

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Committee Room 2, County Hall, Durham on **Wednesday 8 March 2017 at 9.30 a.m.**

Present:

Councillor G Bleasdale in Chair

Members of the Committee:

Councillors B Armstrong, D Bell, O Gunn, D Hicks, K Hopper, B Kellett, O Milburn, R Ormerod, J Rowlandson, F Tinsley and J Turnbull.

Also Present:

Councillor D Freeman.

1 Apologies for Absence

Apologies for absence were received from Councillors C Kay, J Allen, I Geldard, S Morrison, J Robinson and P Stradling

2 Substitute Members

There were no substitute members present.

3 Minutes

The minutes of the meeting held on 12 December 2016 were agreed as a correct record and signed by the Chair.

4 Declarations of interest

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

5 Durham City South East - High Yard/Church Lane - Parking & Waiting Restrictions Order

The Committee considered a report of the Corporate Director of Regeneration and Local Services regarding a proposal to introduce a 'no waiting at any time' restriction on High Yard, to the rear of Church Lane, Durham City (for copy see file of minutes).

The Committee were informed that High Yard was a short cul-de-sac situated off Hallgarth Street, Durham City, in the vicinity of the Queen Victoria pub.

The Council had received ongoing complaints from local residents and local Members regarding the manner of parking in the area. At present there were advisory white

markings which had been partially successful, however, obstructive parking still occurred at the location which had generated several complaints to the Highways Authority and Local Members.

The Committee then received a presentation detailing the following:

- location plan;
- initial consultation area and proposals; and
- photographs showing the parking issues which were occurring.

(for copy see file of Minutes).

The Committee were informed that an informal consultation exercise had taken place which had generated 10 objections in favour. The report stated that there were 11, however, this was a typographical error in the report. The Traffic Management Manager summarised the objections as follows:

- two objectors didn't believe there was a problem with the present arrangements, however, it was clearly evident from garage users and local members and the photographs that there were issues;
- one objector felt that they were being inconvenienced by the proposal, however, the Committee were advised that whilst that may be the case, the proposals were sound in relation to the interests of road safety and accessibility which were of prime concern;
- three objectors did not state any reasons as to why they had objected to the proposals;
- one objector had clarified their concerns by email prior to the meeting and had explained that they were presently housebound and referred to potential issues of being picked up and dropped off at their home address which they felt would mean that they could be issued with a penalty notice whilst carrying out the operation. In response, the Traffic Management Manager informed the Committee that in the circumstances outlined, officers would observe the vehicle for around 5-10 minutes and would be very unlikely to receive a parking ticket in the instance outlined;
- two objectors felt that the current white lining was sufficient. It was explained that the white line did have limited effect, however white lines were advisory markings only and no action could be taken when people chose to ignore it; and
- one objector felt that there should be a mixed use space comprising a residents permit, pay and display and on-street parking.

The Committee then heard from one of the local councillors for the area. Councillor Freeman explained that cars were obstructing garages, causing residents real difficulty with access. Councillor Freeman felt that the current white advisory road markings were failing as people were simply choosing to ignore them. Councillor Freeman explained that there was sufficient pay and display parking for visitors in nearby Hallgarth Street and could not see any valid reason for rejecting the proposals.

Councillor Ormerod supported the proposals outlined in the report and but was disappointed that the course of action had to be taken, essentially through parking in an inconsiderate manner.

Resolved

That the Committee, having considered the objections, recommend to the Corporate Director of Regeneration and Local Services that the proposal be agreed, with the final decision being made in accordance with the Council's scheme of delegation.

6 Status of Coal and Houselop Lanes, North Moor, Wolsingham

The Committee considered an application which sought to record two public byways, at Coal Lane and Houselop Lanes at Wolsingham North Moor on the Definitive Map and Statement of Public Rights of Way (for copy see file of Minutes).

The Senior Rights of Way Officer informed the Committee of the background to the application. A number of applications had been lodged by a member of the public with the County Council in the 1990s for the registration of public byways in remote pieces of moorland in the Weardale area. The Committee were informed that the two routes referred to in the report were determined by the Highways Committee on 3 March 2011 which resolved to register the routes as public byways. A number of other routes were also considered as part of the report at that time.

Since that decision had been made several issues had arisen which necessitated a re-consideration of the decision, i.e. case law affecting the validity of certain Definitive Map Modification Order applications and a High Court challenge made by the owners of the land affected by three of the other routes determined on 3 March 2011. A total of six routes were considered in March 2011 but that 1 decision was withdrawn by the Committee on 22 Nov 2011. However, of these five remaining routes previously considered by the Committee, three were subject of a successful Judicial Review challenge in June 2013 by the landowner who was not the landowner of the two routes for the matter under consideration.

Negotiations were ongoing with the landowner of the other three routes and consequently they are not under consideration in this report. Whilst the successful JR challenge was not in respect of the two routes subject of this report and the previous decisions in respect of them have not been formally quashed, the legal principles established as a result of that challenge are equally applicable to the two routes, hence the need to reconsider the previous decisions upon them.

The Committee were informed that the application to modify the Definitive Map and Statement was based on evidence of 18th century enclosure and depiction on the nineteenth century maps. A negative of the Award plan and copies of the old 'road' maps and Ordnance Survey maps were submitted with the application. No copy of the Inclosure Award was attached. Further information on Inclosure Acts and Awards in County Durham was referred to in Document A of the report and summarised for the Committee.

An overview of the legal framework was then provided to the Committee. The legal situation was complex, equally as the history relating to the matter. The relevant law

related to Section 66 (1) of the 1981 Act, The Countryside and Rights of Way Act 2000 and the concept of a restricted byway and the Natural Environment and Rural Communities Act 2006, 'the 2006 Act', which provided that where a route is not shown on the Definitive Map and Statement as of 2 May 2006 then rights for mechanically propelled vehicles were extinguished other than where a specified exception applies.

The Committee then received a Google Earth Flyby which provided an overview of the two routes, together with a description of Coal and Houselop Lanes. Both routes were detailed in the report and shown on the following presentation made to the Committee for clarity.

The Committee then received an in-depth presentation which detailed the following:

- Overview of the general location;
- Overview plan shown on 1:25,00 map;
- Wolsingham award plan (North Moor);
- Modern Ordnance Survey map overlaid with Definitive Map and Award routes;
- 1860s (1st edition) Ordnance Survey Plan;
- Modern Ordnance Survey map overlaid with Definitive Map, Award routes and 1st edition Ordnance Survey (1860s); and
- Greenwoods Map 1820's

Consultees included the Local Members, Parish Councils, landowners, path user groups and the North Pennines AONB. An objection had been received from each of the two landowners. The British Horse Society supported the proposals commenting that they felt that the habitat needed to be one consideration and that the surface would not hold up to motorised vehicles, which would potentially see the route being closed meaning it would deprive others if it was inaccessible. They wished to see all unrecorded routes registered.

The Committee then appraised the documentary evidence in order to make new determinations as to the status of each of the two routes in the context of a changed legal landscape since the Committee's previous decisions in 2011. The Legal Adviser also added that the resolutions from the Highways Committee applications under consideration for North Moor and South Moor had been dealt with together. The previous determination for North Moor routes wasn't implemented as it was felt correct to await the outcome of judicial review for the South Moor ones.

The Senior Rights of Way Officer informed the Committee that Applications were statutory in nature and any member of the public could lodge one under the Wildlife and Countryside Act 1981. This application had been based on very old documentary evidence, essentially the 1767 Wolsingham Inclosure Award (North Moor).

The other maps did provide some assistance in that there was some evidence of the existence of Coal Lane and Houselop Lane, albeit on a slightly different route. For example the 1860 map showed that a railway line came across the moorland (Crook to Muggleswick and onto the Tyne). A modern OS map showed a purple line which were existing public rights of way over the land. These routes went partly along the old first edition Ordnance Survey Map. Red routes shown on the plan were from the first edition Ordnance Survey map and blue routes related to the award routes. The red and blue lines were overlapping in places on Coal Lane.

Usually when railway lines were built, there were acts of parliament to create them, however, in this particular instance, this was done by way of a private agreement with the landowners so there were no maps for the area.

The Committee then discussed the Greenwoods 1820 road map which was an original survey map, iconic in nature. It depicted the A68 clearly and there was a route which appeared to resemble Coal Lane and Houselop Lane, albeit on a small scale.

The Wolsingham Inclosure Award was considered to be undisputable evidence of the creation of the public highways specified within it. The Wolsingham Inclosure Act of 1765 went through a legal and constitutional process which has the same authority as national legislation and could not be contested.

The Senior Rights of Way Officer explained that the determination of a Modification Order application was constrained by the criteria explained to the Committee by the Legal Adviser. A decision could not be made on the basis of the impact of the proposals or their desirability or suitability and there was little flexibility for the Council when making decisions on Definitive Map Modification Order proposals.

Although landowners may have legitimate concerns the Council could only work with them in an attempt to try and reduce the impacts of usage of the routes on the land in question. Negotiations had taken place with the owners and the Applicant for more suitable routes which could reduce the impact for the management of the land while providing routes that would be easier to use, specifically a former railway line with a solid surface. However, negotiations had failed, despite the best efforts of officers it was disappointing not to have reached agreement and the applicant had continued to press for his application to be determined by the Council.

Councillor Milburn expressed concern regarding access by motor vehicles and asked if there was anything that could be put in place to ensure that motor vehicles weren't able to access the route either by the local authority or by the landowner.

The Senior Rights of Way Officer explained that the status of the route proposed, being a restricted byway meant that pedestrians, horse riders and cyclists were permitted to use it via a small 5ft gap. Unfortunately this would not deter motorbikes and quad bikes. It could be possible to come to some form of agreement with horse riders to make it more difficult for motorbikes.

Councillor F Tinsley felt that points A-D were clear on the plan and was comfortable having seen the extract from the 1820 map that strong documentary evidence was in place. In terms of Section 53 and the modification order, Councillor Tinsley felt that there was sufficient evidence and was comfortable that the evidence would support the route. Non-vehicular access was important to manage to ensure that the natural habitat could be protected.

Councillor Ormerod felt that the countryside should be open as possible for people and that ownership of the land shouldn't bring about exclusive access. Councillor Ormerod thanked officers for their hard work with so much complex legal framework to contend with and supported the comments made by Councillor Tinsley. Councillor Ormerod questioned what would happen should the recommendation be agreed. In response, the Senior Rights

of Way Officer informed the Committee that an order would be made, advertised in the media and on site for a period of six weeks. It was envisaged that the landowner would object. Should the landowner not withdraw his objection the matter would be likely to be dealt with by way of a public inquiry, either by written representations or by a hearing. The whole process could take anytime from 18-24 months.

Councillor Armstrong felt that a 'restricted byway' would be the most suitable option as having viewed the flyby in the presentation, felt that the route would prove favourable to scrambler bikes and the same situation would occur as had occurred at the Salters Gate area which was riddled with scrambler type bikes every weekend.

In response to a question from Councillor Gunn regarding the strength of evidence of the Wolsingham Inclosure Award in relation to the application being brought before the Committee, the Senior Rights of Way Officer confirmed that they felt that this evidence was indisputable and could be relied upon to be evidence of the highway status.

Resolved

- i. That the resolutions of the Highways Committee of 3 March 2011 to add Coal Lane and Houselop Lanes to the Definitive Map and Statement as Byways Open to All Traffic be rescinded; and
- ii. make a Modification Order to add to the Definitive Map and Statement Coal Lane and Houselop Lanes as restricted byways at a width of 60ft as depicted 'Award Route' on the plan attached at Document G.