

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Toft Hill Community Centre Toft Hill, Bishop Auckland, County Durham, DL14 0JA on **Thursday 13 September 2018 at 11.00 a.m.**

Present:

Councillor C Kay in the Chair.

Members of the Committee

Councillors D Bell, G Bleasdale, J Chaplow, J Considine, S Dunn, O Milburn, S Morrison (Vice-Chairman), J Rowlandson, J Shuttleworth, J Turnbull and M Wilson

Also Present:

Councillor H Smith

1 Apologies for Absence

Apologies for absence were received from Councillors H Bennett, A Gardner, K Hopper, S Hugill, K Liddell, P Oliver, R Ormerod, P Sexton and A Simpson.

2 Substitute Members

There were no substitute members present.

3 Minutes

The minutes of the meetings held on 11 June and 5 July 2018 were agreed as a correct record and signed by the Chairman.

4 Declarations of Interest

There were no declarations of interest in relation to any items of business on the agenda.

5 Public Footpath No. 39 Evenwood and Barony

The Committee considered a report of the Corporate Director of Regeneration and Local Services to consider an application to divert Public Footpath No. 39 Evenwood and Barony (for report see file of Minutes).

Prior to consideration of the matter, the Access and Rights of Way Team Leader informed the Committee that the representative from the Open Spaces Society was unable to attend the meeting due to ill health but wished to maintain the objection on behalf of the organisation.

The Committee had viewed the site prior to the meeting and were provided with the background to the application which had been submitted by the owner of High Toft Hill

farm. The application sought to divert Public Footpath No. 39 away from farm buildings and farmyard areas. The owner had plans to construct new agricultural sheds and wished to ensure that a safe and long-term route for the public was provided whilst minimising any potential conflicts between the public and farm machinery and animals.

The effect of the proposal would move Footpath 39 to a more southerly route, following a field edge from the eastern end of the path round to its junction with Public Footpath no. 38 to the west of the farm. An additional stile would be provided to enable alternative access to and from the footpath. The relevant legal framework (Section 119 of the Highways Act 1980) was outlined to the Committee.

The Committee were informed that the ends of the diverted footpath were on the same highway, and it was argued that there would be no real loss of convenience for pedestrians. Whilst the diverted route would be longer and involve some loss and gain of altitude, these were not significant in the context of a path used for recreational countryside walking. The avoidance of potential conflict and confusion for users in the proximity of a working farmyard could also be seen as adding to the convenience of walkers. The provision of an access point onto the diverted path adjacent to the road junction would help to balance any inconvenience caused by the extra distance.

The diversion would also assist with the agricultural running of the farm and would be expedient in relation to the use of the land. The new stile would be constructed in accordance with British Standards.

The Access and Rights of Way Team Leader then summarised the objections made by the Open Spaces Society, which were detailed in Section 4.0 of the report as follows;

- the diversion of Footpath No. 39 was circuitous and inconvenient for the public;
- excessive in relation to the area of concentrated agricultural activity;
- a diversion should be sought under the provisions of the Town and Country Planning Act 1990 in respect of any planned new building;
- the agricultural need for the diversion had not been clearly made;
- the new path might be fenced off and become a narrow corridor; and
- there was no inconvenience to the public in walking close to stock sheds and a working farmyard.

The Access and Rights of Way Team Leader informed the Committee that correspondence with the objector provided by way of Document D to the report sought to address the matters raised. However, in terms of an overall response to objector, it could be commented that the additional distance resulting from the diversion was not felt to be significant in the context of a recreational walk in the countryside. The diversion would add approximately 190 metres to the length of Footpath No. 39. Valid agricultural reasons had been proposed to move the footpath away from the area of existing and proposed sheds, given the expanding farming operations planned.

Whilst it was accepted that the applicant could apply under s.257 of the Town and Country Planning Act 1990 for a diversion around the proposed new shed, and repeat the exercise for each subsequent new building as and when they came forward. It was felt that this would result in a less acceptable solution given the potential confusion for the public and a

route that made a series of right-angled turns to get round the buildings, whilst still being in close proximity to vehicle and animal activity.

The Committee then heard from the applicant who explained that they lived on the site, comprising around 600 acres of farming land. Some of the land was utilised by the owner for their farming operation and other parts of the land were let. A significant number of sheep were present on the farm. The owner referred to the seasonal lambing operation and the shed observed by the Committee during the site visit. The owner explained that whilst the shed was of some size, it was not large enough for the lambing operation. Lambing took place between January and May. The owner had incurred significant losses last winter when many lambs perished during the winter. The construction of an additional agricultural building would provide the required amount of space, connect to the existing buildings and avoid unnecessary journeys with flocks outside during inclement weather.

The owner made it clear that they had no objections to use of the footpaths and the application had been submitted for the benefit of walkers, the owners and the absolute need for accessibility. The owner confirmed that they had no objection to install a stile, although it would mean that a section of established hedgerow would be lost.

Councillor H Smith, one of the local members informed the Committee that she was in favour of the proposed diversion which appeared sensible and pragmatic. Councillor Smith agreed with the assessment made by the County Council's Public Rights of Way Team.

Councillor J Shuttleworth explained that the modern day farming operation and the diversion would not stop or deter any enjoyment for people walking the footpaths in the area and Moved the recommendation detailed in the report.

Councillor J Turnbull agreed with the comments made by Councillors H Smith and J Shuttleworth. Referring to the comments from Barnard Castle Ramblers regarding 'a guarantee that the footpath would not be fenced in either now or at any time in the future', Councillor Turnbull appreciated that the applicant had provided written confirmation which was included in the report and confirmed this with the applicant.

In response the applicant confirmed that they had no intention of fencing off the footpath both now or in the future as there was no desire to do so, essentially because the costs associated with fencing off the area would be prohibitive.

Councillor J Turnbull seconded the recommendation.

Resolved

That the Committee agree to the making of a Diversion and Definitive Map and Statement Modification Order under the provisions of Section 119 of the Highways Act 1980, and that the Order shall subsequently be either confirmed by the Council as an unopposed order or in the event of objection(s), referred to the Secretary of State for determination.

6 Application NL43 for Village Green Registration - Romalldkirk, County Durham

The Committee considered a report of the Head of Legal and Democratic Services regarding determination of an application to register land at Romalldkirk, as Town or Village Green, under the provisions of the Commons Act 2006 (for copy see file of Minutes).

The Solicitor informed the Committee that the relevant law was contained in Section 15 of the Commons Act 2006 which stated that a Village Green has come into existence where:

- (a) A significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports or pastimes on the land for a period of at least 20 years; and
- (b) They continue to do so at the time of the application.”

The application had been made by Romalldkirk Parish Council, acting through its chair, Lesley Cutting (the Applicant). A copy of the application, excluding the supporting user evidence was detailed in Appendix 1 to the report. The Application was dated 11 September 2016 and was accompanied by a plan showing the area claimed as town or village green and included two statements in support from users of the claimed town and village green. Copies of all the user evidence had been provided in Appendix 3 of the report and copies of the letters of objection were detailed in Appendix 4 of the report.

The solicitor acting on behalf of the Commons Registration Authority wrote to both the Applicant and the occupants of the property adjacent to the application land in May and July 2018. The letters expressed concerns in respect of the use of the application land and invited further representations, particularly in respect of the effect of a deed dated 4th September 1930 made under the provisions of section 193 of the Law of Property Act 1925.

It was felt that there was a lack of clarity in respect of the status of the application land and in particular whether the land was used ‘as of right’ or ‘by right’. Copies of the documentation were attached as Appendix 6 to the report and the 1930 Deed was attached as Appendix 7.

On 27 July 2018 the applicant submitted a further 10 supporting statements together with an opinion from a barrister responding to the issues raised in the letters. Copies of the documentation were attached in Appendix 8 and 9 of the report.

The Solicitor informed the Committee that credible evidence had been submitted both in support and in opposition of the application. Whilst there was no set format regarding the determination of applications, it was good practice where there were significant areas of dispute to hold a public inquiry to test the evidence.

The Committee heard from an objector who had resided in the village since 1997. The objector explained that the land was not registered as such, but had been maintained continuously since that time. The objector felt that support of the application had grown since the application date over a period of two years which had culminated in further

support and evidence. The objector explained the importance of the evidence that must meet the qualifying criteria.

The objector also felt that the recommendation to instruct an independent barrister to hold a non-statutory public inquiry was the correct course of action and that it was important for the evidence to be tested via this method.

The Committee then listened to representations on behalf of the applicant who was a parish councillor for Romaldkirk. The representative explained that the land formed part of a wider village green of Romaldkirk. Those objecting to the application had continuously parked cars, planted trees and shrubs on the green area.

The parish council application had been supported by 15 evidence statements, 10 from individuals who could contest use for the entire qualifying period. The representative considered that it was hard to reconcile the further use of public money to determine the matter.

The applicant felt that the objector had also provided instances of recreational use of the land which supported the village green application and suggested that the matter should be determined by the Committee. The representative felt that if the Committee were to refer the matter to a non-statutory public inquiry, the parish council were extremely confident in succeeding with their application, particularly given the legal advice they had received.

The Committee then heard from a supporter of the application who had lived in Romaldkirk for 29 years. The supporter explained that the land was a very important piece of public land. The application had been brought about to save the land and enshrine it for years to come for local residents, including the objector. The supporter claimed that the land had been used as public land and the only way to protect the land would be to register it as village green. The supporter also expressed the view that the Committee should determine the matter at the meeting.

The Solicitor referred the Committee to the 15 individual statements that had been produced as part of the application evidence, however, advice was also given that statements had been provided which contradicted the evidence, hence the suggested approach as set out in the recommendation detailed in the report. Whilst the decision on the application was a matter for the Committee, it was felt that there were sufficient areas of dispute in terms of the extent of the use of the application Site to require a non-statutory public inquiry to test the evidence in order to assist the Committee in the determination of the application. A non-statutory public inquiry was also recommended given the complex legal issues surrounding the status of the land arising from the 1930's deed.

Councillor J Rowlandson informed the Committee that he knew the area of Romaldkirk very well and Moved the recommend approach detailed in the report because of the conflicting and contradictory evidence.

Councillor S Dunn felt that all sides of the argument needed to have a fair hearing. Councillor Dunn was puzzled as to why land included in the 1930's deed was not included in the 1967 registration and queried whether it had been considered and if it had been considered, why had it not been accepted.

The Solicitor informed the Committee that there were no details to suggest why the area of land was excluded from the 1967 registration.

The representative of the applicant, through the consent of the Chair of the meeting explained that it was simply missed off when the map was drawn.

Councillor J Shuttleworth appreciated that there was a cost element to instructing a specialist barrister, however, it was in fairness to all parties concerned that the matter should be determined by way of a non-statutory public inquiry and seconded the proposal.

Resolved

That the Committee delegate authority to the Head of Legal and Democratic Services to instruct an independent specialist barrister to hold a Non-Statutory Public Inquiry to consider the Application and thereafter prepare a report to Members of the Highways Committee which makes a recommendation to Members in respect of the Application.