

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Hamsterley and Low Westwood Community Association on **Thursday 31 January 2013 at 10.45 a.m.**

Present:

Councillor G Bleasdale in the Chair.

Members of the Committee:

Councillors J Robinson (Vice-Chair), B Arthur, D Burn, S Hugill, A Naylor, J Shiell, R Todd, E Tomlinson and J Turnbull

Also Present:

Councillors A Shield and W Stelling.

1 Apologies for Absence

Apologies for absence were received from Councillors A Bainbridge, D Hancock, J Maslin, P Stradling, T Taylor, L Thomson, C Woods, A Wright and R Young.

2 Substitute Members

There were no substitute members present.

3 Declarations of interest

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

4 Proposed Definitive Map Modification Order to add a footpath to the Definitive Map and Statement - Hamsterley Mill, B6310 to High Hamsterley Road

The Committee considered a joint report of the Corporate Director, Regeneration and Economic Development and Head of Legal and Democratic Services regarding a proposed modification order to add a footpath to the definitive map and statement between Hamsterley Road and the B6310 at Hamsterley Mill (for copy see file of Minutes).

The Senior Rights of Way Officer informed the Committee that the application had to be assessed against specific legal tests and the Committee would need to determine whether or not a right of way had been acquired and provided the background to the proposal which related to a path following a north south direction from the cul-de-sac of High Hamsterley Road between no's 17 and 20 to join the B6310. The path in question crossed a grassed area between the two properties before reaching nine steps with a handrail which lead upto the B6310.

The Committee were informed that in February 2012, the Councils' rights of way team had been alerted by local residents about the obstruction of the path by tree cuttings, a wooden fence and stacked up paving slabs which had been removed from the surface of the path by the landowner which led to complaints from local people who had used the path.

The proposal to record the path as a public footpath had been supported by evidence of usage with 106 users completing a user questionnaire, 11 of the path users had been interviewed and had provided formal statements which were detailed in Document B of the report.

The Senior Rights of Way Officer then summarised the evidence of usage, the documentary evidence gleaned from maps and documents which pre-dated the building of the estate and minutes from Hamsterley Mill Residents Association who had appeared to be actively interested in local footpaths in the area. Consultation had also taken place with local members, the Ramblers Association and the utilities who offered no objections to the proposals.

Objections and rebuttal of evidence had been received from the owner of the land the footpath crossed which had been summarised and were detailed in document C of the report.

The Planning and Development Solicitor referred the Committee to Document D and gave an overview of legal framework that the Committee should assess the evidence against. In particular, Section 53 of the Wildlife and Countryside Act 1981, Sections 31 and 32 of the Highways Act 1980 and the tests of 'As of Right', interruption, calling the way into question and lack of intention to decide.

The Committee heard representation from Councillors A Shield and W Stelling.

Councillor Shield informed the Committee that both himself and Councillor Stelling had tried to act as an effective mediation to resolve the dispute and disparity between the two parties. It was acknowledged that residents from Parklands used the path to access public transport from the A694. Buses from the location lead to major centres and formed part of a vital transport link to residents from the estate. Both Councillors had agreed to fund the making of a rural footpath near to the disputed footpath to aid pedestrians to the bus stop, but this had been suspended, pending the dispute that had arisen. Councillor Shield regretted the situation that had arisen but having considered the evidence from all sides, felt that there was no alternative but to support the officers recommendations contained in the report. He also considered that there would be an enormous waste of public money if any public inquiry and the due appeal process is pursued.

Councillor Stelling supported those comments made by Councillor Shield and considered that the path should form a public right of way without doubt. Both Councillors had tried desperately hard to obtain a win-win situation and hoped that this could be achieved. The path would be better served under the auspices of the County Council and the benefits that go hand in hand with that, i.e. upkeep and maintenance would be positive factors for the area

The Committee then heard representations from Mr Bowering, the Acting Chair of Hamsterley Mill Residents Association who had lived at Hamsterley Mill since 1975. The

Committee were informed that the residents association supported the modification order to add the footpath to the map of public rights of way for the following reasons:-

- usage and numbers of responses had indicated that residents of Hamsterley Mill and Parklands Estates had used the path without hindrance since the estate was established in the 1950's;
- record numbers of user evidence provided in February 2012 documented clear use of the path for over sixty years;
- deeds for many houses in the area indicated a link path detailed on ordnance survey maps as a route through Hamsterley Mill Estate;
- residents of Parklands who needed to use public transport always walked through Hamsterley Mill Estate to the A694 to catch buses to local amenities at Rowlands Gill, Consett and Shotley Bridge and to major town centres, such as Newcastle and Gateshead Metrocentre;
- elderly residents used the path to access the only post box in the area;
- local schoolchildren used the path to catch the bus to school;
- there had been conflicting evidence provided in that no residents of the residents association recalled any obstructions on the path or it being closed upto February 2012 for any length of time, nor had anyone been challenged;
- minutes of the residents association meetings made reference to a handrail being replaced in 1993 with one resident recalling that the steps with two handrails either side of the path in 1972 and another recalling the steps and handrail being exactly the same today as they were in 1976 which disputed any suggestion that the handrail had been installed somewhere between 1998-2000;

In summing up the residents association representations, the Acting Chair informed the Committee that the path was highly valued by the residents and maintained that it had been in use for over sixty years. The closure of the footpath on 11 February 2012 only served to highlight how much the path was valued and used.

The Committee then heard representations from Ms Garrington who commented that the recommendation by the County Council was flawed and highlighted the following issues:

- requests for all weather footpaths and two other paths had been turned down;
- In 1992 the land was cleared, as it was very wild and overgrown with bushes. She erected fencing along the boundary of the property, later to be informed by an enforcement officer that she would have to remove the fence from that position because of the footpath and therefore moved it back. The fence was in place for 3-4 days – this was confirmed by the builder at the time;

- between 1998 and 2000 the residents association arranged for the laying of concrete slabs, the widening/opening of the steps and installation of a handrail without her consideration therefore the residents association had created a civil wrong and trespass;
- in 1994 the residents association documented at their Annual General Meeting that a request to turn down to repair the handrail, however, the residents association already knew that the way wasn't an adopted highway and bypassed the law as a result;
- work had been carried out without legal authority or legal advice and the residents association did not check with the land registry in order to ascertain who owned the land;
- the status of the path had been incorrectly classified by the County Council, given that in 1992 an enforcement officer of the Council commented that it was a public footpath which it was not and the landowner did not have the opportunity to object to that action;
- the evidence relating to the obstruction of the footpath in 1992 appears to conflict with user evidence

In summing up, Ms Garrington requested that the Committee carefully consider the need requirement for the way to have been used by the public at large and as she did not feel that this had been demonstrated, the path did not constitute a public right of way.

The Planning and Development Solicitor referred to the 'secrecy' issue and advised the Committee that under Section 31 of the Act, the test of 'as of right' covered the issue of secrecy. It was not therefore necessary for the estate owner to be notified by the users, and instead the use by members of the public must be sufficient to bring it to the attention of a prudent landowner that rights were being asserted. It was not necessary for a landowner to be notified and lack of such notification did not amount to a 'secret use'.

Referring to the installation of the path, it was considered likely that planning permission would have to have been sought, however, it was unclear as to whether it had been at that time. However, the issue was not an inquiry into the planning status of the route. Instead, the issue for the Committee was to ensure that they were satisfied that the right of way is reasonably alleged to exist.

It was considered that the usage evidence from 1972-1992 did detail use by the public at large and not simply that of a defined group such as residents but this issue was really a matter for legal debate. It was felt that the user group was sufficiently wide enough but conceded that the issue would only be provided with a definitive answer after a public inquiry.

The Senior Rights of Way Officer referred Members to the usage of the path and that the issues about how, why and the paving slabs were slight detractions from the decision and as a Rights of Way Officer Hamsterley Mill Residents Association had asked the former Derwentside District Council to undertake works to the path, however, the County Council was in fact the Highways Authority. People can request that the County Council carry out

works on a right of way, and it would always be looked at, but cost can sometimes be a prohibiting factor.

Councillor Naylor felt that adding the path to the definitive map and statement would enhance the area and it provided a vital route to access facilities. She concluded that she could not see any issue relating to the evidence presented at the meeting.

Councillor Todd explained that considerable amounts of evidence had been provided to indicate that the land in question had been used for the relevant period of time and that use had been evidenced sufficiently to enable it to be classified as a public right of way. He moved the Officer's recommendation.

Councillor Shiell agreed with the observations made by Councillors Naylor and Todd and felt that the necessary use had been demonstrated in accordance with the relevant legislation and also felt that the other issues raised relating to what the Residents Association did nor did not do were not relevant to the decision to be made and seconded Cllr Todd's motion.

Resolved

That the recommendation contained in the report be agreed.