

MINUTES of a meeting of the **REGULATORY, LICENSING & APPEALS COMMITTEE** held on **24 JULY 2017** at County Hall, Matlock

PRESENT

Councillor R A Parkinson (in the Chair)

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

Councillor R A Parkinson declared a personal interest in relation to Agenda Item 6, as a member of the British Horse Society.

Councillor J Frudd declared a personal interest in relation to Agenda Item 6, as a member of the Ramblers Association.

14/17 **MINUTES RESOLVED** that the minutes of the meeting held on 27 February 2017 be received.

15/17 **REGULATION OF SPORTS GROUNDS – REVIEW OF ARRANGEMENTS** The Committee was updated on the arrangements in place for the regulation of sports grounds in Derbyshire and to approve a minor amendment to the capacity at the Proact Stadium.

In relation to Chesterfield Football Club a General Safety Certificate in respect of the Proact Stadium in accordance with the Safety of Sports Grounds Act 1975 was granted by the Committee in June 2010. The ground is a ‘designated ground’ within the meaning of this legislation.

The Derbyshire Safety of Sports Grounds Advisory Group, chaired by the Deputy Director of Legal Services and set up in accordance with the recommendations of Lord Justice Taylor following the Hillsborough Disaster, was responsible for ensuring that the contents of the Certificate were observed by the Club. The terms of reference and policy objectives of the Group were agreed at a previous meeting of this Committee. Match Inspections were carried out based on risk.

The work of the Derbyshire Safety Advisory Group is subject to a ‘self-assessment’ process overseen by the relevant national regulator. (Sports Grounds Safety Authority-SGSA). The Group had previously been commended by the SGSA. Identified strengths included the process for

arriving at maximum capacity calculations, and certification and monitoring arrangements.

A number of changes had taken place at the Club since the last report to the Committee in September 2016. Following the departure of the then Chief Executive Chris Turner the Club had proposed that the Club Secretary Sally Swain should be the certificate holder for the safety certificate. Following consultation with the police and the fire service this proposal was approved.

In addition the Club Safety Officer, Colin Nellist, is to retire and will be succeeded by Tony Booker who was previously the Deputy Safety Officer. However, Colin Nellist will continue in the capacity of Deputy Safety Officer until such time as a successor is identified.

In relation to the renewal of the Safety Certificate for 2017/8 no substantial concerns or proposed amendments to the Certificate had been raised by any of the consultees and it was agreed at the relevant Advisory Group meeting that the stadium should continue to be assessed as having a Physical Condition factor of 1 and a Safety Management factor of 1, in both cases the maximum allowable.

A minor adjustment was proposed to the capacity of the stadium as set out in Appendix 1 to the Director of Legal Services Report. The total capacity was now 10,358 (unsegregated) or 10,322 (segregated). This compares with 10,379 and 10,293 respectively for 2016/7.

As indicated above all necessary certificates and inspection reports had been, or would be, provided by the Club prior to the start of the season. Issues identified on the regular fire safety inspection would also be resolved prior to the start of the season.

Policing of the fixtures and stewarding levels would be agreed with the Club.

In relation to Regulated Stands/Smaller Sports Grounds there were currently 3 "places of sport" in the county where there was a regulated stand. Regulated stands were stands which were capable of accommodating at least 500 people under cover. These were: Buxton Football Club (2 stands), Buxton Raceway and Ilkeston Football Club.

All the regulated stands above were of simple design and were covered standing areas with no combustible structural elements. In addition to the regulated stands at these grounds there were other non-regulated stands and facilities that do not fall within the certification for the regulated stands but for

which the Council retained responsibility to the extent of identifying whether they might pose a serious risk to spectators . The safety certificates for each of the regulated stands were reviewed during 2016. Ilkeston Football Club had unfortunately recently been placed in into liquidation. The liquidators had been in contact with the Council and were aware of the requirements of the safety legislation.

In relation to smaller Sports grounds, the Safety Group visits had taken place over the summer covering Queen's Park Chesterfield (Derbyshire County Cricket Club), Shirebrook Town FC, Matlock Town FC, Alfreton Town FC, Heanor Town, New Mills AFC, Gresley FC and also Buxton FC and Buxton Raceway. As a part of these visits the Clubs had been reminded of the advisory capacities applying as appropriate and any necessary actions identified. The Vice Chair of the Committee, Councillor Ashton, participated in the inspection process, as did Councillor Iliffe for the Heanor Town inspection.

RESOLVED to note the update and approve the revised capacity for the Proact Stadium as set out in the appendix to the Director of Legal Services report.

16/17 APPEALS PANEL – DELEGATION OF FUNCTIONS This report was withdrawn at the meeting.

17/17 PROPOSED DIVERSION OF PUBLIC FOOTPATH No 1-PARISH OF ASHBOURNE Authority was sought for the Strategic Director – Economy, Transport and Communities to carry out a public consultation on a proposal to divert Public Footpath No.1, Parish of Ashbourne, and, if no significant objections were received then the Director of Legal Services be authorised to make a Diversion Order for the permanent diversion of Public Footpath No.1, Parish of Ashbourne.

The County Council had received an application from the Strategic Director – Children's Services for the permanent diversion of Public Footpath No.1 to enable an extension of St Oswald's C of E Infant School into the field through which the footpath passed. A planning application had been made to the County Council for a change of use from agricultural use to educational (school) use so that part of this field can be enclosed for use by the school as a recreation area as part of the school curriculum. This was likely to be determined in the next few weeks. The area would be fenced with stock fencing as a security measure and to keep out livestock. As security for schools was now a major issue, it was considered necessary to divert the footpath from the enclosed area to provide a safe learning environment.

The diversion application was received in March 2017 and an informal

consultation was carried out. This revealed that the proposed route was unsuitable and a revised route, as shown on the plan attached to the Director of Legal Services report, was now being considered.

The new proposal was to divert approximately 78 metres of Public Footpath No.1, shown as a bold solid line between points **A** and **B** on the plan attached. The proposed alternative would be approximately 100 metres long, shown as a bold broken line on the route **A – C – D – B**. The alternative route would have a recorded width of 2 metres to allow for future maintenance within which there would be a 1.5 metres wide stone surface seeded with grass to blend in with the landscape at this sensitive location. A British Standard gate will be installed for stock control purposes at Point **C** on the attached plan.

A further informal consultation would usually be carried out inviting comments on this new line before reporting the application to Committee. In this instance, time constraints (the school needs the extra land to be available for pupils for the new school year in September 2017) were such that the Committee was requested to consider the application in advance of further consultation. This would allow the Diversion Order to be made promptly if planning permission was granted and would reduce the risk of the development being held up. It was acknowledged that this was a departure from the Council's normal procedure but public consultation would still take place and if significant objections were received that could not be resolved, the Committee would be asked to consider them at a later meeting. However, during the previous consultation the only objections received were about the route consulted on and that route had now been discarded in favour of the route shown on the attached plan. The principle of the diversion was not questioned.

RESOLVED (1) to support the application to divert Public Footpath No.1 Parish of Ashbourne, with a recorded width of 2 metres and a constructed width of 1.5 metres;

(2) to agree to the Strategic Director – Economy, Transport and Communities to carry out an informal public consultation;

(3) that If objections were received during the informal consultation stage that cannot be resolved then the matter will be returned to the Committee for resolution;

(4) that If no objections were received, the Director of Legal Services be authorised to make the necessary Order under the provisions of Section 257 of the Town and Country Planning Act 1990; and

(5) that If objections were received to the making of the Order, then it would be referred to Secretary of State for determination.

18/17 THE WILDLIFE AND COUNTRYSIDE ACT 1981 – CLAIM TO ADD A FOOTPATH FROM MORLEY LANE TO STANLEY BROOK (PARISH BOUNDARY WITH MORLEY) – PARISH OF STANLEY AND STANLEY COMMON Members were informed that an application had been received from Mr Keith Shiers of the Erewash Ramblers (the Applicant) dated 31 July 2013 to add a footpath to the Definitive Map and Statement from Morley Lane to Stanley Brook in Stanley and Stanley Common. The application was accompanied by 11 User Evidence Forms (UEFs), two walking guides and a copy of email correspondence between the Applicant and a Council officer. A plan showing the claimed route was appended to the Director of Legal Services report.

An informal consultation exercise was carried out between 26 January 2015 and 2 March 2015. Notices were placed on the route at the start of the consultation period and letters were sent to the statutory consultees, landowners and the local elected member, Cllr Carol Hart. There were 40 letters and emails submitted in response to the consultation both in support of and against the proposal.

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

RESOLVED that approval be given for the Director of Legal Services to make an Order under Section 53 of the Wildlife and Countryside Act 1981 to amend the Definitive Map and Statement by adding a bridleway from Point A to Point D as shown on the plan appended to the Director of Legal Services report.

19/17 THE WILDLIFE AND COUNTRYSIDE ACT 1981 – CLAIM TO ADD A FOOTPATH FROM THE VALE TO HADDON STREET TO ILKESTON Members were informed that an application had been received dated 01 February 2013 to add a footpath to the Definitive Map and Statement from The Vale to Haddon Street in Ilkeston. The application was accompanied by 24 User Evidence Forms (UEFs) and a plan showing the claimed route. A plan showing the claimed route was appended to the Director of Legal Services Report.

An informal consultation exercise was carried out between 26 January 2015 and 2 March 2015. Notices were placed on the route at the start of the

consultation period and letters were sent to the statutory consultees, landowners and the local elected member, Cllr Glennice Birkin. Seven letters and a petition were received in objection to the claim, one letter in support and two offering no opinion.

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

RESOLVED to reject the application made under Section 53 of the Wildlife and Countryside Act 1981 to amend the Definitive Map and Statement by adding a footpath in Ilkeston, as shown between Points A and B on the plan appended to the Director of Legal Services report.

20/17 PROPOSED AMENDMENT OF APPLICATION TO REGISTER LAND AT GREEN LANE, BUXTON AS A TOWN OR VILLAGE GREEN (VG102) The Director of Legal Services sought approval to amend the application, at the applicant's request.

The Committee had previously approved the appointment of an Independent Inspector to advise the Council and, if necessary, to hold a public inquiry to hear evidence in relation to the application.

The application, made by Roger Floyd ("the Applicant"), was accepted as validly made on 11 June 2007. The application was made pursuant to section 15(2) of the Commons Act 2006 and would be determined in accordance with that provision and regulations made under the 2006 Act.

A large number of objections were received to the application, including objections from Derbyshire County Council, High Peak Borough Council, Buxton Hockey Club and Miss D Bennett and Mrs M Oldfield, all landowners of part of the land. A plan of the land affected by the application was appended to the Director of Legal Services Report.

The Regulatory Licensing and Appeals Committee had previously approved the prioritisation of applications. There being no grounds on which to give this application a higher priority, it was initially accorded Priority 5. On 31 October 2013 the Council received information that the land affected by application VG102 had been included in the draft High Peak Local Plan. As the outcome of the town or village green application might have impacted on the designation of the land officers considered whether the TVG application should be re-prioritised.

The inclusion of land in a draft Local Plan need not result in the re-prioritisation of the application in every case. Where the proposed designation

of the land in the Local Plan does not conflict with TVG status there would seem to be no need to re-prioritise, ie. where the land is to be designated as green or open space. In this case the land was proposed for secondary school improvements, potentially for relocation of some current outdoor sports pitches on the Buxton Community School site on the northern side of Green Lane. Such use could conflict with TVG status and was considered appropriate to re-prioritise the TVG application for that reason.

It is usual to seek initial advice from an inspector as to whether it is appropriate to determine an application on the basis of the application, statements in objection and further written comments received from the parties. Where there are disputes of fact it was usually recommended that an inquiry be held to test the conflicting evidence. Following approval of the referral of this matter, by the Committee, the Council instructed Mr Philip Petchey, of Counsel. Following initial consideration of the papers Mr Petchey concluded that the application raised disputed issues of fact which could not be fairly resolved without a public inquiry. Due to the nature of the site, being large and under multiple ownerships and uses, the Inspector decided that prior to issuing directions for a public inquiry he would visit the site to understand more clearly the cases put forward by the parties.

In the process of referring the matter to the Inspector additional landowners were identified. The application land included an access track to several properties and was included within the title of some of the adjacent properties. The relevant landowners were consulted but no additional objections to the application were received.

Mr Petchey conducted a site visit, accompanied by an officer of the Council, the applicant, landowners and objectors on 21 October 2016. The applicant, both prior to and again at the site visit, indicated that he wished to amend the application to exclude certain land which he had initially sought to register.

Following the site visit Mr Petchey advised that this was an appropriate case where the application might be amended by the deletion of discrete parts of the application site. He suggested that having clarified the precise boundaries of the amended application site the Council should advertise the proposal to ensure that there were no objections to the amendment.

With regard to the land remaining subject to the application Mr Petchey advised that it would be sensible to defer taking the matter to public inquiry until the courts had decided certain cases being appealed on grounds of 'statutory incompatibility'. These cases are being brought before the courts on the basis that the registration as a town or village green of land held for

statutory purpose by a public body would be incompatible with the purpose for which it is held, and that in such cases registration should be refused.

The boundaries of the amended application site were subsequently agreed with the applicant and a notice of the proposed amendment was published in the local press and posted on site on 16 March 2017. The notice required any person wishing to object to the amendment of the application to write to the Council by no later than 14 April 2017.

The Council received two responses to the notice. Neither of the two representations received raise an objection to the removal of land from the application. A representation received from the Children's Services Department of the Council related to the registration of the land unaffected by the proposed amendment. This was subsequently withdrawn, once it had been confirmed that the Council's objection to the application as originally made was maintained. A representation by High Peak Borough Council also related to the land unaffected by the proposed amendment. The Borough Council had objected to the application as originally made, as the owner of land then proposed to be registered. The new representation related to the land in respect of which the applicant still wished to seek registration, in respect of which the Borough Council was the local planning authority.

If the proposed amendment was accepted the land in respect of which the applicant wished to seek registration will be limited to land in the ownership of Derbyshire County Council as detailed at Appendix 2 to the report. As commons registration authority the Council was required to determine the application and has appointed Mr Petchey as Inspector to make recommendations in that regard.

The Inspector has indicated that the principle of statutory compatibility arises in two cases to be considered by the Court of Appeal in October 2017. There may then be a further appeal to the Supreme Court. The Inspector has suggested awaiting the determination of those cases, and a clarification of the issue, before proceeding with a public inquiry in respect of this application.

The applicant attended the meeting and made a brief presentation with regards to the proposed amendment.

RESOLVED that approval be given for the Director of Legal Services to amend the application as requested by the applicant and in accordance with the plan attached to this report.