



Meeting **PLANNING AND LICENSING COMMITTEE**

Date **Tuesday 12 December 2017 (commencing at 10.30 am)**

membership

Persons absent are marked with 'A'

COUNCILLORS

Chris Barnfather (Chair)
Jim Creamer (Vice-Chair)

Pauline Allan	Sue Saddington
Neil Clarke MBE	Tracey Taylor
Sybil Fielding	Keith Walker
Paul Henshaw	A Stuart Wallace
John Longdon	A Andy Wetton
Rachel Madden	

OTHER COUNTY COUNCILLORS IN ATTENDANCE

John Cottee
Bruce Laughton

OFFICERS IN ATTENDANCE

Pete Barker – Resources Department
Eddie Brennan – Place Department
Rachel Clack – Resources Department
Mike Hankin – Place Department
Ruth Kinsey – Place Department
Neil Lewis – Place Department
Joel Marshall – Place Department
Jonathan Smith – Place Department

ALSO IN ATTENDANCE

Geoff Garratt – Hill Farm
Anthony Northcote – agent for applicant
Steven Parkhouse – The Ramblers' Association
David Walker – agent for applicant
Rebecca Woodhouse – Roehoe Lodge

MINUTES OF LAST MEETING HELD ON 31 OCTOBER 2017

The minutes of the meeting held on 31 October 2017 having been circulated to all Members were taken as read and were confirmed and signed by the Chair.

APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Andy Wetton and from Councillor Stuart Wallace, who was due to substitute for Councillor Andy Brown.

DECLARATIONS OF INTERESTS BY MEMBERS AND OFFICERS

None

DECLARATIONS OF LOBBYING OF MEMBERS

None

APPLICATION TO ADD THREE PUBLIC FOOTPATHS TO THE DEFINITIVE MAP STATEMENT FOR WIDMERPOOL

Mr Brennan introduced the report and highlighted the following:

- The evidence for the existence of the three footpaths in question is the Widmerpool Inclosure Award of 1804
- Other documents were studied, including those concerning the construction of the Midland Railway and the earliest Ordnance Survey maps available, but no footpaths were identified. However, this does not exclude the possibility that the rights of way exist.

In response to a question Mr Brennan stated that there is a legal maxim that states 'once a highway always a highway' and unless there is evidence of a right of way being stopped up it will continue to exist in law, even if it has fallen into disuse. In this case no evidence of stopping up was found.

Following the introductory remarks of Mr Brennan, Mrs Woodhouse of Roehoe Lodge was given the opportunity to speak and a **summary** of that speech is set out below. Mrs Woodhouse stated that there was insufficient evidence to prove that a public right of way was created by the 1804 Award:

- The route of the footpath through a nesting area for game birds suggests that the path is for the use of the gamekeeper or visitors to the Keeper's Cottage and not a public right of way
- There was a much more convenient public footpath along Station Road which means the claimed footpath was unlikely to be used at the time of the 1804 Award and supports the contention that it was a mislabelled private right of way

- Other than the 1804 Award, the footpath is not shown on any other plans. If the footpath were a public right of way one would expect it to be marked on at least one other plan.
- Even if a public right of way was set out by the 1804 Award the line of the path is not sufficiently certain to enable a modification order to be made:
 - the only evidence of a public right of way is the 1804 Award
 - the committee report states that of the two plans drawn up for the implementation of the 1804 Award, only the small scale plan can be used as the other is so heavily amended as to be 'barely visible'
 - a decision of the Planning Inspectorate from 10th January 2012, based on the same plan attached to the Award, reached the conclusion that the small scale plan (relating to another footpath) was not of itself sufficiently precise to enable an order to be upheld
 - no physical path exists on the ground and there is no obvious route for it to follow

In response to questions, Mr Brennan stated that the decision in 2012 involved a public inquiry into a footpath in Upper Broughton whose alignment was found on OS maps. The 1804 Inclosure Award map was not available at the inquiry. In terms of the route for the footpath in question, Mr Brennan stated that though the line is very faint on the plan it had been possible, through a desktop exercise, to determine an alignment.

Mr Garratt of Hill Farm was then given the opportunity to speak and a **summary** of that speech is set out below:

- The land inclosure award dated 1776 does not show the relevant footpath but footpaths from Widmerpool to Keyworth, Stanton on the Wolds, Wymeswold and Thorpe, Willoughby, and Broughton Sulney are clearly marked.
- On the 1804 land inclosure award map all of the paths mentioned above were documented along with the route from Widmerpool to Kinoulton.
- Widmerpool estate was a well-known shooting estate and would not have been suitable for footpaths.
- The footpath had been documented by the Rector of Widmerpool as he had noticed it being used regularly by the estate workers and game keepers employed by James Robinson's estate. It was a mistake to define it as a public right of way and that is why it is not recorded on the following four maps found in the archives – 1796, 1924, 1957 and 1973.
- Pine Lodge was known as the Keeper's Cottage where the gamekeepers lived and they would make the journey from Kinoulton to Widmerpool daily.

- Hill Farm was three cottages for the estate workers who would be constantly using that route.
- People who grew up in the area can remember being told off by the gamekeepers for trespassing near these routes. This would be unlikely if an official footpath existed.
- The railway has no evidence that there was ever a footpath over the line in that location.
- Searches carried out in 1967 when purchasing Hill Farm only found footpath number 2 to Stanton on the Wolds. Bingham Rural District Council and Nottinghamshire County Council had no knowledge of a footpath between Widmerpool and Kinoulton over this land.
- In 1967 it had been possible to get footpath number 2 diverted. If the footpath in question had been known of then I am convinced it would have been possible for it to have been diverted down Station Road and Kinoulton Lane.
- People walking in the 19th Century would go by the most direct route. In this case the route would be straight down Station Road and Kinoulton Lane if the destination was Kinoulton.
- Route 4 already goes from Widmerpool to Kinoulton. At the time this would have been in close proximity to a meeting place at Turnpike Farm. Today the route would be over the dangerous A46.

Mr Brennan responded to comments by stating that the fact the footpath was not shown on the railway plans indicated that the footpath had fallen into disuse rather than it was not legally set out.

Mr Parkhouse of the Ramblers' Association was then given the opportunity to speak and a **summary** of that speech is set out below:

- The Ramblers' Association believes that there is a need for an off-road link between Widmerpool and Bridleway 11.
- The Association is keen to talk to landowners with the aim of agreeing on a route that is better for both walkers and landowners. In recent years this has happened elsewhere with great success several times.
- The Association encourages the Committee to accept the recommendations contained in the report with the proviso that before the orders are made discussions take place between them, Rights of Way officers and landowners to agree on a better route.

Mr Brennan responded to comments by stating that the Committee could not prejudice any decision and that the Authority would need to make a legal order

on the alignment in the report before any discussions on alternative routes could take place.

Councillor John Cottee, the local member, was then given the opportunity to speak and a **summary** of that speech is set out below:

- The footpath is only mentioned in the 1804 Inclosure Award, no record of the path can be found anywhere else either before or since 1804.
- I grew up in the village and remember Widmerpool Hall being owned by the AA. The route would only have been used by workers with the Cottages en route. The workers would go by the easiest, shortest route, which to Widmerpool would be south of Station Road.
- The footpath has been labelled public in error, it is a private route not a public one.

Following the speakers, members debated the item and the following comments and issues arose:

- Mr Brennan confirmed that the footpath in question has been deemed public in the 1804 Inclosure Award and directed members to Appendix D of the report where the relevant wording can be found.
- Mr Brennan agreed that the route of the footpath does now cross the A46 but the route in question was set out before motorised traffic existed. If Committee determines that the route exists and the order is made, then an emergency closure would be required on safety grounds.
- The Chair sympathised with the views of some members as to the futility of confirming a route only to close it again, but reminded members of the Committee's legal responsibilities in that if the route is declared as public in the inclosure award and there is no evidence of extinguishment, then the Committee has very little discretion in the matter.

On a motion by the Chair, seconded by the Vice-Chair, it was:-

RESOLVED 2017/038

Footpath A-B

- 1) That the making of a Modification Order by adding the footpath between points A-B (APPENDIX B) to the definitive map and statement be approved on the basis that the evidence shows a right of way to subsist (Test A).
- 2) That the Authority will support the confirmation of the Order in the event of it being referred to the Secretary of State for determination, unless further evidence is received in the meantime which indicates to officers

that either a neutral or objecting stance would be more appropriate, in which case officers are authorised to proceed accordingly.

Footpath C-D

- 3) That the making of a Modification Order by adding the footpath between points C-D (APPENDIX B) to the definitive map and statement be approved on the basis that the evidence shows a right of way to subsist (Test A).
- 4) That the Authority will support the confirmation of the Order in the event of it being referred to the Secretary of State for determination, unless further evidence is received in the meantime which indicates to officers that either a neutral or objecting stance would be more appropriate, in which case officers are authorised to proceed accordingly.

Footpath E-F

- 5) That the making of a Modification Order by adding the footpath between points E-F (APPENDIX B) to the definitive map and statement be approved on the basis that the evidence shows a right of way to subsist (Test A).
- 6) That the Authority will support the confirmation of the Order in the event of it being referred to the Secretary of State for determination, unless further evidence is received in the meantime which indicates to officers that either a neutral or objecting stance would be more appropriate, in which case officers are authorised to proceed accordingly.

The Committee agreed that the order of items be changed, in order that the report on the land adjacent to the railway line at North Muskham be debated next.

LAND ADJACENT TO RAILWAY LINE, OFF GREAT NORTH ROAD, NORTH MUSKHAM, NG23 6HN

Mr Smith introduced the report which highlighted the following:

- The application seeks permission for the use of land to import, store and process inert wastes, including wastes from the Newark Waste and Water Improvement Project.
- The key issues relate to the principle of this type of development in the countryside having regard to the historic uses of the site; impacts to the amenity of adjacent residential properties from resultant noise; dust; from HGV traffic; and railway safeguarding issues.

Following the introductory remarks of Mr Smith, Mr Northcote, appearing in support of the applicant, Laffeys Limited, was given the opportunity to speak and a **summary** of that speech is set out below:

- The Newark Waste and Water Improvement Project is well under way and is generating not only clean excavated material, which is being used to form a new embankment at Muskham Lakes, but also excavated material that needs to be processed.
- The application site is ideally located, both for processing the waste arisings and for the Muskham Lakes site. There are several alternative routes to the site which is important given the frequent traffic congestion around Newark.
- The site has been used by the County Council for over 30 years for the storage and processing of excavated highway materials. In fact, the applicant has undertaken a proportion of this work on behalf of the County Council using the same screener and crushing equipment that will be used for this application development.
- Processing will occur on a campaign basis estimated to be a maximum of 2 or 3 days every 4 to 6 weeks, equating to between 8 and 13 campaigns per annum.
- Via's noise engineer confirms that any noise problems can be mitigated, agreeing that the processing can be undertaken between 8am and 6pm, Monday to Friday. The applicant has previously undertook work for the County Council on an unrestricted basis, with crushing and screening occurring at evenings and weekends without any noise mitigation.
- The report takes due cognisance of the Development Plan and other material planning considerations.

The local Member, Councillor Bruce Laughton, was then given the opportunity to speak and a **summary** of that speech is set out below:

- The application should be refused for a number of reasons
- The application is retrospective and the gap in the bunds will be used to access the field
- The works in Newark will be carried out regardless of the success or otherwise of this application
- Local residents say that the site access is dangerous, with near misses with vehicles being reported and only this morning a digger has destroyed the grass verge
- The local community does not want this mess and knows that in 2 ½ years' time an extension will be granted as these sites are useful

- This developer has a history of carrying out recycling operations without permission
- A similar application in Bilsthorpe was successfully fought in 2003
- Some residents will not object as they live in a residential home
- This developer took 5 – 6 years to clear a similar site
- The site and planning conditions will be abused and the application should be refused

Following the speakers members debated the item and the following comments and questions were responded to:-

- Mr Smith confirmed that the field behind the site is not part of the application, though the noise attenuation bunds would be sited there. Unauthorised use of the field ceased immediately when an enforcement notice was served previously. The Chair stated that the purpose of today's meeting was not to consider past misuse.
- Concern was expressed that the gap between the bunds could be used to access the field. Mr Smith stated that though the noise engineer's report had been based on the gap being there, Condition 4 could be varied to impose a single bund. Discussions would need to take place with the applicant and the noise engineer on site and the exact wording of the condition could then be agreed with the Chair and Vice Chair.
- Mr Smith agreed that it was not ideal that the field and the bunds were not included within the red line indicating the extent of the application, but stated that such a scenario was not unprecedented. A legal order could be made but this would mean a substantial delay and would also need to be agreed with the field's landowner, though Mr Smith confirmed that at present the field was under the applicant's control.
- In response to the statement that the site was too small for HGVs to be able to turn round, Mr Smith stated that the relevant condition would require HGVs to leave the site in forward gear with the applicant able to vary the site layout in order to achieve this.
- Members were aware that NCC Highways had used the site previously but the proposed usage relating to this proposal is far more intensive with residents in the area already in negotiations to get noise mitigation measures implemented
- Mr Smith confirmed that enforcement action would be taken immediately if any breaches of the conditions were reported.

On a motion by the Chair, seconded by the Vice-Chair, it was:-

Resolved 2017/039

That temporary planning permission be granted subject to the conditions set out in Appendix 1 to the report.

GIRTON QUARRY, GAINSBOROUGH ROAD, GIRTON, NEAR NEWARK

Mr Hankin introduced the report and highlighted the following:

- At the 18th April 2017 Planning and Licensing Committee meeting members resolved to support a granting of planning permission for two separate planning applications to extend the existing completion date for mineral working at Girton Quarry until 31st December 2036
- The Council subsequently decided to withdraw the draft Replacement Minerals Local Plan, the policies of which partly informed the original decision taken by committee in April.
- Planning law requires the County Council to have regard to the Development Plan which is in place at the time the planning decision is issued and not as it stood when the committee resolution was made.
- The purpose of the report, therefore, is to review the original decisions taken in April 2017 which were informed in part by policies of the draft Replacement Nottinghamshire Minerals Local Plan and to reassess the merits of the planning applications in the absence of these policies.

Following the introductory remarks of Mr Hankin, Mr Walker on behalf of the applicant, Tarmac Trading Limited, was given the opportunity to speak and a **summary** of that speech is set out below:

- Girton Quarry is a mothballed sand and gravel quarry in the Trent Valley that has been closed since 2009 because of the economic recession.
- Tarmac would like to reopen the quarry next year with an anticipated output of 200.000 tonnes per annum. An estimated 3.44 million tonnes of sand and gravel remain to be extracted. This would take approximately 17 years to complete, hence an extension of the permission to quarry until 31st December 2036 is requested.
- The fixed processing plant on site is in a state of disrepair and needs decommissioning and removing.
- When the site is reopened the expectation is that mobile modular plant will be used.
- All existing environmental controls will be maintained, though those relating to ecology may need updating. This is mainly because of the site

having been largely untouched since 2009 with the consequence that some habitats have regenerated and some species have established themselves.

- Tarmac is committed to implementing the ecological mitigation measures set out in the two Regulation 22 submissions.
- In consultation with the Authority's ecological and landscape officers, Tarmac has produced an enhanced scheme of restoration as well as an interim scheme to restore the areas south of the site in the immediate short term
- Tarmac has agreed to establish a technical working group to review the progress of restoration which would include the authority, its advisors, and other interested parties such as the Nottinghamshire Wildlife Trust.
- Updated environmental controls will be implemented once planning permission is granted.
- If permission is not granted then the quarry would be permanently closed which could create a shortfall in the county land bank.

There were no questions.

On a motion by the Chair, seconded by the Vice-Chair, it was:-

Resolved 2017/040

NEWARK AND SHERWOOD DISTRICT REF. NO.: 3/16/01341/CMM

1. That the Corporate Director Place be instructed to enter into a legal agreement under Section 106 of the Town and Country Planning Act to require the submission of a report of archaeological findings from areas previously stripped of soils within 12 months of the date that planning permission is issued and to impose controls over lorry routeing to require all HGV traffic to access and exit the site to and from the north along the A1133 and thus avoid trafficking through Collingham village.
2. That subject to the completion of the legal agreement before 12th March 2018, or another date which may be agreed by the Team Manager Development Management in consultation with the Chairman, the Corporate Director Place be authorised to grant planning permission for the above development subject to the conditions set out in Appendix 1 of the April committee report, supplemented by the conditions set out in paragraph 11 of this report imposing archaeological control. In the event that the legal agreement is not signed by 12th March 2018, or within any subsequent extension of decision time agreed with the Minerals Planning Authority, the Corporate Director Place be authorised to refuse planning permission on the grounds that the development fails to provide for the measures identified in the Heads of Terms of the Section 106 legal agreement within a reasonable period of time.

NEWARK AND SHERWOOD DISTRICT REF. NO.: 3/16/01340/CMM

3. That the Corporate Director Place be instructed to enter into a legal agreement under Section 106 of the Town and Country Planning Act to impose controls over lorry routeing, requiring all HGV traffic to access and exit the site in a northerly direction along the A1133 and thus avoid trafficking through Collingham village.
4. That subject to the completion of the legal agreement before 12th March 2018, or another date which may be agreed by the Team Manager Development Management in consultation with the Chairman, the Corporate Director Place be authorised to grant planning permission for the above development subject to the conditions set out in Appendix 2 of the 18th April 2017 committee report. In the event that the legal agreement is not signed before 12th March 2018, or within any subsequent extension of decision time agreed with the Minerals Planning Authority, that the Corporate Director Place be authorised to refuse planning permission on the grounds that the development fails to provide for the measures identified in the Heads of Terms of the Section 106 legal agreement within a reasonable period of time.

KIRTON BRICKWORKS AND QUARRY, STATION ROAD, KIRTON, NG22 9LG

Mr Hankin introduced the report and highlighted the following:

- The application is for a western extension to Kirton Quarry for the extraction of 5.5 million tonnes of brick clay from a 20 hectare area of land
- The key issues relate to minerals policy issues concerning the allocation and extraction of brick making clay, the extraction of minerals from high quality agricultural land and the restoration provisions for the site, particularly the loss of agricultural land and ecological benefits derived from the restored site.

Following Mr Hankin's introduction members debated the item and the following comments and issues arose:

- Dust would be controlled at source with officers of the opinion that the ridge line between the village and the works means that dust should not be a problem.
- A Liaison Committee meets 6 monthly, if any measures prove inadequate, including those aimed at mitigating the effects of dust, then the applicant has 28 days to introduce further measures.
- The scheme would result in the loss of agricultural land but the balance has to be made between that loss and the economic benefits that will derive from the scheme.

On a motion by the Chair, seconded by the Vice-Chair, it was:

Resolved 2017/041

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

DEVELOPMENT MANAGEMENT PROGRESS REPORT

Mr Smith explained that this report was an amalgamation of the previous reports and the Work Programme reports and that this format would be used for future meetings.

On a motion by the Chair, seconded by the Vice-Chair, it was:-

RESOLVED 2017/042

That no further actions are required as a result of the contents of the report.

The meeting closed at 12.45pm

CHAIR