

## **DEVELOPMENT CONTROL AND REGULATION COMMITTEE**

Minutes of a Meeting of the Development Control and Regulation Committee held on Tuesday, 7 June 2022 at 10.00 am at Council Chamber - County Offices, Kendal, LA9 4RQ

### **PRESENT:**

Mr GD Cook (Chair)

Mr A McGuckin (Vice-Chair)	Mr KR Hamilton
Mr RW Betton	Mr AJ Markley
Mr RK Bingham	Mr W McEwan
Mr A Bowness	Mr P McSweeney
Mrs HF Carrick	Mr FI Morgan
Mr N Cotton	Mr CP Turner
Mr D English	Mr MH Worth
Mr D Gawne	

### **Also in Attendance:-**

Ms S Bainbridge	-	Commons Registration Officer
Mr I Blinkho	-	EPW - Lead Lawyer
Mr M Brennand	-	Lead Officer Historic Environment and Commons
Mr R Cryer	-	Lead Officer – Development Control
Mrs J Currie	-	Democratic Services
Mr A Sims	-	Countryside Access Officer

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

#### **1 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Mr F Cassidy, Mr J Mallinson and Mr D Wilson.

#### **2 CHANGES IN MEMBERSHIP**

It was noted that Mr D Gawne replaced Mr J Mallinson as a member of the Committee for this meeting only.

#### **3 DISCLOSURES OF INTEREST**

Mrs H Carrick declared a non pecuniary interest in Agenda Item No 9 – Wildlife and Countryside Act 1981 – Section 53 Application to delete a section of public footpath no 358037, as one of the residents was known in a professional capacity to her husband. She would take no part in the discussion or vote in this item.

Mr P Turner declared a non pecuniary interest in Agenda Item No 9 – Wildlife and Countryside Act 1981 – Section 53 Application to delete a section of public footpath no 358037, as one of the applicants was a previous work colleague of his, whom he had not seen for number of years.

#### **4 EXCLUSION OF PRESS AND PUBLIC**

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

#### **5 MINUTES**

**RESOLVED,** that, the minutes of the meeting held on 13 April 2022 be agreed with the following amendment:-

Minute No 72 – 3<sup>rd</sup> paragraph add in the word ‘was’ between ‘and’ and ‘for’ so it now read ‘claimed paths, and was for a decision’.

#### **6 CA13/34 - APPLICATION TO CORRECT NON- REGISTRATION OF COMMON LAND; TWO PARCELS OF LAND ABUTTING CL58 ESKDALE COMMON**

The Development Control and Regulation Committee considered a report from the Executive Director – Economy and Infrastructure which informed members that an application had been received from the Open Spaces Society to register as common land 0.76 hectares of land at Wasdale and 0.28 hectares of land at Eskdale. Both parcels abut CL58 Eskdale Common and the committee was asked to decide as to whether the application should be granted and a correction made to the Council’s register of common land.

The Commons Registration Officer took members through the background to this application.

The Applicant claimed that the Application Land was not at any time finally registered as common land or as a town or village green under the Commons Registration Act 1965. The Applicant further claimed that the Application Land was subject to a Deed of Declaration and an Order of the Minister of Agriculture and Fisheries Imposing Limitations on and Conditions as to the Exercise of Rights of Public Access. The Applicant requested that the Application Land was added to register unit CL58 Eskdale Common.

The officer then took members through the supporting evidence, the representations received and the response from the applicant to the representations.

The Commons Registration Officer had considered the representations and the Applicant’s reply, and advised the members that the registration authority could only

take into account the facts and evidence which related to the legal test set out in paragraph 2 of Schedule 2 to the 2006 Act. The Officer was of the opinion that this test had been satisfied, and believed that the points made by the representations were outside the scope of the legal test and, therefore, should not be taken into account.

The Officer then explained to members the concerns raised that registration of the Eskdale Parcel as common land would create an obstacle for highway authorities, and why she did not believe this to be a material consideration for the purposes of this application, and that the Committee should resolve that the Application was accepted and the Application Land be added to the register of common land.

Members had a number of questions for clarification, which the Commons Registration Officer answered.

The Chair notified the committee that there had been one request for public participation from Mr Lasper, although he was not in attendance at the meeting.

Mr Lasper's representation was then read out by the Lead Officer – Development Control.

'Has Jones understood:

- that this Application depends on the land being "common land" within paragraph 2(2)(b)(iv);
- that that Schedule is concerned with the correction of registration failures under the 1965 Act", i.e. the Commons Registration Act of that year;
- that section 22(1) of that Act expressly excludes highway land from the meaning of "common land" registrable under that Act; and
- that the bridleway that Jones has found to exist over part of the Eskdale Parcel is a highway?

Why then, does Jones not except from her recommendation of acceptance of the Application the bridleway in the Eskdale Parcel?

The Committee ought also to invite Jones to correct her advice that highway authority works on the bridleway are exempt from section 38 by virtue of subsection (6)(a); that advice is irreconcilable with published Defra views (paragraph 189 of Defra's Explanatory Notes on the 2006 Act)."

The Chair thanked the Lead Officer for reading the representation.

Members then asked for clarification on the points raised and the recommendations were then moved, seconded and put to a vote.

With 15 members voting for, 0 against and 0 abstentions it was

**RESOLVED,** that the Committee accepts the application and resolves to amend the common land register on the grounds that the Application Land was not at any time finally registered as common land or as a town or village green under the Commons Registration Act 1965 and that it is recognised as common land in the Deed of Declaration made under section 193(2) of the Law of Property Act 1925 on 7th April 1933 and in the Order of Limitations made under paragraph (b) of the proviso to section 193(1) of the 1925 Act on 17th January 1934, and thus satisfies the criteria for registration specified in paragraph 2 of Schedule 2 of the Commons Act 2006.

**7 HIGHWAYS ACT 1980 SECTION 118 - PUBLIC FOOTPATH NO 115033  
PARISH OF FARLAM: DISTRICT OF CARLISLE**

The Countryside Access Officer presented a report from the Executive Director – Economy and Environment which informed members that the County Council had made an order under Section 118 of the Highways Act 1980 on 26 September 1997 to extinguish a section of public footpath no 115033 at Silver Side in the parish of Farlam.

The Order was made to extinguish a section of public footpath no 115033 at Silver Side in the parish of Farlam on the basis that it was not needed for public use and would be replaced by a newly dedicated nearby public bridleway.

The three affected landowners at the time were prepared to dedicate bridleway rights subject to a section of footpath 115033 being relocated onto a hard track around the edge of the field. However, negotiations with the three landowners had broken down and there was unlikely to be any formal agreement to dedicate the bridleway rights.

The Countryside Access Officer was therefore recommending the Order be abandoned.

One of the members asked for clarification on whether the footpath was Silver Top, or Silver Side. The officer confirmed it was Silver Side.

The recommendation was then moved and seconded and put to a vote, which was unanimously carried.

**RESOLVED,** that, the County Council abandon the Order made under Section 118 of the Highways Act 1980 to extinguish public footpath no 115033 in the parish of Farlam, and all those who made representations or objections to the Order be informed.

**8 HIGHWAYS ACT 1980 SECTION 119 - PUBLIC FOOTPATH NOS 135005,  
135006 AND 135020 PARISH OF WALTON: DISTRICT OF CARLISLE**

Mr K Hamilton left the meeting at this point.

Members had before them a report from the Executive Director – Economy and Infrastructure which informed them that in 2002 the County Council made orders under Section 119 of the Highways Act 1980 to divert public footpath nos 135005, 135006 & 135020 at Dovecote in the parish of Walton, in the interests of the public as part of the Hadrian’s Wall Path National Trail.

However, following the making of the Orders concerns were raised regarding the suitability of the diversionary routes and a more sustainable alternative route for the National Trail was later established. Approval was now sought to abandon the Orders.

Members asked questions for clarification, which were duly answered, and then the recommendation was moved and seconded and put to a vote.

With 13 for, 0 against and 1 abstention it was

**RESOLVED,** that the County Council abandon the orders made under Section 119 of the Highways Act 1980 to divert public footpath nos 135005, 135006 & 135020 at Dovecote in the parish of Walton as copies attached at Appendix B of the report.

**9 WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53 APPLICATION TO DELETE A SECTION OF PUBLIC FOOTPATH NO 358037 IN THE PARISH OF PENRITH DISTRICT OF EDEN**

Mrs H Carrick had declared a non pecuniary interest in this item, as one of the residents was known in a professional capacity to her husband. She did not take part in the debate or vote.

Mr P Turner declared a non pecuniary interest in Agenda Item No 9 – Wildlife and Countryside Act 981 – Section 53 Application to delete a section of public footpath no 358037, as one of the applicants was a previous work colleague of his, whom he had not seen for a number of years.

Members had before them a report from the Executive Director – Economy and Infrastructure which detailed two applications that had been received to remove a section of public footpath from the Definitive Map and Statement. These applications relate to public footpath no 358037 at Milestone House in the parish of Penrith.

Members were asked to consider all the available evidence and for a decision to be made whether to proceed with the next stage of the process by making a legal order to remove the section of public footpath from the Definitive Map and Statement.

Footpath 358037 was presently legally recorded as passing through the gardens of the properties Milestone House and The Hollies.

An objection had been received from the local representative of the Ramblers on the basis that there was clear evidence of the existence of the path but if evidence were produced showing the path should go on a different route between the buildings,

then the Ramblers Association may find an order to amend the route acceptable but the evidence so far was not sufficient.

Cumbria Local Access Forum suggested resolving the problem by means of a diversion order pursuant to section 119 of the 1980 Highways Act. This may be possible although a decision was first required on this Wildlife and Countryside Act 1981 section 53 application.

Mr Hamilton returned to the meeting at this point.

The applicant landowners agree the route cannot be a cul-de-sac but believed it originally may have passed to the south of Milestone House. Although there were physically possible routes south of Milestone House there was insufficient evidence to support the proposal. The Countryside Access Officer asked members to note Milestone Cottages were built around 1937 before the path was claimed.

The officer said it was doubtful that this path 358037 was a cul-de-sac stopping at point B. It was very unlikely that when the definitive map was drawn up it should have recorded that the path ended at The Hollies. The section A-B was originally recorded and numbered as part of a continuous route from Penrith to approximately 1km east of Milestones where it meets a public vehicular carriageway. Considerable evidence points to the footpath continuing to and over the main road adjacent to Milestone House. All old plans inspected show routes which the path could have taken to link with the A6 main road. The first 1966 Definitive Statement says the path continues from Milestone House in a north-easterly direction from a gate on the side of the A6 main road. The current 1976 Definitive Statement says the path goes from field gate alongside the A6 main road at Milestone House north-easterly through fields.

The applicants agreed that the path could not have been a dead end stopping at point B before entering The Hollies. There are several routes which the path could have taken around Milestone House and believed it should pass to the south of Milestone House and Milestone Cottages.

The applicants had demonstrated that the Definitive Line was physically impossible to use and was unlikely to have ever been walked and they had witnesses that said they were unaware of a public right of way crossing the Milestone property.

The Countryside Access Officer believed the evidence was of insufficient weight to show that this route should be deleted and to support any alternative option. He considered the evidence required to pass the stringent legal tests to delete a public right of way had not been provided in support of these applications and, therefore, recommended that the application be rejected.

Mr McGuckin arrived at the meeting at this point.

Members asked the Countryside Access Officer a number of questions, both for clarification and their understanding of the issue. The officer responded to these and a lengthy debate then took place.

On conclusion of the questions the Chair opened the meeting up to public participation.

The Lead Officer – Development Control read out a statement from Mr Dugdale:-

“The applications to delete part of the footpath were made in December 2007 and early 2008, some 14 1/2 years ago during which time one of the applicants, Mr Bowler has died.

On 24th May 2022 I received an email advising me that the hearing to consider the application would be held on 7th June 2022, giving me 14 days notice and on the following date, 25th May I received your email informing me that the deadline re submission of any representation that I would like to make was midnight on 30th May, providing me with 6 days to respond. Infact the online report was not available immediately, reducing the time I have to respond to a couple of days. This is hardly fair to the applicant

I have a number of concerns re this report

Paragraph 1.2 states that the purpose of the report is to consider all the available evidence and yet all of the evidence is not attached or included in this report .

Are the statements of the witnesses described at Paragraph 4.12 being made available to the Council. There is a statement from witness Heather Thompson who resided in the cottages from 1950 - 1976 (26 years) and she provided evidence that there was no footpath running down the south side of what is now The Hollies and describes in detail why this was not the case. This statement was provided as evidence with associated maps and diagrams. In addition there are accounts from John and Annie Hodgson, brother and sister who resided at the farm house or adjacent cottages for the period 1935 - 1974 and describe in detail how the route of the footpath did not cross the farmyard and did not run alongside the south of the farm buildings. It is my belief that Mr Hodgson and Ms Hodgson are now deceased and their evidence was never verified by ant representative from the Highways Dept even though their accounts were presented to them. Accounts from witnesses who resided at this location between 1935 - 1976 have to be regarded as irrefutable evidence that the footpath did not follow the route which is being challenged

Paragraph 4.4 Definitive statement and map (Appendix D and E refers) The original definitive statement states that the footpath went to a field gate onto road at Milestone House, continuing north easterly from field gate on opposite side of the road, through fields (field gates) etc This is supported by the map at appendix D which highlights the field gates (F.G) , These are shown to the south side of the original property, Milestone House. I have supplied photographic evidence of the footpath sign (indicating PUBLIC FOOTPATH THACKA LANE) in a location well to the south of The Hollies, Milestone House farm located at a field gate and opposite a field gate on the other side of the road which would have taken you by the south side of Milestone Cottages. This photograph has not been included in the report. Milestone cottages at that time were enclosed within a walled area of minimal curtilage. (as shown in Appendix I of this report

There is not and never has been a field gate either side of the route of the footpath to which this application applies, a site visit would afford clarity regarding this. There have been two site visits from members of Council Highways and both confirmed that the footpath could not have followed the route being challenged.

In addition, there are two original sandstone walls blocking the route of this footpath, it would be impossible to cross these walls, which have significant drops and are retaining walls, the buildings are in a location where land drops several metres from back to front, these walls, a site visit would confirm, are obviously original and are necessary to retain the land behind them. I have provided the Highways staff with a number of photographs and maps throughout decades indicating the position of these walls

Paragraph 4.11 states that there is today little evidence of any gates (I note the omission of the word field gates as described in both definitive statements) in fact there is no evidence of such which strongly supports the argument that the path did not exist at this location.

Paragraph 4.14 the map at Appendix D the thick black line as mentioned and the scale (undetermined) make it unclear as to where exactly the line runs, however what is important is that quite clearly Field gates (F.G) are highlighted at both the points the footpath crosses the A6 road. I am unable to even see the properties known as Milestone cottages on this map

Paragraph 8.3 states that the applicant have only demonstrated that the definitive line could not have been walked in recent years, however I have provided witness evidence that it was not used, nor could it have been used for the period dating back to the 1920's, a period of nearly one hundred years. I have resided at The Hollies since 1994 (28 years), no one has used this route during that time

Paragraph 8.4 I submit that on the balance of probabilities the route shown on the definitive map is incorrectly recorded and there is irrefutable evidence to support this

I have only had the time to highlight a few issues due to the limited time constraints placed on me by your timetable.

I think it only fair that the council reach a decision having viewed all of the available evidence.”

The Chair thanked the officer for reading the statement, and members asked further questions for clarification.

The recommendation was then moved, seconded and voted upon. With 10 for, 2 against, 1 abstention and 3 not voting due to not being in the meeting for the full discussion it was

**RESOLVED,** that the applications to delete a section of public footpath no 358037 in the parish of Penrith (shown A-B on the map annexed at Appendix A) be rejected.

The meeting then broke at 11.15am and reconvened at 11.25am.

**10 APPLICATION REFERENCE NO. 3/22/9002. PROPOSAL: INSTALLATION OF ROOF MOUNTED SOLAR PHOTOVOLTAIC PANELS. LOCATION: BROUGH COMMUNITY PRIMARY SCHOOL, CHURCH BROUGH, KIRKBY STEPHEN, CA17 4EW**

Members considered a report from the Executive Director – Economy and Infrastructure, which detailed a planning application for the installation of Solar Photovoltaic (PV) Panels on the roofs of a number of buildings at Brough Community Primary School in Church Brough. The application proposed installation on three different distinct roof elements.

The applicant wished to decarbonise their electricity supply by providing decentralised renewable energy and realise energy cost-savings that could be utilised to help financially sustain the school and help drive forward improved delivery of the curriculum.

Planning permission was required because the proposed solar panels would be within 1 metre of the external edge of some of the pitched roof elements.

The Planning Officer took members through the report in detail.

One of the members asked for clarification on which buildings would have the solar panels on, and the Planning Officer responded to say they would be installed on the rear elevation.

The same member asked if the solar panels would be seen from the public footpath, and the officer replied to say they would only be viewable from a very short section of the bridleway that ran alongside the southern boundary of the school.

The member responded to say he was unhappy about the panels being installed on the Victorian structure and felt the County Council should be safeguarding the appearance of the historic Victorian building in its entirety. He suggested an amendment to the proposals, but this was not carried.

The Planning Officer recommendation was then moved and seconded and put to a vote.

With 15 votes for, 1 against and 0 abstentions it was

**RESOLVED,** that Planning Permission be **GRANTED** subject to the conditions set out in the report.

**11 APPLICATIONS DETERMINED UNDER DELEGATED POWERS**

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

**12 APPLICATIONS PROPOSED TO BE DETERMINED UNDER DELEGATED POWERS**

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

**13 FORWARD PLAN**

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

Members noted that the decision from the Secretary of State on the West Cumbria Mining application was due next month, and that the A595 Grizebeck Improvement Scheme application was likely to be considered in September. Members requested a site visit be arranged for this application. The Lead Officer – Development Control confirmed that a site visit would be arranged for this application.

**RESOLVED** that,

- (1) The Forward Plan be noted;
- (2) The site visit scheduled for June be removed from the schedule.

**14 DATE AND TIME OF NEXT MEETING**

The next meeting of the Committee will be held on 15 July 2022 at 10.00am in County Offices, Kendal.

The meeting ended at 11.40 am