

DEVELOPMENT CONTROL AND REGULATION COMMITTEE

Minutes of a Meeting of the Development Control and Regulation Committee held on Wednesday, 13 April 2022 at 10.00 am at Council Chamber - County Offices, Kendal.

PRESENT:

Mr GD Cook (Chair)

Mr RW Betton	Mr AJ Markley
Mr RK Bingham	Mr J Mallinson
Mr A Bowness	Mr W McEwan
Mrs HF Carrick	Mr P McSweeney
Mr F Cassidy	Mr FI Morgan
Mr N Cotton	Mr CP Turner
Mr D English	Mr M Wilson
Mr KR Hamilton	Mr MH Worth

Also in Attendance:-

Mr I Blinkho	- EPW - Lead Lawyer
Mr M Chambers	- Regulation and Compliance Officer
Mr R Cryer	- Lead Officer - Development Control
Mrs J Currie	- Professional Lead - Democratic Services
Ms H Davison	- Member of the Public (Item 8)
Ms A Gadsen	- Member of the Public (Item 8)
Mr D Gibson	- Senior Countryside Access Officer
Ms K Lawson	- Member of the Public (item 8)
Mr E Page	- Planning Officer
Ms J Petersen	- Planning Officer
Ms S Smith	- Countryside Access Officer
Mr D Wright	- Gleeson Homes (Item 8)

PART 1 – ITEMS CONSIDERED IN THE PRESENCE OF THE PUBLIC AND PRESS

65 APOLOGIES FOR ABSENCE

Apologies for absence were received from Mr A McGuckin and Mr D Wilson.

66 CHANGES IN MEMBERSHIP

It was noted that Mr M Wilson replaced Mr A McGuckin as a member of the Committee for this meeting only.

67 DISCLOSURES OF INTEREST

Mr J Mallinson declared a non pecuniary interest in Agenda Item No 8 - Wildlife and Countryside Act 1981 - Section 53 Application to Add Public Footpaths at Deer Park in the City of Carlisle, as he lived close to the site, and had used it in the past. He would not take part in the consideration of the item or vote.

68 EXCLUSION OF PRESS AND PUBLIC

RESOLVED, that, the press and public not be excluded during consideration of any items of business.

69 MINUTES

RESOLVED, that, the minutes of the meeting held on 2 March 2022 be confirmed as a correct record and signed by the Chairman.

70 SAFETY AT SPORTS GROUNDS

Members considered a report by the Executive Director – Economy and Infrastructure which informed the Committee that a Section 10 Prohibition Notice had been served earlier this year, on The Recreation Ground, Whitehaven prohibiting spectator access to areas of the Popular Terrace and Kells Stand, Recreation Ground, but that the notice had now been lifted..

On 3 March 2022 an updated report was presented that was acceptable to the SAG and the Section 10 Prohibition Notice was lifted from the side barriers.

RESOLVED, that the report be noted.

71 WILDLIFE & COUNTRYSIDE ACT 1981 - SECTION 53 APPLICATION TO ADD A PUBLIC FOOTPATH AT PENNY BRIDGE CARTMEL IN THE PARISH OF LOWER ALLITHWAITE: DISTRICT OF SOUTH LAKELAND

The Committee considered a report from the Executive Director – Economy and Infrastructure regarding an application which had been received to add a section of public footpath at Penny Bridge, Cartmel in the Parish of Lower Allithwaite to the Definitive Map and Statement.

Members were presented with the evidence regarding the route and a decision was sought as to whether to proceed with the next stage of the process by making a legal order.

It was reported the main use of the claimed path seemed to be either to access the caravan site, allotments or the pub beer garden, none of which were public places,

as such it would appear that use of the path had been by invitation and exercising a private right rather than a public right.

A gate was present at point D between the end of the bridge and the beer garden of the Royal Oak Inn, which was equipped with a code lock but was presently unlocked. However, with the bridge in disrepair and chained off access beyond point C had not been available for some time.

Members had a number of questions about the route and the ownership of the derelict bridge. A suggestion was made that it might be better to defer this application pending further information.

Officers informed members that they had been trying to identify the landowner for a considerable period of time. Notices had been installed in and around the area but no-one had come forward. They had also requested further evidence from the applicants, but nothing had been provided.

After further consideration of the item it was moved and seconded that the application be deferred for clarification about the extent of the route and for further information about the ownership of the derelict bridge. This was then put to a vote.

With 15 for and 2 against it was **RESOLVED**, that the application be deferred pending additional information.

72 WILDLIFE AND COUNTRYSIDE ACT 1981 - SECTION 53 APPLICATION TO ADD PUBLIC FOOTPATHS AT DEER PARK IN THE CITY OF CARLISLE

Mr J Mallinson declared a non pecuniary interest in this item, as he lived close to the site, and had used it in the past. He did not take part in the consideration of the item.

Members received a report from the Executive Director – Economy and Infrastructure regarding an application which had been received to add sections of public footpath at Deer Park in the City of Carlisle. The Committee noted that this followed an earlier report which was presented to members on 2 December 2021, when it was resolved that the item be deferred to a future meeting following an indication that further user evidence would be available to support the claim.

Members noted the report presented evidence regarding the claimed paths, and for a decision to be made whether to proceed to the next stage of the process by making a legal order.

The Countryside Officer made a presentation using plans and photographs to explain the application in more detail. He took members through the report, and detailed an analysis of all the user claim forms which had been submitted.

As of 30 June 2021 the land in question was transferred to the ownership of a developer, and a submission had been produced on their behalf.

The Countryside Access Officer then detailed the consultations and the Chair then opened the meeting up to public participation.

Karen Lawson – speaking in support

'In over 30 years of living directly opposite Deer Park Field I have witnessed it developing into a valuable community amenity with many well-walked footpaths. When we moved in, in 1988, Etterby Park estate had not yet been built and the whole area from the shops was agricultural land used for grazing cattle and occasionally horses.

Following the building of Etterby Park in 1995 the remainder of the field ceased to have livestock and in the following decades had reverted to a wilder landscape.

Informal footpaths began to be used and landowners over many years did nothing to prevent entry or the footpaths becoming rights of way. In around 2008 or 2009 a single the footpath became formalised and finger posts erected. By this point there were already other good quality paths over the field that had been there for some years.

The finger post opposite number 10 Kingmoor Road pointed in a general direction and immediately divided into 3 paths. The official path could be very muddy during the winter so others were used as alternatives and were used all year.

Of the various informal paths into, across and around Deer Park Field various paths became more well used and regularly used. In the summer months the vegetation grew up more and so it was always easiest walking the already trodden paths and so they became more developed. It was rare to walk in the field without meeting other walkers. My home overlooks the field and I often saw walkers.

We have gathered evidence of long-term use although the nature of the housing in much of the area lends itself to a more transient population which led to our initial challenges gathering information. Many more people had walked the paths regularly over the years but some left before they had walked them for 20 years. We know that others who have now moved away used the field over 20 years ago

Evidence gathering was hindered by the Covid pandemic. We relied mainly on emailing forms and this method does not suit some people. Also some people had extreme difficulty in navigating and completing the evidence forms and during the Covid restriction we were unable to help with this.

- Not everyone who had completed the forms lived near to Kingmoor Road as Gleeson claimed. Evidence statements had come from other parts of Carlisle, Lancashire, Yorkshire and Scotland
- The local OS maps showed many of the footpaths being claimed.
- Page 93 of the document showed that in 2008 there were multiple paths and entrances to the area.
- Why could Gleeson submit evidence against the paths when they do live in the area and have very little local knowledge or understand the

context of the field in our area? And why does their evidence (when they have not known the area for 20+ years) hold more power than our evidence? ‘

Anne Gadsden – speaking in support

‘I am pleased that the council had given us extra time to provide more evidence in support of the above application. We had found that with people having moved through and out of the area over the 20 year period, gathering evidence took a little longer than we had originally anticipated.

Residents in the area, whether long-term or recent, had come forward to talk about the pleasure Deer Park field had provided them, even more so through the last two years of the pandemic. The field had been used by me and my family continuously for 22 years (since we first moved to Carlisle) so I am pleased to be able to give a voice to the many users of the field – all the people who had walked through and in the field, enjoying the wildlife and the sense of calm and refuge the field had provided us for 20 years and more.

The current landowners (property developers who had vested interest) stated that they had an old photograph circa 2003 which they said doesn’t show any sign of paths. I can assure the members here that throughout that time I, my family, and other members of the public were certainly using the same paths that we used today. When the previous application for a public right of way was granted in 2008 there was an acknowledgement at that point that a path through the field had existed since at least 1988. We had submitted evidence to show that there had been no gaps in use of the field in all that time and that the paths used had been consistent and persistent for 20 years and more.

As a regular user of the paths myself, I know that we have always used these paths as they were the easiest and most obvious routes through the field. When I first started walking through the field my children were very young and they followed the paths because these were the simplest ways for them to get around the field and to access the nature reserve. We have followed those routes which were already clear and well-trodden when we started ever since.

We are pleased that the Council Officer had now found that we have provided sufficient evidence of use of these paths, confirming what we were confident about, which was that these paths had been regularly used over 20 years. We hope that members would take those recommendations to authorise the Legal Officer to add the paths as a public right of way.’

Helen Davison spoke to say

‘As local councillor I have heard many stories from residents of their use of the field over many years. Even in the days when it was “cow field” as it was known locally residents were walking in the field and there were certain routes they would take through the field and paths there. The paths had been used for pleasure and residents from nearby and further afield have told me of their enjoyment of walking through and just in the field on the paths as an enjoyable pastime and enjoying the

experience of the field in its own right and part of the experience of going to the nature reserve.

Various residents I have spoken to assumed that it was just part of the nature reserve. Certainly for a long time there had been the three access points into the nature reserve at points G, B and E on the map on Appendix A. When you visit the field at entrance G it was a properly formed entrance into the nature reserve, developed by city council workers at some point. We could not find the city council records for exactly when. But that path into the field and from within the nature reserve was particularly well walked and must have been at the time they created the entrance there that it was created there in the first place.

With regards the fence across the entrance to the field put up by Persimmon at the point it became apparent that residents were looking to claim a right of way over the field, I had a conversation with a first-hand witness who lived very close to the entrance to the field at point A who said that the barrier to the path was there obstructing the path for less than 24 hours before it was moved by someone such that people could still get in. And as was also mentioned there were other routes into the field just nearby that enabled people to get in. Which fits with most people not even finding their route blocked.

A question about section 8.13. It says I-L and M_N haven't had sufficient user evidence forms for 20 years or more. However in para 4.7 and on the map in appendix D it says there were 8 user evidence forms for I-L and 6 for M-N for twenty years or more. I thought the threshold for dedicating use was at least 6 users for over 20 years and I am wondering why they were not being included in the recommendation for rights of way.

If the evidence does fit the criteria I would ask that committee look to add these to the footpaths too, especially given for every resident who had submitted forms there would have been a good number more who had walked them but either didn't hear about the footpath claims or did not, for whatever reason manage to fill in the forms.

I don't know what Gleesons would say in objection but any issues Gleesons now had about cost and other implications for their development would seem to be down to their desire just to push forward with this development without waiting for council processes, such as this footpath application to go through due process. They had known that these footpaths were being claimed from before the time their planning application was approved.

I understand that your decision was based on the weight of evidence of footpath use, which the statements from residents from near and further afield had produced and had to ignore any financial implication of your decision. I therefore hope that along with the officer's recommendations in section 8.11 that the existence of the planning application was irrelevant and that you were able to discount many of the statements made by Gleesons in appendix E in your considerations given they appeared to be misinformed, assumption-based, inaccurate or irrelevant to the process you were going through.

For example I note that Gleeson mentioned they were not aware of existence of other paths at the time the existing footpath was dedicated. However from conversations I have had with an officer the paths were there, it was difficult to find evidence for 20 years of use back at that point (2008) and there was a decision made that it was best to focus on just the one path. But we were now 13/14 years later than this and that 20 years of use had now been clearly demonstrated.

I also note backing up the evidence of there being well established paths in 2008 at the time of the original footpath claim there was an email on p90 of your report from May 2008 from White Young Green which made reference to a variety of paths on the site including one which divided into a number of paths leading into the nature reserve and a well walked path to the north western corner.

This was just one example of where statements from the Gleesons report could be disputed.'

David Wright, Land Director from Gleeson Homes spoke to say

'Having reviewed the evidence which had been provided purportedly in support of this application, we were firmly of the view that this does not meet the required legal test to justify a modification to the definitive map to show the 'claimed' routes.

The evidence provided to support the claim at best indicated sporadic patterns of use, and at times evidence provided by one user directly contradicted other user evidence. At best it could be regarded as being inconsistent and as such, we do not consider that the relevant legal test had been met and therefore, on this basis, we believed that the only lawful decision of the Council would be to refuse to make an order modifying the definitive map (or defer a decision). There was simply insufficient evidence to support the making of an order.

In respect of the evidence which had been taken to inform the recommendation, we believe there were strong grounds to appeal an order made by the Council.

As already outlined, we do not consider there to be sufficient evidence to support the dedication of these claimed rights, and it would be our intention to challenge any order made by the Council to amend the definitive map.

It was firmly our view that there was no public benefit in proceeding with the recommendation today, as it would inevitably lead to an appeal and potentially other proceedings to challenge the order.

We were, however, prepared to work with the Council to achieve an outcome that would benefit all parties, by securing formal rights of way without the costs associated with appeal and other proceedings.

In 2021, planning permission was granted for the development of 80 homes on the land, and this planning permission had since been lawfully commenced. We have enclosed a copy of the Site Layout Plan for the approved housing development, which had been annotated to show the routes of the 'claimed rights of way'.

Notwithstanding our concerns about the weakness of the evidence provided, and in the event that the Order was eventually confirmed, the existence of an extant planning permission, would afford Gleeson Homes the opportunity to seek to divert or extinguish the claimed rights of way. Section 247 or 257 of the TCPA 1990 made provision for the stopping up or diversion of any highway outside Greater London, if it was necessary so to do in order to enable development to be carried out in accordance with a planning permission.

With this in mind, we see little public benefit in committing significant cost and resources to progressing this Order, when alternative solutions existed which would achieve the same objective.

As such, we would ask the Council to consider deferral of this item to allow the developer, in conjunction with the County Council, Carlisle City Council and ideally local residents to work together to formally secure additional public rights of way through the development site and into the neighbouring Nature Reserve.

Whilst it would not be our intention to amend the approved scheme layout, we do consider there to be opportunities for enhanced movement through the site, providing additional access points (subject to the agreement of the City Council as landowner) to the Nature Reserve utilising existing and proposed footpaths and roads within the approved development. In doing so, we would not raise any objections to the dedication of any such agreed routes.

In considering the above points, we were firmly of the view that it was in the public interest for the Council and ourselves to work collaboratively to dedicate alternative routes through the site, rather than for the Council to approve the recommendation today.'

Members had a number of questions for the developer about the evidence of use provided and their conclusions about the use of the paths being sporadic.

Mr Wright answered all the questions posed by members.

Members asked about the suggestion by the developer that an amicable solution could be sought to re-route the paths. Officers confirmed that once it had been established by the evidence that the footpath existed, they would need to be stopped up or diverted by the relevant statutory process.

Upon conclusion of the discussions the officer's recommendation was moved and seconded and upon being put to the vote, with 16 for and 1 abstention, it was **RESOLVED**, that

- (1) the Chief Legal Officer be authorised to make an order under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the effect of which, if confirmed, would be to add the sections of public footpath at Deer Park in the City of Carlisle marked A-C-D-E-F and H-J-(K)-O-N-C (as shown on the map annexed at Appendix B of the report) to the County Council's Definitive Map and Statement of Public Rights of Way;

(2) if there are no objections to the made order members authorise the Chief Legal Officer to confirm the order.

73 HIGHWAYS ACT 1980 SECTION 25 DEDICATION OF SECTION OF PUBLIC FOOTPATH IN THE PARISH OF BRIDEKIRK DISTRICT OF ALLERDALE

Mr Worth left the meeting at this point.

The Committee considered a report by the Executive Director – Economy and Infrastructure which informed members that Bridekirk Parish Council had identified a requirement for a safe off-road pedestrian route within the village of Dovenby, to link the two existing bus stops with the rest of the village.

Members were informed that as part of the scheme the landowners had agreed to dedicate land for the section of public footpath (as shown on the plan at Appendix A to the report) whilst noting that the dedication of the route could be carried out by an Agreement under Section 25 of the Highways Act 1980.

Members indicated support for this dedication and it was proposed and seconded and put to a vote.

With 16 for and no abstentions it was **RESOLVED**, that (pursuant to the power set out at Part 2G paragraph 2.1(g)(i) of the County Council's Constitution), the Chief Legal Officer be authorised to enter into an Agreement under Section 25 of the Highways Act 1980 with the relevant landowners to create a public footpath in the parish of Bridekirk (as shown A-F on the plan at Appendix A to the report).

The meeting then adjourned at 11.25am and reconvened at 11.35am.

74 APPLICATION REFERENCE NO 4/21/9005 - PROPOSAL: CONSTRUCTION OF LIGHTLY SHIELDED STORE (LSS1), ANCILLARY SUPPORT BUILDINGS AND ASSOCIATED INFRASTRUCTURE. LOCATION: SELLAFIELD LTD, SEASCALE, CA20 1PG

Members considered a report from the Executive Director – Economy and Infrastructure regarding Application Reference No. 4/21/9005: Proposal for the Construction of Lightly Shielded Store (LSS1), ancillary support buildings and associated infrastructure at Sellafeld Ltd, Seascale, CA20 1PG.

The Planning Officer gave members a presentation using plans and photographs to explain the planning application. The officer also took members through the report in detail.

The Planning Officer recommended that the application be granted subject to the conditions set out in Appendix 1 of the report.

One of the members asked whether any consideration had been given to installing solar panels on the roof of the new building.

Members queried a number of the acronyms/abbreviations referenced in the report and the officers responded in respect of these.

The officer responded to say that this had been considered by the applicant but there was an incompatibility of solar PV with their existing energy systems on site.

The recommendation was moved and seconded and put to a vote, which was cast as followed: 16 members in favour, 0 against and 0 abstentions.

RESOLVED, that planning permission be granted subject to the conditions set out in Appendix 1 of the report.

75 APPLICATION REFERENCE NO 5/22/9003 - PROPOSAL: ERECTION OF AN EXTENSION TO PROVIDE A NEW CLASSROOM, MEETING ROOM, SANITARY FACILITIES, AND OTHER ANCILLARY SPACES WITH ASSOCIATED DEMOLITION OF AN EXISTING OUTBUILDING TO ACCOMMODATE THIS; AND ERECTION OF A NEW EXTERNAL STORE. LOCATION: LEVENS C OF E PRIMARY SCHOOL, CHURCH ROAD, LEVENS, KENDAL, LA8 8PU

Members considered a report from the Executive Director – Economy and Infrastructure regarding Application Reference No. 5/22/9003: Proposal for the erection of an extension to provide a new classroom, meeting room, sanitary facilities, and other ancillary spaces with associated demolition of an existing outbuilding to accommodate this; and erection of a new external store at Levens C of E Primary School, Church Road, Levens, Kendal, LA8 8PU.

The Planning Officer gave members a presentation using plans and photographs to explain the planning application, and summarised the key conclusions within the report.

The officer drew members' attention to the old dining room which had been used until 2017. This room was no longer utilised by the school, and no change of its use had occurred since.

The Planning Officer recommended that the application be granted subject to the conditions set out in Appendix 1 of the report.

A member queried whether the new external store should be faced with stone instead of the proposed timber cladding. The Planning Officer said this had been considered but felt the proposed timber cladding material had a more modern look and would tie in neatly in the glimpses of timber clad classroom extension available from Church Road.

It was proposed and seconded that members accept the officer recommendation and this was then put to a vote.

With 16 members voting in favour and 0 against, and no abstentions it was **RESOLVED**, that planning permission be granted subject to the conditions set out in Appendix 1 of the report.

76 APPLICATIONS DETERMINED UNDER DELEGATED POWERS

RESOLVED, that the list of applications determined under delegated powers be noted.

77 APPLICATIONS PROPOSED TO BE DETERMINED UNDER DELEGATED POWERS

RESOLVED, that the list of applications proposed to be determined under delegated powers be noted.

78 FORWARD PLAN

The list of applications to be considered at future meetings was discussed.

Members were provided with an update on the West Cumbria Mining application.

There were no site visits currently scheduled for May 2022. However, members requested that a site visit be in the future to High Close Quarry.

RESOLVED, that the Forward Plan be noted.

79 DATE AND TIME OF NEXT MEETING

It was noted that the next meeting of the Committee would be held on Tuesday 7 June 2022 at 10.00 am at County Offices, Kendal.

The meeting ended at 12.30 pm