

Meeting: Planning and Rights of Way Committee

Date: Tuesday 1 November 2022 (commencing at 10:30am)

**Membership:****County Councillors**

Richard Butler (Chairman)  
Jim Creamer (Vice Chairman)

Mike Adams	Nigel Moxon
André Camilleri	Philip Owen ( <b>apologies</b> )
Robert Corden	Francis Purdue-Horan
Sybil Fielding ( <b>apologies</b> )	Sam Smith
Paul Henshaw ( <b>apologies</b> )	Daniel Williamson ( <b>apologies</b> )
Andy Meakin	

**Substitute Members**

Errol Henry JP for Paul Henshaw  
Tracey Taylor for Philip Owen

**Officers and colleagues in attendance:**

Tommi Cluley	-	Planning Monitoring and Enforcement Officer
Steven Eastwood Snr	-	Advanced Legal Practitioner
Neil Lewis	-	Countryside Access Team Manager
Jaspreet Lyall	-	Solicitor
Adrian Mann	-	Democratic Services Officer
David Marsh	-	Major Projects Senior Practitioner
Joel Marshall	-	Principal Planning Officer
Jonathan Smith	-	Interim Group Manager for Planning
Jo Toomey	-	Advanced Democratic Services Officer

**Public speakers in attendance:**

David Duffield	-	Registration of a Town or Village Green in South Scarle (item 5)
Kate Murrell	-	Registration of a Town or Village Green in South Scarle (item 5)
Peter Rowlands	-	Registration of a Town or Village Green in South Scarle (item 5)

## **1. Apologies for Absence**

Sybil Fielding	-	medical / illness
Paul Henshaw	-	other County Council business
Philip Owen	-	other reasons
Daniel Williamson	-	other reasons

## **2. Minutes of the Last Meeting**

The minutes of the last meeting held on 27 September 2022, having been circulated to all Members, were taken as read and were confirmed and signed by the Chairman.

## **3. Declarations of Interests**

No declarations of interests were made.

## **4. Declarations of Lobbying**

No declarations of lobbying were made.

## **5. Registration of a Town or Village Green in South Scarle**

Neil Lewis (Countryside Access Team Manager) introduced application 366NVG by the South Scarle Parish Meeting to register land at the corner of Main Street and Swinderby Road, South Scarle as a Town or Village Green (TVG):

- a) The legal criteria for the registration of land as a TVG is that there must be a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, who have indulged in lawful sports and pastimes on the land as of right for a period of at least 20 years, and that they continue to do so at the time of the application. Any other issues such as suitability, desirability or community needs are not legally relevant to the consideration of an application to register land as a TVG.
- b) The land identified in the application is not registered with the Land Registry. The application has been made to formalise the free public access of the land, as an adjacent landowner has asserted that it is part of their private property and has carried out work to the land on this basis, without consultation with the wider community. In the past, an adjacent property had used the area for the raising of pigs. There is unrestricted access from the land to adjoining properties and fields, and a public footpath runs beside the land and is used in conjunction with it. Sections of the land have been used by the South Scarle Nature Project to plant flora.
- c) Letters were received from 12 local residents in support of the application, in addition to a collection of 88 signatures from local residents. The representations stated that the land is used regularly by walkers and horse riders, and that the Nature Project has used the land to plant flora. The first registration of the land was sought by the adjacent landowner with the Land Registry, but the application

was opposed by the Parish Meeting and so was not completed. The land was rough approximately 17 years ago and has since been improved by local residents, and there is a desire to implement further environmental developments and to protect the land as a public open space.

- d) Three objections to the application have been received, with these representations stating that, since 2002, drainage works have been carried out on the land by the adjacent land owner on the basis that it is private property. A large amount of rubble and other material was removed as part of these works and topsoil was laid and seeded, making the land usable by the public. However, the land has not had access or been used for lawful sports and pastimes for over 20 years.
- e) In terms of the assessment of the legislative requirements, the locality is identified as being South Scarle Parish, and this meets the criteria. There is nothing in the application to say that the limited use of the land was not as of right, and this meets the criteria. However, use has only been demonstrated on an occasional basis by a limited number of people – and this use ceased on a temporary basis prior to the application being made. It does not appear that the land has been used for lawful sports and pastimes for a period of at least 20 years. As such, the application is not considered to have met all of the required criteria for the registration of the land as a TVG.

With the permission of the Chairman, David Duffield, Peter Rowlands and Kate Murrell addressed the Committee in support of the application:

- f) The intention of the application is to register the area as a green space for the village in perpetuity, to guarantee public access and recreational use, and to enable to continuation of a nature trail and wilding project. The land is adjacent to a public footpath and has a track for farm vehicle access. General roaming has taken place over the land for generations, including by parishioners, dog walkers, members of the public and agricultural users.
- g) The Nature Project has been working to convert the area into a valuable green space since 2017. A wildflower meadow has been created elsewhere in the village and it is hoped that a re-wilding policy can be adopted for the area to keep the land available to all as a habitat-rich asset.
- h) An adjacent landowner has sought to discourage public use by asserting that the land forms part of private property, and has taken actions to reverse the Nature Project's work. The adjacent landowner has carried out works to the land to create a domestic landscape, rather than a natural one. However, the land is not registered and an application by the landowner for its first registration has not been successful.

After the presentation of the application and the representations made in support, the Committee discussed the following points:

- i) The Committee noted that the criteria for the designation of land as a TVG is governed by legislation, and that the associated registration process is carried

out at the County Council level. The designation of protected green space is managed at the District Council level, in the context of the associated Local and Neighbourhood Plans. As such, the Committee is only able to consider the application in terms of whether the land as identified on the submitted plan meets the legal requirements for registration as a TVG. The Committee is not able to consider whether the land should be protected as a green space under the appropriate District or Parish Council local plans, nor to comment on a land ownership dispute. Similarly, an independent public inquiry would only be able to consider whether the land meets the legal criteria to be registered as a TVG – not whether it should be protected as a public green space.

- j) The Committee was sympathetic to the applicants' aim of protecting a green space for the local community and the wider public, but it considered that an application to designate the land as a TVG was not the right approach in the context of the associated legislation, under which the application did not meet the required criteria. Members suggested that the applicants discussed other potential options for protecting a green space formally with Newark and Sherwood District Council and the Open Spaces Society.

**Resolved (2022/051):**

- 1) To reject the application for the reasons as set out in the report, as it does not meet all of the required criteria for the registration of the land as a Town or Village Green.

**6. Amendment to Planning Permission for Staple Quarry, Grange Lane, Cotham, Newark-on-Trent**

David Marsh (Major Projects Senior Practitioner) introduced application 3/22/00740/CMW by FCC Recycling (UK) Limited to amend the existing Planning Permission (3/16/00693/CMW) for the restoration of Staple Quarry from an agricultural to an ecological use:

- a) The applicant is seeking to change the currently approved restoration scheme for the former gypsum quarry to establish an ecological and habitat-based after-use, rather than the agricultural use proposed originally. This is because there is a shortfall of soil on the site to meet the needs of the restoration and, although this is being resolved through the import of soils from elsewhere, the soils available are of poor quality and are not suitable for an agricultural restoration.
- b) The revised scheme would create open glade habitats of grassland and woodland blocks, hedgerows, scattered trees and scrub. There are no proposed alterations to the ground levels already approved. The modifications to the planting proposals would have a minimal visual impact on the wider area and would not change the character of the landscape significantly. The conifers on the site would still be removed, as per the current approvals.
- c) The amended restoration scheme would be less dependent on the import of soils, some of which would be substituted for soil improvement materials to be sourced from by-products from the waste industry, including composts from anaerobic

digestion facilities and filter cake derived from the capture of silt and other sediments in river water abstracted for use in power station cooling. The soil improvers would be blended within the top layer of soil on the site to provide organic-rich matter for nutrition and a suitable soil structure to support the establishment of vegetation cover. This methodology would also ensure that by-products of the waste industry achieve a beneficial use in a sustainable way.

- d) The consultation and publicity responses to the amended proposals were supportive and informed some modifications to the scheme to enhance the ecological benefits derived from the development, including the reinstatement of Cotham Footpath No.7 on its original line. The permitted vehicle routing arrangements to the site have also been reviewed in response to representations received.
- e) The modifications to the restoration arrangements would enhance the ecological value of the site in a manner consistent with the Nottinghamshire Minerals Local Plan Strategic Policy, which promotes a biodiversity-led approach to the restoration and after-use of former mineral sites. Any potential adverse environment effects will be managed through both the proposed Planning conditions and the Environmental Permit regulated by the Environment Agency. The measures in this Permit will ensure that the soil improver materials imported onto the site are subject to appropriate pollution control limits, to protect ground and surface waters from contamination.
- f) The new proposals would not change the overall volume of material to be imported to the site, so there would be no overall change to the number of vehicles needed to transport the loads. Lorry routing is regulated within the existing Planning Permission through a Section 106 legal agreement that requires all delivery vehicles to access the site from either from the A52 or the A1, avoiding the less suitable minor rural and residential routes in the wider area. The routing arrangements have been reviewed in the context of the ongoing construction of the Newark Southern Link Road, which would also provide an acceptable access route to the site, once completed.

After the presentation of the application, the Committee discussed the following points:

- g) The trees to be cleared from the site are non-native conifers, which do not form part of the natural landscape. The adjacent belt of native trees will remain and continue to provide an appropriate visual screening.
- h) The current development is subject to an Environmental Permit from the Environment Agency, which would need to be reviewed in the context of the amended proposals. The nature of the soil improver to be imported will be regulated under the Permit to ensure that, as it is a waste product from industrial processes elsewhere, it is not contaminated and does not represent a pollutant. The Environmental Impact Assessment for the proposals will also be reviewed, as required.

- i) Newark and Sherwood District Council is currently carrying out a tendering process for the next stage of construction for the Newark Southern Link Road, and an update will be provided to Committee members on whether it is likely to be completed in time for this relief road to be used as an appropriate access route to the development site. Although the routes to be used by vehicles accessing the site can be determined as requirements within the Planning Permission, the Council has no powers to enforce how materials such as the soil improver are transported to the site via the public highway.
- j) The Committee considered, however, that it is vital to mitigate against the potential for load shedding of soil on the public highway and the negative impact that this can have, and so all loads should be covered by sheeting during transportation. Members requested that an advisory note is included within any new grant of Planning Permission to make this expectation clear.

**Resolved (2022/052):**

- 1) To authorise the Corporate Director for Place to grant Planning Permission for the development subject to the conditions as set out in Appendix 1 to the report, subject to the completion of the legal agreement before 1 February 2023 or an alternative date that may be agreed by the Team Manager for Development Management in consultation with the Chairman and Vice Chairman of the Committee.
- 2) To authorise the Corporate Director for Place to enter into a legal agreement under Section 106 of the Town and Country Planning Act to secure the appropriate lorry routing arrangements in connection with the development.
- 3) To authorise the Corporate Director for Place to refuse Planning Permission in the event that the legal agreement is not signed before 1 February 2023 (or within any subsequent extension of the decision time agreed with the Waste Planning Authority), on the grounds that the development has failed to provide for the measures identified in the Heads of Terms of the Section 106 legal agreement within a reasonable period of time.

**7. Variation of Scheme for Bestwood 2 Quarry, Mansfield Road, Papplewick, Nottingham**

David Marsh (Major Projects Senior Practitioner) introduced application 7/2022/0425NCC by Tarmac Aggregates Limited to vary the existing Planning Permission (7/2017/1491NCC) for the creation of offset and mitigation habitats:

- a) The application seeks to vary the currently approved scheme for the creation of mitigating habitat at the Bestwood 2 sand quarry. Planning Permission for an extension of the quarry was granted in December 2018, subject to conditions including both the establishment of ecological habitat on the site and the creation and management of a new heathland-based habitat at the Calverton Burnstump Quarry, as the level of ecological mitigation required could not be delivered fully at the Bestwood 2 site.

- b) The quarry has been operational for many years and has well-established infrastructure, with access via a purpose-built haul road joining the A60. The west, south and east parts of the quarry are areas of worked void, with the active mineral extraction now taking place within the new 4.5-hectare eastern extension.
- c) The extension area incorporated part of the wider Longdale Plantation Local Wildlife Site, which is noted for its oak-birch woodland habitat. During the initial assessment for the extension, the removal of a section of the Wildlife Site woodland was considered to be acceptable, provided that adequate habitat compensation was provided through the creation and subsequent management of offset and mitigation habitats.
- d) Proposals were agreed for the transfer and direct placement of woodland soils removed from the extension area to three receptor sites along the southern wall of the quarry void. Deadwood from the felling of the trees was then to be placed into the receptor sites to provide a habitat for plants and invertebrates, and to support the development of a wider ecosystem.
- e) In 2019, the excavated tree roots were placed into a single temporary store near the western soil receptor site, pending their planned distribution across the three receptor sites. However, the onset of very wet weather in late 2019 and early 2020 delayed the transfer of the felled timber, and site closure and business continuity issues arising during the Coronavirus pandemic meant that the timber was not relocated in either 2020 or 2021.
- f) An ecological assessment undertaken in October 2021 identified that the temporary timber store had since become an important habitat for amphibians and invertebrates, so a decision was taken to not disturb the new habitat by redistributing the timber from the store because of its ecological value and the likely negative impact its movement would have on biodiversity.
- g) Consequently, it is not possible for the deadwood placement to be delivered in full compliance with the approved scheme, so a variation is sought to import deadwood from appropriate species of tree from other sites such as Lockington quarry in Leicestershire, and Elvaston, Whitwell and Hindlow quarries in Derbyshire. The deadwood to be imported is estimated to constitute no more than 24 loads and would be distributed across the three woodland soil receptor sites to provide deadwood habitat. The retention of the existing deadwood pile, along with the importation of suitable deadwood from off-site, will ensure that the original objectives for the woodland creation can still be met.

After the presentation of the application, the Committee discussed the following points:

- h) No responses were returned as part of the public consultation carried out on the proposed variation to the scheme.
- i) The Committee considered that it was positive to see how quickly a new habitat established itself in the existing tree root pile. Members noted concerns, however, regarding the long delay in the carrying out of the habitat mitigation work intended

to offset the impact of the quarry extension, resulting in the need to import additional deadwood to the site by lorry, which would have its own carbon footprint.

- j) The Committee was assured that the deadwood to be imported would be sourced from within the East Midlands region, from quarries in Leicestershire and Derbyshire, to ensure the use of tree species appropriate for the area and to limit transportation distance. It was confirmed that, regarding the ash dieback disease affecting ash trees across the UK, there are no current restrictions on the transportation of ash timber, branches or leaves for introduction into the site.

**Resolved (2022/053):**

- 1) To authorise the Service Director for Investment and Growth to grant Planning Permission for the development subject to the conditions as set out in Appendix 1 to the report, subject to the completion of the legal agreement before 1 February 2023 or an alternative date that may be agreed by the Team Manager for Development Management in consultation with the Chairman and Vice Chairman of the Committee.
- 2) To authorise the Service Director for Investment and Growth to enter into a legal agreement under Section 106 of Town and Country Planning Act 1990 to secure the creation and the management for a period of 25 years thereafter of a new heathland-based habitat within Calverton (Burntstump) Quarry, and to provide for the continuation of a liaison meeting as set out in its constitution between the operator, the Minerals Planning Authority and representatives of the local community.
- 3) To authorise the Service Director for Investment and Growth to refuse Planning Permission in the event that the legal agreement is not signed before 1 February 2023 (or within any subsequent extension of the decision time agreed with the Maste Planning Authority), on the grounds that the development has failed to provide for the measures identified in the Heads of Terms of the Section 106 legal agreement within a reasonable period of time.

**8. Development Management Progress Report**

Jonathan Smith (Interim Group Manager for Planning) presented a report on the recent Planning applications received and decisions taken, and the details of applications likely to come to Committee in the near future. The following points were discussed:

- a) The report details the applications received between 9 September 2022 and 14 October 2022, and the decisions made since the last Committee meeting on 27 September 2022.
- b) In relation to the upcoming consideration of the application relating to Land off Private Road No.3, Colwick Industrial Estate (7/2022/1066NCC), the applicant has invited the Committee members to visit a similar waste transfer station in



Worksop to inform their understanding of the proposals being put forward for the Colwick site.

- c) The Committee considered that a site visit would be helpful in assessing the upcoming application regarding the Colwick Industrial Estate and noted that, as there is a potential public interest in the proposals, it is important to ensure that the voice of the local population is heard as part of the determination process.
- d) In relation to a pending application relating to the Daneshill Landfill Site, Lound (1/20/00544/CDM), a decision has been made by the Environment Agency on the Environmental Permit that is likely to have an impact upon the Environmental Impact Assessment associated with the application for Planning Permission.
- e) The Committee asked that members and the local community are kept updated as the situation regarding this application progresses.

**Resolved (2022/054):**

- 1) To request that an appropriate site visit is arranged in relation to the application concerning Land off Private Road No.3, Colwick Industrial Estate (7/2022/1066NCC).
- 2) To request that members are kept updated as to the progress of the application concerning the Daneshill Landfill Site, Lound (1/20/00544/CDM), following the Environment Agency's decision on the Environmental Permit.

There being no further business, the Chairman closed the meeting at 11:52am.

**Chairman:**