

Meeting PLANNING AND LICENSING COMMITTEE

Date Tuesday 5 June 2018 (commencing at 10.30 am)

Membership

Persons absent are marked with `A`

COUNCILLORS

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

Richard Butler	Kevin Rostance
Neil Clarke MBE	Tracey Taylor
A - Sybil Fielding	Keith Walker
Kevin Greaves	Andy Wetton
A – John Longdon	Yvonne Woodhead
Rachel Madden	

OTHER COUNTY COUNCILLORS IN ATTENDANCE

Glynn Gilfoyle

OFFICERS IN ATTENDANCE

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

1. APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN**Resolved 2018/011**

That the appointment of Councillor Chris Barnfather as Chairman and Councillor Jim Creamer as Vice-Chairman of the Planning and Licensing Committee be noted.

2. COMMITTEE MEMBERSHIP AND TERMS OF REFERENCE

Resolved 2018/012

That the membership of the Committee and Terms of Reference be noted

3. MINUTES OF LAST MEETING HELD ON 24th April 2018

The minutes of the meeting held on 24 April 2018, having been circulated to all Members, were taken as read and were confirmed and signed by the Chair.

4. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Fielding and Councillor Longdon. Councillor Rostance replaced Councillor Saddington on a permanent basis. Councillor Butler replaced Councillor Brown, Councillor Greaves replaced Councillor Henshaw and Councillor Woodhead replaced Councillor Allan, all for this meeting only.

5. DECLARATIONS OF INTERESTS BY MEMBERS AND OFFICERS

No declarations of interest were made.

6. DECLARATIONS OF LOBBYING OF MEMBERS

No declarations of lobbying were made.

7. PUBLIC BRIDLEWAY, ELKESLEY

Mr Brennan introduced the report and informed Committee that an application had been made for a Definitive Map Modification Order by Elkesley Parish Council in July 2016. Mr Brennan told the Committee that if the Order were implemented then a public bridleway along Battery Lane, Elkesley would be added to the Definitive Map and Statement in the Parish of Elkesley.

Following the introductory remarks of Mr Brennan, Mr Ffoulkes-Jones had an opportunity to speak and a **summary** of that speech is set out below:-

- In 1952 the officer compiling the Definitive Map removed Battery Lane as there was no evidence of usage.
- Four years ago the Poulter Valley Group could find no evidence of the route being used, however now members of the Group are asserting that they have been using the route regularly for over 20 years.
- Only a small number of individuals have been campaigning for this route, which has been rejected many times by the Parish Council.
- I have an uninterrupted view of the Lane from my home and land and I have never seen anyone using the route regularly.
- I believe the application for the route is based on the misconception that a further application could then be made for a continuation of the route to Thaymars.

- The lane is barely wide enough for a tractor and machinery and there are no passing places. The Lane is also bordered by barbed wire and hedging so surely safety is a consideration.
- We are regularly the victims of theft, damage and cruelty to our livestock and if the Order were made this would increase the opportunities for criminal behaviour.
- For at least 38 years the Lane has turned to my gate and crossed private land. This is the only worn track and has only been used by landowners.
- The photos accompanying the report were taken in spring when there was very little plant growth. The last 50 metres of the Lane are now as they have always been since I have lived here, that is, head high with flora and fauna and impassable.
- We are fortunate to have an abundance of Bridleways in the area including the stone bridge from Battery Lane which leads to the river and into the woods and on to Crookford Ford, Clumber Park and Bothamsall. In recent years this route has been made both horse and wheelchair friendly.
- I cannot see what has changed from 1952 or four years ago. I believe a large number of the statements have been embellished.
- There has been a nasty personal vendetta against me by certain individuals who feel they have a right to roam on my land.
- I hope Committee sees that there is no gain to be had by granting the Order and I am disappointed to have read statements that are untrue.

Following Mr Ffoulkes-Jones speech the following comments and questions were responded to:-

- Mr Ffoulkes-Jones stated that he does not own Battery Lane but accesses it through permitted rights from the private landowner.
- Mr Brennan stated that records clearly show that the land was sold by the Duke of Newcastle to Charles Longbottom in 1920 but that there is no record of the current owners, meaning that no-one is in a position to give permission to access.
- Mr Brennan informed Committee that the land either side of the Lane has changed hands since 1920 but that the documentation makes no mention of the Lane and according to the Land Registry the Lane has no owner at present.
- Councillor Greaves stated that he had first used the Lane more than 35 years ago and had never been challenged.

Mr Flear, a member of Elkesley Parish Council, was then given the opportunity to speak and a **summary** of that speech is set out below:-

- Whenever the subject of ownership has been discussed the assumption is that the land resides in private hands.
- The gate has been installed on safety grounds to prevent livestock escaping, which has happened in the past and could have fatal consequences.

- The Poulter Valley Group looked at potential improvements in the area and discounted Battery Lane as no-one used it, instead choosing to improve Stone Bridge.
- Making the Order will not make the site of Thaymars accessible.
- A team could be formed to look into what residents really want, for example, tackling the problems caused by owners of 4x4 vehicles

Following Mr Flear's speech the following comments and questions were responded to:-

- Mr Flear stated that a gate across Battery Lane rather than a cattle grid is preferred as this is more secure and cost effective. If there is a risk of livestock escaping then they should be secured - 'it is better to be safe than sorry.'
- Mr Flear has lived in the area for more than 30 years.
- Mr Flear informed Committee that residents did not mention Battery Lane when given the opportunity with only Stone Bridge and the Crookford Ford area generating interest.
- Mr Flear has never seen anyone on Battery Lane. There was no interest in the Lane 4 years ago and the fact that 49 statements have now been received does not sit well with Mr Flear.
- Mr Flear confirmed he is a member of Elkesley Parish Council and voted against submitting the Order but was defeated. He is speaking to the Planning and Licensing Committee as a private individual.

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

- I have lived in Elkesley some 26 years.
- A piece of string was stretched across Battery Lane in July 2015 which I assumed was by someone wanting to gauge public reaction. A rope subsequently appeared a few weeks later.
- Prior to this I had been approached as a member of the Parish Council by a member of the public who complained that her family had been ordered from Battery Lane by Mr Ffoulkes-Jones, who claimed to own it.
- From the 1400s Elkesley has comprised two estates – the larger of these passed into the hands of the Dukes of Newcastle and the smaller was owned by the Sharp family.
- Battery Lane appears un-named on a map of 1857-8 on the sale of the Sharp Estate. Since its inception the Lane has enjoyed a measure of independence and has not appeared in the various sales schedules.
- Paragraph 8 of the report refers to the use of hedging to stop foot traffic straying on to adjacent land. The planting of this hedge suggests regular public usage of the Lane.
- Mr Ffoulkes-Jones attended a meeting of the Parish Council in September 2015 to inform them that he intended to erect a gate on the lane. The justification given was that it would 'keep out gypsies' and prevent access into a nearby field where he may decide to

keep a bull. There was a period of months when the gate was locked.

Following Mr Hirst's speech the following comments and questions were responded to:-

- It would not be possible to leave the gate in situ and remove the sign as if the Order were to be made, the right of way would have to be restored as it was when dedicated, and this did not include a gate.
- Access to a public bridle road is by foot and horse from 1950 and by cyclists from 1968 with no motorised access allowed.
- There is no indication that anyone is seeking a route beyond the river, if the Order is made it will purely define a route that has existed historically.
- The Chair invited officers to comment on the fact that some of today's speakers had queried the honesty and accuracy of the user evidence forms. Mr Brennan replied that all evidence was taken at face value and investigated. Mr Brennan informed Committee that if the Order were to be approved the evidence could be further tested as any objections would then be passed on to the Planning Inspectorate.

The Chair summarised the situation as follows:

- Battery Lane is not in the ownership of Mr Ffoulkes-Jones, a fact with which Mr Ffoulkes-Jones agrees.
- Historical documents refer to uninterrupted public use for 50 years. For the purposes of this application the right of the public to use the route was brought into question in 2015 so the relevant 20 year period in this case is from 1995 to 2015.
- It is up to members to decide if the information on the forms is honest and people's recollections can be inaccurate.
- The County Divisional Highway Surveyor decided against including Battery Lane on the Definitive Map as it did not connect to another highway, though this is not a legal reason for such an omission.
- No records show the access rights as extinguished so if a right existed it has not disappeared.
- Many members represent rural areas and have sympathy with the problems faced by landowners, but in his opinion, in this case, there is not enough evidence to refuse the application.

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

RESOLVED 2018/011

- 1) That Committee approve the making of a Modification Order by adding the bridleway between points A-B (APPENDIX B) to the definitive map and statement on the basis that the evidence shows a right of way to subsist (Test A) and there being no credible evidence to the contrary.
- 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.

8. PUBLIC RIGHT OF WAY, HIGHLAND GROVE, WORKSOP

Mr Trundle introduced the report which considered an application for a Modification Order to record a route as a public footpath on the Definitive Map and Statement for the Parish of Worksop. Mr Trundle informed Committee that if the application were to be accepted a new public footpath would be added from its junction with the adopted section of Highland Grove to its junction with Worksop Bridleway No. 34.

Following the introductory remarks of Mr Trundle, Mr Wass was given the opportunity to speak and a **summary** of that speech is set out below:-

- The plot of land was put up for sale in October 2016
- Prior to the auction I was informed that the footpath was private and belonged to the NHS
- In October 2016 we were successful in our bid for the land
- 34 and 36 Highgrove Grove were subsequently put up for sale by tender for which we were successful and a package was agreed to buy 34, 36 and the land.
- Prior to agreeing the above deal our solicitor obtained a statutory declaration from the NHS confirming that the footpath was private and they were able to sell the lot as a vacant plot
- In December 2016, again prior to purchase, a planning application to develop the land was submitted
- Mr Thorpe submitted an application for a modification order on 2nd March
- The sale of the site was completed on 21st March and the footpath was fenced off and the site secured
- We contacted Mr Trundle on 5th April 2017 to notify him that Mr Thorpe was withdrawing his application after consulting ourselves as he was happy with the proposed development
- Mr Trundle confirmed the application for a modification order was turned down on 24th May and no appeals were made
- Mr Osborne made no objections to our planning application
- Outline planning permission was granted on 7th September 2017 to build two dwellings
- In July 2017 Mr Osborne made a new application for a modification order
- Mr Trundle contacted us and we resubmitted all the evidence again including:
 - Statutory declaration from the NHS that the footpath was for hospital use only
 - Photographs of extensive signage confirming the footpath was for hospital use only and was not a public right of way
 - Statutory declaration from Richard Penney, former Estates Officer for Bassetlaw Hospital, confirming the existence of signs and gates across the path

- There is no evidence that anyone has lawfully used the path continuously for a 20 year period to substantiate the application for a modification order.

There were no questions.

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

- I have lived on Highland Grove since 1989 and have used the footpath regularly between Kilton Hill and Highland Grove, and vice versa, from then until the present day.
- I have used the footpath on a relatively regular basis from at least 1974 and probably going back to 1968.
- The footpath has never been closed and no-one has ever questioned me or stopped me from using the footpath.
- My wife and three sons have also used the footpath since 1989 and no-one has ever questioned or stopped them either.
- I have witnessed school children and others using the footpath from Kilton Hill for over 25 years.
- No signs have ever been in place on the footpath when going in the direction from Kilton Hill to Highland Grove.
- There are some errors in the report, for example the report states that the hospital owned 32 Highland Grove and this has never been the case.
- Photograph 1, November 2016, shows no signs placed on the footpath.
- Photograph 3 shows b to c towards the hospital car park but shows no signs in the opposite direction, therefore the 20 year rule is back from 2017 when the path was closed.
- Photograph 6 shows the path from the hospital to Highland Grove and again there are no signs.
- Photograph 7 shows a sign on the wall of 34 Highland Grove which is 12 words long and this cannot be the same sign as shown in Photograph 9 which mentions dogs and contains 13 words. The wording is: 'No Public Right of Way NHS Staff Access to Hospital Site Only' Again this illustrates inconsistencies in the report.
- I submitted a satellite image taken prior to 2006 and no sign on the wall of number 34 was present.
- According to information published by Pugh auctions the sale of the land and of 34 and 36 Highland Grove did not include the footpath.
- The wording on the signs should be clear and consistent, yet the wording differs and no explanation is given.
- Plan A showing the OS map must be dated prior to 1990.
- The new sign on the wall of number 34 was only put up when I made the original application for a modification order, otherwise there would be no signs.
- My understanding is that the signs need to be displayed for 20 years and this is clearly not the case.
- The new sign on the side of number 34 was not put up by the owners.

- The owners of the property (Notts NHS Trust and not Bassetlaw Hospital), as the public record shows, could not afford to maintain the property and clearly sign/s would be a very low priority.

Following Mr Thorpe's speech the following comments and questions were responded to:-

- The differences in the wording on the signs is set out in paragraph 17 of the report. The wording is different but very similar.
- It is true there are no signs facing the opposite direction, but a right of way includes the right to pass and re-pass. Also, the sign on the side of the building is visible from both directions.
- Mr Thorpe withdrew a previous application for a modification order. This concerned the sale of Barrowby House, after which a charge for on-site parking was introduced which led to an increase in on-street parking. Local residents did not appreciate this development and consequently withdrew the application. Mr Thorpe regards this as a separate issue.
- Mr Wass bought the property in 2016 not 1989.

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

- There is no doubt that the footpath is well used.
- I have used the path for in excess of 30 years.
- I have written to local residents but the response was minimal. I agree with Mr Thorpe about the effect of the introduction of parking charges and can understand the reluctance of local residents to come forward.
- I noticed the sign on the side of the building but assumed it related to access to the building, which I thought were two secure units, and not to the footpath.
- Children have used the footpath to go to and from school

Following the speeches Members debated the item and the following comments and questions were responded to:-

- The hospital did write to the Head of Valley Academy about pupils using the footpath. The Head responded that as the footpath was not on school grounds there was not much he could do.
- There is no prescribed wording for signs but both signs in this case are clear and challenge people's use of the footpath.
- There is no requirement for signs to have been on site for a continuous period of 20 years.
- Aerial photos from 1971 do show the route as being present but cannot indicate whether the path is private or public or being used.
- Paragraph 22 of the report states that the signs were put up by the hospital, though the wording does not include the term 'By Order'
- Paragraph 26 of the report states that people using the footpath were challenged when the signs were put up but this only happened for one week.

The Chair summarised the situation as follows:

- The survey carried out by Mr Straw is also relevant. He would have been very conversant with the rights of way in the area and it is significant that he chose to omit this footpath.
- Nothing on OS maps to indicate the status of the footpath
- People's use of the footpath has been challenged ie by signage and staff
- There is only one user evidence form that covers the entire period in question
- Members need to consider all of the evidence put before them before coming to a decision.

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

Resolved 2018/012

That the application for a Modification Order to modify the Definitive Map and Statement be turned down for the reasons set out in the report that the evidence shows that a right of way is not reasonably alleged to exist.

9. DORKET HEAD QUARRY, NOTTINGHAM

Mr Hankin introduced the report which considered two planning applications at Dorket Head Quarry, Arnold.

Mr Hankin informed Members that the main development seeks planning permission for the extension of clay extraction within a southern extension and the second application seeks to vary the approved restoration scheme for the wider quarry workings.

Mr Hankin stated that the key issues related to compliance with Development Plan policy regarding future mineral extraction at Dorket Head, the contribution the development makes to secure the long term economic future of the quarry and its factory, to wider sustainability issues and the relationship between this development and housing allocations proposed in the new Gedling Local Plan.

Mr Hankin pointed out that Phases 2 and 3 shown on Plan 4 are the wrong way round and also informed Committee that since the report had been written more comments had been received and that no objections to the proposals had been made by either the Flood Team or the Reclamation Team.

There were no questions.

Following the introductory remarks of Mr Hankin, Mr Ingram, on behalf of the developer Ibstock, was given the opportunity to speak and a **summary** of that speech is set out below:-

- There is a need to meet the demands of the Gedling Local Plan otherwise 3 years of clay extraction will be lost with consequent effects on local employment as well as those employed in the supply chain

- After extraction the area will be landscaped, trees will be planted and inert waste will be used.
- A Section 73 agreement will be signed so the applicant's rights to use household waste will be surrendered.
- A detailed Environmental Impact Assessment has been completed and concluded that no long term harm will result from the development.
- There have been no objections from any of the statutory consultees.

Following Mr Ingram's speech Members debated the item and the following comments and questions were responded to:-

- Use of inert waste is a positive.
- No use of household waste a positive.
- The developer bringing forward its plans so the land is not sterilised or housing precluded, is a good example of partners working well together.

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

RESOLVED 2018/013

1. That planning permission be granted for Planning Ref.7/2018/0159NCC, subject to the conditions set out in Appendix 1.
2. That planning permission be granted for Planning Ref.7/2018/01681NCC, subject to the conditions set out in Appendix 2.

10. WEST BURTON POWER STATION AND BOLE INGS ASH DISPOSAL SITE, RETFORD

Mr Smith introduced the report which concerned a planning application seeking to vary conditions governing the operations at Bole Ings ash disposal site, principally to enable greater quantities of ash to be reclaimed from a single phase than is currently permitted and to extend the duration of ash disposal operations to cover the remaining life of West Burton A power station.

Mr Smith informed Members that the key issues related to the principle of extending the period of ash disposal operations and thereafter achieving an acceptable restoration.

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

RESOLVED 2018/014

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

11. SHALE GAS PROPOSALS – CONSULTATION RESPONSE

Mr Smith introduced the report which advised Members of the County Council's written submission to the Parliamentary Communities and Local Government

Committee Inquiry on fracking, the Planning Group Manager's attendance at the Inquiry and subsequent meeting with the MHCLG and a Ministerial Written Statement made in relation to shale gas proposals.

Following Mr Smith's introductory remarks Members debated the item and the following comments and questions were responded to:-

- The response included the pros and cons involved, balancing the potential lack of local democratic accountability against very contentious issues.
- There will be cost implications for the Authority whatever is decided.

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

RESOLVED 2018/015

That the continued involvement of the authority with the Ministry of Housing, Communities and Local Government on consultations relating to shale gas development be approved.

12. DEVELOPMENT MANAGEMENT PROGRESS REPORT

Mr Smith introduced the report and confirmed that this was the usual regular report detailing which reports were likely to come before Committee.

Following Mr Smith's introductory remarks Members debated the item and the following comments and questions were responded to:-

- All applications for sand and gravel extraction will be taken into account with regards to requirement and the land bank.
- Planning Application 3/18/00756/CMA, Land at Rufford Hills Farm, is an application to extract mine gas from the former Ollerton Colliery and turn it into electricity.

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

RESOLVED 2018/016

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

The meeting closed at 1pm

CHAIR