal position at

that time was different in that the Barkas legal precedent had not been established.

Members discussed the report and the following issues were highlighted:-

- ◆ The Chairman provided details of the Barkas v North Yorkshire ruling which highlighted the issues in relation to “by right” as opposed to “as of right”. In relation to that he suggested that the application land had been used “by right”.
- ◆ A Member asked whether a subsequent legal judgment could rule against the position outlined. In response it was stated that this could be the case, however, this would not alter the position of the decision made on the application, as the legal position had to be taken account of at the time of the determination of the application. It was felt that it was unlikely that a subsequent consideration of such matters would rule against the Supreme Court’s judgment.
- ◆ It was noted that legislation had changed to prevent applications for Town or Village Green being registered with a view to preventing developments from taking place, when planning permission was already in place.

Resolved -

That the application be refused on the grounds that the Sub-Committee is not satisfied that all relevant criteria of Section 15(2) of the Act were evidenced by the applications for the reasons set out in the report.

9. Next Meeting

Resolved -

That the next meeting of the Planning and Regulatory Functions Sub-Committee be held on Friday 23 November 2018 at 10 am at County Hall, Northallerton.

The meeting concluded at 10.35 am.

SL/JR