

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Committee Room 2 - County Hall, Durham on **Friday 1 February 2019 at 10.30 a.m.**

Present:

Councillor C Kay in the Chair

Members of the Committee

Councillors D Bell, H Bennett, J Considine, D Hicks, S Morrison (Vice-Chairman), R Ormerod and P Sexton

1 Apologies

Apologies for absence were received from Councillors G Bleasdale, J Chaplow, K Hopper, S Hugill, K Liddell, O Milburn, J Shuttleworth, A Simpson, J Turnbull and M Wilson.

2 Substitute Members

There were no substitute members present.

3 Declarations of Interest

Councillor J Considine informed the Committee that, as one of the local members, she had come to a provisional view to support the application. However, her view was not conclusive and Councillor Considine wished to listen to the proceedings of the meeting prior to making an informed decision at the conclusion of the debate.

The Legal Advisor informed the Committee that under the circumstances it was acceptable for Councillor Considine to participate in the decision making process.

4 Proposed creation of public bridleway using compulsory powers Highways Act 1980 Section 26 - Red House near Oxen Law, Muggleswick

The Committee considered a joint report of the Corporate Director of Regeneration and Local Services and Head of Legal and Democratic Services regarding a proposal to create a public bridleway under Section 26 of the Highways Act 198 at Red House near Oxon Law within Muggleswick parish (for copy see file of Minutes).

The Senior Rights of Way Officer provided the Committee with a detailed presentation of the area which was located on the tops of the North Pennines Area of Outstanding Natural Beauty. The route was popular with walkers, horse riders and cyclists. As part of the presentation the Committee viewed a location plan and video which showed the route from A to B. Photographs of the farm track, fence, grassed field, Oxen Law and footpath no. 22 through the farm were also shown. Strava heat map data (Strava is a mobile application which recorded user activity on trails) was shown from the previous two years which evidenced the importance of the Waskerley Way and Red House Route. The heat maps showed that people were still using Red House, even though people had been challenged at times, using the route.

The route linked the minor highway network between Tow Law and Castleside with the Council owned Waskerley Way which formed part of the C2C (Coast to Coast) cycle route. Problems arose when people were being challenged and gates were being locked. The highway status of a section of unclassified road (UCR) 18.3 from near Oxen Law to Red House had been vociferously challenged by the owner since at least 2014. Investigations resulted in it being concluded that the route should not have been shown on the list of streets within Muggleswick parish.

A number of accommodation providers, in particular Bee Cottage B&B had reported a decline in their business due to the difficulty for cyclists to gain access to/from the C2C via Red House in recent years.

Consultations had been carried out with relevant landowners affected. Those objecting included the private landowner who was represented at the meeting by their legal representative; and a rights of way/highways campaigner who considered that the Council could not create a bridleway over land that was already recorded as a highway. The local parish council, Muggleswick Parish Council, had expressed concern over the potential health and safety implications of horses passing through a working farm.

In terms of the objections, the highways/rights of way campaigner stated that a bridleway could not be created on a route already shown on the list of streets and that the Council should not consider as incorrect the depiction of the route as a highway on the list of streets. It had been explained to the objector that the Council would be removing the route from the list of streets before any order was made therefore avoiding the legal problem highlighted. The Council's highway record for the section of track had been provided which detailed how the records point to a mapping error from the 1970s.

Cycling, walking and horse-riding representatives had expressed their support for the proposal along with Lanchester Parish Council, one of the local County Councillors, Councillor Jude Considine. DCC land managers for the Waskerley Way length of the route were also agreeable to the proposal.

The Committee were informed that the proposed creation of any highway must connect two places of public resort, normally another highway. The Waskerley Way was not a highway/public right of way, so the proposed bridleway could not terminate at a point on the railway path and would need to continue to another highway. This meant that the proposal not only included the section marked A to B on the report, from the point where unclassified road 18.3 terminated at the Lanchester/Muggleswick parish boundary, along a farm track to Red House and the Waskerley Way but also to B-C, along the line to unclassified road 17.2 at Waskerley Village. These points were shown on the plan at Document A of the report. The bridleway would be at a width of 3 metres.

The Committee were appraised of the relevant legal framework for which the statutory provision was contained in Section 26 of the Highways Act 1980.

The Committee then heard from a supporter for the proposal who was a part-time farmer from the Consett area, with two-rights of way running through his own farm. The supporter was also a trustee of Project Genesis and a keen cyclist. He had been involved in setting up the C2C in the early 1990s which had won a global tourism award. He had never witnessed any conflict with livestock nor any farm machinery along the route. The route served as a quiet, short, well surfaced link to other circular routes, which crossed the A68 on a level gradient with good sightlines. The supporter then referred to the 'alternative routes' one of which was rutted and foot deep with water, destroyed by 4x4 vehicles. Another route via Whitehall accessed directly onto dangerous roads and was not suitable in the slightest. All are in any case counterintuitive for those accessing the C2C.

The supporter felt that the order was necessary to confirm the vital link which was a safe connection to a series of routes and circular routes for walkers, which also served the needs of cyclists and was of both strategic and local significance.

The Committee heard from the representative of the landowner who explained that Red House was a livestock farm, part of a large farming enterprise. The reasons for objection included the disruption and the effect on the value of the property which would be substantial, conflict with agricultural vehicles and livestock, biosecurity issues and the fact that there were alternative routes nearby which negated the need to use the route through Red House. Additional documentation had been circulated to the Committee prior to the meeting from the landowners Chartered Surveyor. The document detailed the impact of the proposal presented to the Committee and the impact of three alternative routes. Detail was also provided of the impact in terms of a valuation of Red House Farm and the compensation that would be claimed from the Council should the proposal outlined in the report be agreed.

The legal representative for the landowner explained that the emotive element for the Committee was the 'question of need' and given the existence of nearby access routes into Waskerley Way it was felt the need had not been demonstrated. The

existing access was in an extremely poor condition and had not been maintained. The legal representative failed to see the equality in the proposal as presented.

The County Council's Legal Advisor explained that the local search made in respect of the purchase in the 1970's was not an issue for the Committee. The matter was a separate issue for the landowner to pursue if he felt it advisable to do so. The Legal Advisor referred the Committee to the references in Paragraph 15 of the report, that whilst article 1 to the first protocol (peaceful enjoyment of property) and article 8 (right to respect for family, private life and home) were engaged, it was important to note that these rights were not qualified, not absolute, which meant that they could be interfered with in so far as such interference was in accordance with domestic law and was necessary in a democratic society for the protection of the rights and freedoms of others. It was also considered that any interference occasioned by the making of a Creation Order was both in accordance with domestic law (the Highways Act 1980) and was in the public interest as it is necessary in a democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way. Relevant in-play was qualified and there was sufficient justification.

The Senior Rights of Way Officer informed the Committee that the alternative routes referenced by the landowners representative had been considered and were deemed to be longer, less direct, hillier and would require the construction of a new track and other works making them an inferior and more expensive option.

Councillor J Considine addressed the Committee as the local member and explained that she had received representations from residents within her electoral division, including cyclists and walkers. Councillor Considine appreciated the impact and was sympathetic of the situation as presented by the landowner but preferred to support the recommendation detailed in the report having listened to the representations made.

Councillor P Sexton explained to the Committee that he was a keen cyclist and familiar with the area. Councillor Sexton felt that the assessment of the proposal was incorrect and that the Council had not demonstrated the need for the proposed route. It had been stated that the Red House route was more suitable for a 'wider audience', however, Councillor Sexton felt that if an individual was going out to exercise on a bike the proposed creation of the route defeated the object. Councillor Sexton noted evidence of tyre tracks on the route, which demonstrated off-road and farm activity. Having listened to the representations made by the legal representative of the owner, Councillor Sexton felt that he could not support the proposal.

Councillor Sexton also queried if the road was owned by the landowner which could potentially result in trespassing in the area. The Senior Rights of Way Officer confirmed that a highway can cross private land.

Councillor R Ormerod felt that the countryside should be open to as many people as possible and felt that the proposal provided for this with any necessary compensation claim open to the landowner.

It was explained by the Council's legal representative that the compensation aspect was not decided upon by the Committee, it should not be a factor in terms of decision making. Councillor Sexton explained that knowing the routes and the nearby alternatives, he failed to see the need for the creation of the new bridleway.

The Chair asked Councillor J Considine that given her earlier representations in support of the recommendation, was she minded to move the making of a creation order in accordance with the recommendation detailed in the report. Councillor Considine moved the recommendation contained in the report.

Councillor R Ormerod seconded the proposal.

Resolved

(i) That the Committee agree to the making of a Public Bridleway Creation Order under the provisions of Section 26 of the Highways Act 1980 (combined with a Definitive Map Modification Order) for the length shown A, B to C on the plan shown at Document A of the report.

(ii) The Order subsequently being confirmed as an unopposed Order or referred to the Secretary of State for determination in the event of objections.