

**MINUTES** of a meeting of the **REGULATORY, LICENSING & APPEALS COMMITTEE** held on **29 OCTOBER 2018** at County Hall, Matlock

**PRESENT**

Councillor R A Parkinson (in the Chair)

Councillors: R Ashton, C Dale, J Frudd, P Makin, J Innes, J Perkins, C Short, D Taylor and M Wall

Apologies for absence were received on behalf of Councillor M Wall.

Also in attendance were 6 members of the public.

Councillor R A Parkinson declared a non-pecuniary interest in relation to Agenda Item 9 as a member of the British Horse Society

**58/18** **MINUTES RESOLVED** that the minutes of the meeting held on 10 September 2018 be confirmed as a correct record and signed by the Chairman.

**59/18** **WILDLIFE AND COUNTRYSIDE ACT 1981- CLAIM TO ADD A FOOTPATH FROM BRAMLEY ROAD TO LIGHTWOOD ROAD – PARISH OF ECKINGTON** Members were asked to determine an application to amend the Definitive Map and Statement by adding a public footpath from Bramley Road to Lightwood Road in the Parish of Eckington

The Council had received an application dated 13 January 2016, to add a public footpath to the Definitive Map and Statement. The application was accompanied by eleven user evidence forms, an undated letter from the applicant addressed to the Council and a photograph. A plan showing the claimed route was appended to the Director of Legal Service's report.

An informal consultation exercise was carried out between 18 April 2017 and 23 May 2017. Notices were placed on the route and letters were sent to the statutory consultees, landowners and the local elected members, Cllr Diane Charles and Cllr Brian Ridgway. Details of the responses received were given in the Director of Legal Services report.

The Director of Legal Services summarised all of the available evidence as detailed in the report and gave her conclusions to the committee.

**RESOLVED** that the Director of Legal Services be authorised to make an order under section 53 of the Wildlife and Countryside Act 1981 to add to the definitive map and statement a footpath from Bramley Road to Lightwood Road in the Parish of Eckington as shown between Points A-B-C-D on the plan appended to the Director of Legal Service's report.

**60/18      WILDLIFE AND COUNTRYSIDE ACT 1981 - CLAIM TO ADD FOOTPATHS WITHIN THE GROUNDS OF SHERWOOD LODGE – OLD BOLSOVER TOWN** Members were asked to determine an application to amend the Definitive Map and Statement by adding public footpaths within the grounds of Sherwood Lodge in Old Bolsover Town.

The Council had received an application dated 3 March 2016, to add public footpaths to the Definitive Map and Statement. The application was accompanied by thirty-two user evidence forms, a copy of a transcript of conveyance dated 24 June 1941 between the vendors of Sherwood Lodge and the Urban District Council of Bolsover, a copy of Land Registry titles and copy of the applicant's letter & enclosures dated 21 September 2015 addressed to the Economy, Transport and Environment department. A plan showing the claimed route was appended to the Director of Legal Service's report.

An informal consultation exercise was carried out between 2 May 2017 and 6 June 2017. Notices were placed on the route and emails/letters were sent to the statutory consultees, landowners and the local elected Member, Cllr Joan Dixon. Details of the responses received were given in the Director of Legal Services report.

The Director of Legal Services summarised all of the available evidence as detailed in the report and gave her conclusions to the committee.

**RESOLVED** that the Director of Legal Services be authorised to reject the application under section 53 of the Wildlife and Countryside Act 1981 to add to the definitive map and statement footpaths within the grounds of Sherwood Lodge in Old Bolsover Town as shown on the plan attached to this report.

**61/18      WILDLIFE AND COUNTRYSIDE ACT 1981 – CLAIM TO ADD A FOOTPATH FROM BRIDGE STREET (A6) AROUND THE PERIMETER OF FIELD THEN EXIT TO A6 OPPOSITE GIBFIELD LANE – BELPER** Members were asked to determine an application to amend the Definitive Map and Statement by adding a footpath from Bridge Street (A6) around the perimeter of the field then exit to A6 opposite Gibfield Lane in Belper.

The Council had received an application dated 17 September 2015 to add a footpath from Bridge Street (A6) around the perimeter of the field then exit to A6 opposite Gibfield Lane in Belper to the Definitive Map and Statement. The application was supported by a plan showing the claimed route, photographs and 28 User Evidence Forms. A plan showing the claimed route was appended to the Director of Legal Service's report.

Following receipt of the application correspondence was received from one of the landowners opposing the application on the basis that although they had no objections to members of the public using the private land to access the river they did not wish this to become a public right of way as they wished to keep control of the private land and for the route to be made concessionary.

Further correspondence was received from the same landowner which was summarised in the Director of Legal Service's report.

An informal consultation exercise was carried out between 18 April 2017 and 23 May 2017. Notices were placed at either end of the route at the beginning of the consultation period and letters were sent out to the statutory consultees, landowners and the elected Local Members at that time Councillors' John Owen and David Taylor.

Responses were received both in support of and opposition to the application, which were detailed in the Director of Legal Service's report.

Mr T Burton, applicant, attended the meeting and made representations in support of the officers recommendation.

The Director of Legal Services summarised all of the available evidence as detailed in the report and gave her conclusions to the committee.

**RESOLVED** that the Director of Legal Services be authorised to make an Order under s53 Wildlife and Countryside Act 1981 to amend the Definitive Map and Statement for Derbyshire by adding to them a footpath from Bridge Street (A6) around the perimeter of the field then exiting to the A6 opposite Gibfield Lane – Belper.

**62/18      WILDLIFE AND COUNTRYSIDE ACT 1981 - CLAIM TO ADD A FOOTPATH FROM BRIDGE STREET (A6) TO MORRISON'S SERVICE ROAD – BELPER.** Members were asked to determine an application to amend the Definitive Map and Statement by adding a footpath from Bridge Street (A6) to Morrison's Service Road in Belper.

The Council had received an application dated 17 September 2015 to add a footpath from Bridge Street (A6) to Morrison's Service Road in Belper to the Definitive Map and Statement. The application was supported by a plan showing the claimed route, photographs and 28 User Evidence Forms.

Following receipt of the notice of application correspondence was received from the landowners in opposition to the application, the details of which were summarised in the Director of Legal Service's report.

An informal consultation exercise was carried out between 18 April 2017 and 23 May 2017. Notices were placed at either end of the route at the beginning of the consultation period and letters were sent out to the statutory consultees, landowners and the elected Local Members at that time Councillors' John Owen and David Taylor.

Responses were received both in support of and opposition to the application, which were detailed in the Director of Legal Service's report.

The Director of Legal Services summarised all of the available evidence as detailed in the report and gave her conclusions to the committee.

**RESOLVED** to reject the application to add a footpath from Bridge Street (A6) to Morrison's Service Road in Belper.

**63/18 WILDLIFE AND COUNTRYSIDE ACT 1981- CLAIM TO ADD A BRIDLEWAY FROM PUBLIC BRIDLEWAY NO.39 TO PUBLIC FOOTPATH NO. 38 – CHESTERFIELD UPGRADE PUBLIC FOOTPATH NO. 38 (PART) TO BRIDLEWAY – CHESTERFIELD UPGRADE PUBLIC FOOTPATH NO. 209 (PART) – CHESTERFIELD ADD A BRIDLEWAY FROM PUBLIC FOOTPATH NO. 209 – CHESTERFIELD TO PUBLIC FOOTPATH NO. 73 – PARISH OF BARLOW UPGRADE PUBLIC FOOTPATH NO. 73 (PART) TO BRIDLEWAY – PARISH OF BARLOW**

Members were asked to determine an application to amend the Definitive Map and Statement by adding a bridleway from Public Bridleway No. 39 to Public Footpath No. 38 – Chesterfield (as shown A – B on the plan attached to the Director of Legal Service's report), upgrading of Public Footpath No. 38 (Part) to bridleway – Chesterfield (as shown B – C), upgrading of Public Footpath No. 209 (Part) to bridleway (as shown C – D), adding a bridleway from Public Footpath No. 209 – Chesterfield to Public Footpath No 73 – Parish of Barlow (as shown between Points D – E), and upgrading of Public Footpath No 73 (Part) to bridleway – Parish of Barlow (as shown between Points E – F).

The Council had received an application from the British Horse Society dated 16 October 2015 to add a bridleway from Public Bridleway No.39 to

Public Footpath No. 38 – Chesterfield, upgrade Public Footpath No. 38 (Part) to bridleway – Chesterfield, upgrade Public Footpath No. 209 (Part) – Chesterfield, add a bridleway from Public Footpath No. 209 – Chesterfield to Public Footpath No. 73 – Parish of Barlow, and to upgrade Public Footpath No. 73 (Part) to Bridleway – Parish of Barlow. The application was supported by a plan showing the claimed route and 18 User Evidence Forms.

An informal consultation exercise was carried out between 02 May 2017 and 06 June 2017. Notices were placed at either end of the route at the beginning of the consultation period and letters were sent to the statutory consultees, land owners and the elected Local Members at the time, Councillor Dean Collins and Councillor Stuart Ellis.

Responses were received both in support of and opposition to the application, which were detailed in the Director of Legal Service's report.

Mr D Sparkes, attended the meeting and made a number of observations regarding the validity of evidence provide by horse riders who had ridden along footpaths. This was duly noted and answered by the Director of Legal Services' representative.

The Director of Legal Services summarised all of the available evidence as detailed in the report and gave her conclusions to the committee.

**RESOLVED** to reject the application to add a add a bridleway from Public Bridleway No.39 to Public Footpath No. 38 – Chesterfield, upgrade Public Footpath No. 38 (Part) to bridleway – Chesterfield, upgrade Public Footpath No. 209 (Part) – Chesterfield, add a bridleway from Public Footpath No. 209 – Chesterfield to Public Footpath No. 73 – Parish of Barlow, upgrade Public Footpath No. 73 (Part) to Bridleway – Parish of Barlow.

**64/18      WILDLIFE AND COUNTRYSIDE ACT 1981 - CLAIM TO ADD A FOOTPATH FROM MOOR LANE TO PUBLIC FOOTPATH NO. 19 – PARISH OF KIRK IRETON** Members were asked to determine an application to amend the Definitive Map and Statement by adding a footpath from Moor Lane to Public Footpath No. 19 in the Parish of Kirk Ireton.

The Council had received an application dated 7 March 2016 to add a footpath from Moor Lane to Public Footpath No.19 in the Parish of Kirk Ireton to the Definitive Map and Statement. The application was supported by a plan showing the claimed route and 12 User Evidence Forms. A plan showing the claimed route was appended to the Director of Legal Service's report.

An informal consultation was carried out between 02 May 2017 and 06 June 2017. Notices were placed at either end of the route at the beginning of

the consultation period and letters were sent out to the statutory consultees, landowners and the elected member Councillor Irene Ratcliffe.

Responses were received both in support of and opposition to the application, which were detailed in the Director of Legal Service's report.

Miss Shuker, landowner, attended the meeting and made representations in objection to the officer recommendation.

The Director of Legal Services summarised all of the available evidence as detailed in the report and gave her conclusions to the committee.

**RESOLVED** that the Director of Legal Services be authorised to make an Order under s53 of the Wildlife and Countryside Act 1981 to add a footpath from Moor Lane to Public Footpath No 19 in the Parish of Kirk Ireton.

**65/18 WILDLIFE AND COUNTRYSIDE ACT 1981 - CLAIM TO ADD A FOOTPATH FROM PUBLIC FOOTPATH NO. 108 TO PUBLIC FOOTPATH NO. 107 – BELPER** Members were asked to determine an application to amend the Definitive Map and Statement by adding a footpath from Public Footpath No. 108 to Public Footpath No. 107 in Belper.

The Council had received an application dated 05 February 2016 to add a footpath from Public Footpath No. 108 to Public Footpath No. 107 to the Definitive Map and Statement for Belper. The application was supported by 20 User Evidence Forms. A plan showing the claimed route was attached to this report.

Following receipt of the application, correspondence was received from the landowner drawing attention to a declaration deposited under s31(6) Highways Act 1981 declaring the rights of way that were accepted to exist on the land.

An informal consultation exercise was carried out between 02 May 2017 and 06 June 2017. Notices were placed at either end of the route at the beginning of the consultation period and letters were sent out to statutory consultees, landowners and the elected members

Responses were received both in support of and opposition to the application, which were detailed in the Director of Legal Service's report.

The Director of Legal Services summarised all of the available evidence as detailed in the report and gave her conclusions to the committee.

**RESOLVED** to reject the application to add a footpath from Public Footpath No 108 to Public Footpath No 107 in Belper

**66/18      APPLICATION TO RECORD ROAD USED AS A PUBLIC PATH (NOW RESTRICTED BYWAY) NO. 69 IN THE PARISH OF BARLOW, CONTINUING IN BARLOW PARISH AS A NON-CLASSIFIED HIGHWAY CALLED JOHNNYGATE LANE, ON THE DEFINITIVE MAP AND STATEMENT AS A BYWAY OPEN TO ALL TRAFFIC** Members were asked to determine an application to record the above route in Barlow parish, known as Johnnygate Lane, on the Definitive Map and Statement as a Byway Open to all Traffic.

The Council had received an application dated 20 January 2006 on behalf of the Trail Riders Fellowship to record the above route known as Johnnygate Lane, heading north eastwards from the junction with Far Lane at Moorhall towards the junction with the B6051, as a Byway Open to all Traffic on the Definitive Map and Statement. The application was supported by a plan showing the claimed route and a list of documents, which the applicant stated provided evidence that the route should be upgraded. A plan showing the claimed route was appended to the Director of Legal Service's report.

Details of the documentary evidence and definitive map evidence were given in the Director of Legal Service's report.

The Director of Legal Services summarised all of the available evidence as detailed in the report and gave her conclusions to the committee.

**RESOLVED** to reject the application to record RUPP (now Restricted Byway) No. 69 in the parish of Barlow, continuing in Barlow parish as non-classified highway called Johnnygate Lane, to a Byway Open to all Traffic

**67/18      APPLICATION TO RECORD ROADS USED AS PUBLIC PATHS (NOW RESTRICTED BYWAYS) NOS. 71 IN THE PARISH OF BARLOW AND 72 IN THE PARISH OF BRAMPTON, CONTINUING IN BRAMPTON PARISH AS A NON-CLASSIFIED HIGHWAY CALLED COMMON LANE, ON THE DEFINITIVE MAP AND STATEMENT AS A BYWAY OPEN TO ALL TRAFFIC.** Members were asked to determine an application to record the above route known as Mellor Lane in Barlow and Common Lane in Brampton, on the definitive map and statement as a Byway Open to all Traffic.

The Council had received an application dated 25 January 2006 to record the above route, leading southwards from the village of Barlow to Cutthorpe, as a Byway Open to all Traffic on the Definitive Map and Statement. The application was supported by a plan showing the claimed route and a list of documents which the applicant stated provided evidence

that the route should be upgraded. A plan showing the claimed route was appended to the Director of Legal Service's report

Details of the documentary evidence and definitive map evidence were given in the Director of Legal Service's report.

The Director of Legal Services summarised all of the available evidence as detailed in the report and gave her conclusions to the committee.

**RESOLVED** to reject the application to record RUPPs (now Restricted Byways) Nos. 71 in the parish of Barlow and 72 in the parish of Brampton, continuing in Brampton parish as non-classified highway called Common Lane, to a Byway Open to all Traffic

**68/18      APPLICATION TO REGISTER LAND KNOWN AS DALE CRESCENT GREEN, HATHERSAGE, (VG145) AS A TOWN OR VILLAGE GREEN** Approval was sought to the appointment of an independent Inspector to advise the Council in respect of the application to register land known as Dale Crescent Green, Hathersage as a town or village green (VG145), if necessary to hold a public inquiry and to make a recommendation to the Council as to its determination.

Following advertisement of the application no objections were received. A plan showing the Land affected by the application, was appended to the Director of Legal Services report.

The application was made pursuant to the Commons Act 2006. As was required further to the amendment to legislation by the Growth and Infrastructure Act 2013, a request for information pursuant to section 15C of the Commons Act 2006 was sent to Derbyshire County Council (as Minerals Planning Authority), Peak District National Park (as Local Planning Authority) and The Planning Inspectorate to ascertain whether any trigger or terminating events had occurred. Replies were received indicating that no trigger or terminative events had occurred on the land and a letter was sent on 18 November 2016 notifying the applicant that the application was accepted as validly made. Application VG145 was made pursuant to Section 15(2) of the Commons Act 2006 and would be determined in accordance with those provisions and regulations made under the 2006 Act. In order for the Land to have become a new town or village green ("TVG") under the Act it has to have been used: "as of right" (being without force, without permission and not in secret)

- By a significant number of the local inhabitants of a locality, or neighbourhood within a locality



- For lawful sports and pastimes
- For twenty years prior to the date of the application

It was usual to seek advice from an Inspector as to whether it was appropriate to determine an application on the basis of the application form, statements in objection to the application and further written comments received from interested parties (determining on the papers) or where there were disputes of fact it was usually recommended that a public inquiry be held to test the conflicting evidence. It was probable that an Inspector would recommend that this application could be determined on the papers as there have been no objection received.

**RESOLVED** that the Director of Legal Services be authorised to appoint an Inspector to make recommendations to the Council as to the determination of application VG145 as a town or village green and if deemed necessary to hold a public inquiry into the application.

**69/18      WITHDRAWAL OF APPLICATION TO REGISTER LAND KNOWN AS THE BROOK, MAIN STREET, CALVER, AS A TOWN OR VILLAGE GREEN (VG91)** Members were asked to authorise the withdrawal of an application made under the Commons Registration Act 1965 to register land known as The Brook, Main Street, Calver, Derbyshire, as a town or village green.

The County Council ('the Council'), as commons registration authority, received an application to register land at Calver, known as The Brook, as a town and village green on 31 December 2004. The application was acknowledged and allocated reference VG91. The application was made on behalf of Calver Parish Council by its Clerk. The application was accompanied by 6 evidence questionnaires and 12 letters in support of the application.

The Landowner, local planning authority and the Council's Environmental Services Department were informally notified of the application in January 2005. Formal notice of the application was published in The Derbyshire Times on 8 December 2005. Due to the prioritisation of applications in respect of other claimed town or village greens affecting land subject to proposed development, in accordance with a scheme of prioritisation previously agreed by this Committee, the application remains under consideration

On 26 February 2018 this Committee was asked to authorise the Director of Legal Services to appoint an Inspector to advise the Council, if necessary hold a public inquiry, and make recommendations to the

Committee as to the determination of the application. That authorisation was granted.

Mr Philip Petchey, of Counsel, was appointed as the independent Inspector. Mr Petchey provided an initial Advice in which he raised a number of questions that the parties should be asked to respond to. He proposed that the Council, as highway authority, should be asked to produce the evidence on which it relied in concluding that the land subject to the TVG application was part of the public highway. He also proposed that the Parish Council be asked to provide any further relevant material, such as maps and photographs of the application site.

The parties were asked to provide their responses to the matters raised by the Inspector, by no later than 18 May 2018. The Applicant then proposed a site meeting to involve the Council, as highway authority, and any other objectors to the application. Prior to that meeting taking place, at its meeting of 17 May 2018, the Parish Council resolved to withdraw the application.

A TVG application raised a matter of public interest, in that it claimed that a public right – albeit in relation to recreational use that would be restricted to the residents of a neighbourhood or locality – has been established. The Council had a statutory duty to determine such applications. There was no provision in the relevant legislation which specifically enables an applicant to withdraw, or a commons registration authority to abandon, a town or village green ('TVG') application. Therefore whilst the Parish Council had determined, by its resolution, to withdraw its application, the Council as commons registration authority must consider whether it will permit that withdrawal.

Further advice was sought from the Inspector with regard to the proposed withdrawal. The Inspector advised that whilst in the circumstances it seemed appropriate to allow the Parish Council to withdraw its application there was in such cases the possibility that there may be a member of the public who might have made an application for registration if the Parish Council had not; or who considered that the land should be registered as a village green. Accordingly he advised that it would be appropriate to post a notice in or on the land, and possibly by publication in the local press, indicating that the Parish Council had resolved to withdraw its application and giving anyone who might be interested the opportunity to make representations as to whether it is appropriate that the Parish Council should be permitted so to withdraw its application.

The Inspector advised that should there be no objections received in response to the notice it would be appropriate for the Council as registration

authority to allow the application to be withdrawn and for no further action to be taken on it. Notice of the proposed withdrawal was posted on the land subject to the application on 23 July 2018, and was published in the 30 July 2018 edition of the Peak Advertiser, with a deadline for the submission of representations in response to the notice of 7 September 2018. No representations were received in response to the notice.

**RESOLVED** to authorise the withdrawal of the application to register land known as The Brook at Main Street Calver (VG91) as a town or village green.