

## **DEVELOPMENT CONTROL AND REGULATION COMMITTEE**

Minutes of a Meeting of the Development Control and Regulation Committee held on Wednesday, 4 March 2020 at 10.00 am at Council Chamber - County Offices, Kendal, LA9 4RQ

### **PRESENT:**

Mr GD Cook (Chair)

Mr A McGuckin (Vice-Chair)	Mr LN Fisher
Mr RK Bingham	Mr KR Hamilton
Mr A Bowness	Mr AJ Markley
Mrs HF Carrick	Mr W McEwan
Mr F Cassidy	Mr FI Morgan
Mrs BC Gray	Mr MH Worth
Mr D English	Mr D Gawne

### **Also in Attendance:-**

Svetlana Bainbridge	-	Commons Registration Officer
Mark Brennand	-	Lead Officer - Historic Environment and Commons
Philippa Christie	-	Solicitor
Richard Cryer	-	Lead Officer - Development Control
Paul Haggin	-	Manager Development Control and Sustainable Development
David Hughes	-	Planning Officer
Andy Sims	-	Countryside Access Officer

### **PART 1 – ITEMS CONSIDERED IN THE PRESENCE OF THE PUBLIC AND PRESS**

#### **114 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Mr N Cotton, Mr J Holliday, Mr P Turner and Mr D Wilson.

#### **115 CHANGES IN MEMBERSHIP**

It was noted that Mr D Gawne replaced Mr D Wilson as a member of the Committee for this meeting only.

#### **116 DISCLOSURES OF INTEREST**

There were no disclosures of interest made.

## **117 EXCLUSION OF PRESS AND PUBLIC**

RESOLVED that, the press and public not be excluded during consideration of any items of business.

## **118 MINUTES**

Corrections:

Page 9, Minute 103, 2<sup>nd</sup> paragraph, last line. Replace 'make the order' with 'approve the making of the order'

Page 28, Minute 107, 1<sup>st</sup> line. Add in 'Acting' between 'the' and 'Executive'

Page 29, Minute 108, 1<sup>st</sup> line. Ref 5/19/9013 to be replaced with 5/19/9014.

RESOLVED that, subject to the corrections above, the minutes of the meeting held on 22 January 2020 be confirmed as a correct record and signed by the Chairman.

## **119 CA13/28 - APPLICATION TO CORRECT MISTAKEN REGISTRATION; CL40 COMMEMORATION SITE, BURGH BY SANDS**

A report was considered from the Executive Director – Economy and Infrastructure regarding CA13/28 – Application to correct mistaken registration: CL40 Commemoration site, Burgh by Sands. The report advised that an application had been received from John Robert Armstrong, Ann Judith Butler, Philippa Jane Hodgson and William Adam Hodgson to correct a mistaken registration of common land register unit CL40 Commemoration Site, Burgh by Sands.

The Commons Registration Officer presented a location plan and maps of the site and outlined the applicant's claims. She considered it reasonable to conclude that the Application met the statutory criteria for deregistration and recommended that the Committee accepted the Application.

It was moved by Mr Markley and seconded by Mr Bowness that the Committee accept the application. Following a vote cast as follows, 15 in favour of the motion, 0 against and 0 abstentions, it was

RESOLVED that, the common land register be amended on the grounds that the land in question immediately before its provisional registration was not land subject to rights of common, waste land of a manor, a town or village green or land of a specified in Section 11 of the Inclosure Act 1845.

## **120 COMMONS REGISTRATION: - APPLICATION FOR REGISTRATION OF LAND TO THE WEST OF NEW CROFT, WIGTON AS A TOWN OR VILLAGE GREEN**

A report was considered from the Executive Director – Economy and Infrastructure regarding Commons Registration: application for registration of land to the west of New Croft, Wigton as a Town or Village Green. The report advised that an application had been received from Rose Anne O’Hea to register land to the West of New Croft, Wigton as a town or village green.

The Commons Officer presented a location plan and overhead photographs of the land and outlined the applicant’s claims to register the land. She explained that for an application to be successful, each element of statutory criteria must be properly and strictly proved. She stated that after considering all available evidence, she was of the opinion that whilst there was some evidence that the application land has been used for recreational activities for over 20 years by a number of people living in the houses which back onto the Application Land, a number of the statutory criteria for registration had not been satisfied. She recommended that the Committee rejected the application so that the Application Land was not added to the Council’s register of town or village greens.

A member expressed that he thought the definition of ‘neighbourhood’ was unfortunately too narrow to agree the application for registration for this piece of land.

It was moved by Mr McGuckin and seconded by Mr McEwan that the application be rejected. Following a vote cast as follows, 15 in favour of the motion, 0 against and 0 abstentions, it was

RESOLVED that, the Committee reject the application on the ground that the statutory requirements contained at section 15(2) of the Commons Act 2006 have not been met.

**121 COMMONS REGISTRATION: - APPLICATION FOR REGISTRATION OF LAND ADJACENT TO WEST ROAD, WIGTON AS A TOWN OR VILLAGE GREEN**

A report was considered from the Executive Director – Economy and Infrastructure regarding Commons Registration: application for registration of land adjacent to West Road, Wigton as a Town or Village Green. The report advised that an application had been received from Rose Anne O’Hea to register land adjacent to West Road, Wigton as a town or village green. The Application was made under section 15 of the Commons Act 2006.

The Commons Officer explained that the application related to a parcel of land at Wigton adjacent to the one which was subject to the application for registration of land to the west of New Croft, Wigton as a Town or Village Green, considered by members immediately before this application. A location plan and map were presented, the application was outlined and the legal criteria which must be met to register land was explained. She reported on the objections that had been submitted. The Commons Officer explained that having considered the application, she was of the opinion that there was insufficient evidence of use and, what

evidence there was, was of poor quality. She agreed with objectors that none of the statutory criteria had been satisfied and recommended the application be rejected.

In moving that the application be rejected, Mr Markley stated that he considered this to be a weak application. In seconding this motion, Mr Fisher drew members' attention to a document for the public which was a step by step guide for applying for Town or Village Green status. Following a vote cast as follows, 15 in favour of the motion, 0 against and 0 abstentions, it was

RESOLVED that, the application be rejected on the grounds that the statutory requirements contained at section 15(2) of the Commons Act 2006 have not been met

## **122 HIGHWAYS ACT 1980 SECTION 119 - APPLICATION TO DIVERT PUBLIC FOOTPATH NO 372030 IN THE PARISH OF WARCOP: DISTRICT OF EDEN**

A report was considered from the Executive Director – Economy and Infrastructure regarding Highways Act 1980 Section 119 – Application to divert public footpath no 372030 in the parish of Warcop: district of Eden. The report advised that an application had been received to divert a section of public footpath no 372030 at the Warcop Training Area in the parish of Warcop district of Eden.

The Countryside Access Officer explained that the applicant for agenda items 9 and 10 was the same landowner and as the two cases were located next to each other, he had prepared an overview slide to aid with understanding of the situation. He reported that the Ministry of Defence (MoD) was the landowner who had two public rights of way that were within close proximity to a live firing range. The MoD wished to move the rights of way further away from the firing range. It was reported that by working closely with the Countryside Access Officers, a safe and convenient alternate route outside the Impact Area had been devised and agreed by the Defence Infrastructure Organisation. The Countryside Access Officer was satisfied that the proposed changes passed the relevant legal tests and recommended that the recommendation in the report be agreed.

Following questions from members, the Countryside Access Officer confirmed that although use of the paths would be heavily restricted (in comparison to the use of other footpaths off the MoD site), the new route would be permanent and could only be altered by a legal order. He indicated that the new routes would be very well way marked for reasons of public safety and convenience. A query was raised on the use of local fishponds, however it was confirmed that these did not have a public route leading to them.

Mr Markley moved that the order be made as he wanted to ensure the safety of the public. This was seconded by Mr Fisher.

A member raised that a piece of MoD owned land in West Cumbria had been closed to public access due to its contamination. He stated that should the land at Warcop be returned to the public, it should be established that the MoD clean it. The

Manager Development Control and Sustainable Development advised that this request stood outside the legislation used to determine the application, however when he met with the MoD he would raise this.

Following a vote cast as follows, in favour of the motion: 15, against: 0, abstentions: 0 it was

RESOLVED that, pursuant to the power set out at Part 2G paragraph 2.1(g) (iii) of the Council's Constitution, an order be made under Section 119 of the Highways Act 1980 to divert that section of public footpath no 372030 in the parish of Warcop shown A-B to a new route A-C-D-E-F-G-H-B and that all necessary actions be taken to confirm the order.

### **123 HIGHWAYS ACT 1980 SECTION 119 - APPLICATION TO DIVERT PUBLIC FOOTPATH NO 372031 AND PUBLIC BRIDLEWAY NO 372033 IN THE PARISHES OF WARCOP: DISTRICT OF EDEN**

A report was considered from the Executive Director – Economy and Infrastructure regarding Highways Act 1980 Section 119 – Application to divert public footpath no 372031 and public bridleway no 372033 in the parishes of Warcop: district of Eden. The report advised that an application had been received to divert sections of public footpath no 372031 and public bridleway no 372033 at the Warcop Training Area in the parish of Warcop district of Eden.

The Countryside Access Officer presented a map showing the diversion and explained that the proposed diversion would connect the public bridleway to the A66 where a minor highway on the south side of the carriage way created a viable link to other rights of way in the area. He was satisfied that the proposed changes passed the relevant legal tests and recommended that the recommendation in the report be approved.

It was moved by Mrs Gray and seconded by Mr Graham that the Order be made. Following a vote cast as follows, in favour of the motion: 15, against: 0, abstain: 0 it was

RESOLVED that, pursuant to the power set out at Part 2G paragraph 2.1(g) (iii) of the Council's Constitution, an order be made under Section 119 of the Highways Act 1980 to divert

- (i) That section of public footpath no 372031 in the parish of Warcop shown N-B to a new route N-O-P-Q-R-S in the parish of Warcop and a new route S-H in the parish of Musgrave; and
- (ii) That section of public bridleway no 372033 in the parish of Warcop shown A-B to a new route A-C in the parish of Warcop and a new route C-D-E-F-G-H-I-J-K-L-M in the parish of Musgrave

And that all necessary actions be taken to confirm the order.

**124 WILDLIFE & COUNTRYSIDE ACT 1981 - SECTION 53 APPLICATION TO MODIFY A SECTION OF PUBLIC FOOTPATH NO 126003 PARISH OF NICHOLFOREST: DISTRICT OF CARLISLE**

A report was considered from the Executive Director – Economy and Infrastructure regarding the Wildlife and Countryside Act 1981 – Section 53 application to modify a section of public footpath no 126003 parish of Nicholforest: district of Carlisle. The report advised that an application had been received to modify a section of public footpath no 126003 on the Definitive Map and Statement at the Kingfield Estate, Penton in the parish of Nicholforest.

The Countryside Access Officer explained that agenda items 11 and 12 were linked and presented an overview slide to help with understanding the situation. He explained that the landowner did not agree with the recorded alignment of a public right of way across their property but had not provided sufficient evidence to convince Officers to recommend making a legal order to alter the location of the path. Consequently, the landowner had agreed to an alternative 1980 Highways Act S119 diversion order. He reported on his work with the applicant to seek a mutually acceptable remedy to the situation but concluded that the applicant had failed to satisfy the strict burden of proof that the Definitive Map and Statement were incorrect and therefore recommended that the modification order should be rejected.

After being asked to provide clarification on the B-C section for which there were three evidence statements and whether they were accepted as evidence, the Countryside Access Officer explained that it had to be considered whether there was sufficient evidence to show that end point C should instead be located at point D. He explained that route B-C was an inconvenient route as there were a lot of steps however, route A-D although not perfect, had not received any objections during the consultation process.

In response to a member question about the farm and the diversion through the buildings, the Countryside Access Officer advised that it was a working farm and explained the local terrain along the existing recorded alignment which included fences and a stream. He added that there wasn't enough evidence to prove that a mistake had been made when the Definitive Map and Statement was produced.

It was moved by Mr Fisher and seconded by Mrs Gray that the application be rejected. Following a vote cast as follows, in favour of the motion: 15, against: 0, abstain: 0 it was

RESOLVED that, the application to modify the route of public footpath no 126003 in the parish of Nicholforest be rejected.

**125 HIGHWAYS ACT 1980 SECTION 119 APPLICATION TO DIVERT PUBLIC FOOTPATH NO 126003 PARISH OF NICHOLFOREST: DISTRICT OF CARLISLE**

A report was considered from the Executive Director – Economy and Infrastructure regarding the Highways Act 1980 Section 119 Application to divert public footpath no 126003 parish of Nicholforest: district of Carlisle. The report advised that an application has been received to divert sections of public footpath no 126003 in the Parish of Nicholforest.

The Countryside Access Officer presented a map of the diversion route and outlined the existing definitive route. He considered that the proposed route would offer a more logical, easier and accessible route and in doing would reduce the future maintenance burden on the land manager and County Council. He concluded that the proposed diversion passed the legal tests and recommended that the order as set out in the report was made.

Mr Markley moved that the order to divert the footpath be made. This was seconded by Mrs Gray. Following a vote cast as follows, in favour of the motion: 15, against: 0, abstain: 0, it was

RESOLVED that, pursuant to the power set out at Part 2G paragraph 2.1(g)(iii) of the Council's Constitution, an order be made under Section 119 of the Highways Act 1980 to divert those sections of public footpath no 126003 in the parish of Nicholforest as shown A-B to a new route A-E-F-B and C-D to a new route C-G-H-I as shown on the plan at Appendix A and that all necessary action be taken to confirm the order.

**126 5/19/9006 CHANGE OF USE FROM AGRICULTURAL FIELD TO WASTEWATER TREATMENT WORKS EXTENSION TO ALLOW FOR INCREASES TO THE CAPACITY OF THE WASTEWATER TREATMENT PROCESS TO ACCOMMODATE POPULATION GROWTH IN THE AREA. LOCATION: LAND ADJACENT TO THE ENDMOOR WASTEWATER TREATMENT WORKS, ENYEAT ROAD, ENDMOOR, NEAR KENDAL, LA7 7NW**

A report was considered from the Executive Director – Economy and Infrastructure regarding planning application no 5/19/9006, Change of use from agricultural field to wastewater treatment works extension to allow for increases to the capacity of the wastewater treatment process to accommodate population growth in the area. Location: Land adjacent to the Endmoor Wastewater Treatment Works, Enyeat Road, Endmoor, Near Kendal, LA7 7NW.

The Planning Officer guided members through the retrospective planning application, advising that the original scheme was granted Planning Permission under delegated powers on 31 July 2018. He explained that the contractor had constructed the site but had had changed some aspects of the scheme to reflect engineering constraints. An aerial photograph was presented and members were informed that the site footprints were slightly different. A number of photographs were shown from different viewpoints which highlighted topography, barriers and houses near the location. Slides were presented showing the previous approved

scheme and current proposal. Members' attention was drawn to an image from an objector who considered that the tree planting was inadequate for screening.

Members' attention was drawn to a black chain link fence, weathered concrete and galvanised handrails and barriers. A photograph was shown which showed the two schemes side by side which showed that the works were broadly similar.

The Planning Officer talked about the planting in the proposed scheme. He detailed the objections from a resident which related to a number of issues which included inadequate screening and species of tree used in the planting. He then read out further comments from the objector which were outlined in the circulated update sheet and highlighted that there had not been enough time to obtain a response from the applicant to present to the Committee. The Planning Officer considered that the application met planning polices and addressed relevant material considerations.

The Planning Officer indicated on a map to members where the objector lived. A member reported that he had received an email from the objector outlining their objections regarding planting, however the whole Committee had not received the email. The Manager Development Control and Sustainable Development acknowledged that not all members had received the email, however the Planning Officer had outlined the planting scheme.

The Local Member, Mr Bingham stated that he knew the site well, supported the development and reported that the lane was well used but acknowledged the objector's points about planting. He moved that planting was increased and an additional condition be included in the permission to reflect this. This was seconded by Mr Markley. The Manager Development Control and Sustainable Development advised that adding an additional landscaping condition to the permission was acceptable.

Following a question from a member regarding ownership of the nearby hedgerow and whether it could be grown to improve screening, the Planning Officer advised that the Hedgerow was not in the ownership of the applicant. It was queried whether there was provision within the permission to check that planting continued to grow to ensure screening whilst another member suggested the local farmer could grow his hedge higher for screening purposes. The Planning Officer outlined that the landscaping scheme required planting to be removed and replaced after five years.

Following a vote to grant planning permission, subject to conditions and with the inclusion of an additional landscaping condition, cast as follows, in favour of the motion: 15, against: 0, abstain: 0, it was

**RESOLVED** that, Planning Permission be granted subject to conditions set out in Appendix 1 of the report and additional condition as set out below:

Notwithstanding the details shown on landscaping plan 80014814-01-C2V-ENDMO-DR-T-05102 Revision P07 and the requirements of condition 2, within 3 months of the date of this permission a scheme for additional planting shall be submitted to the County Council for approval in writing. The scheme shall propose additional tree



and shrub planting to improve visual screening of the site. The additional planting as approved shall be carried out in the first planting season following approval and any trees or plants which die, are removed or become seriously damaged or diseased within 5 years of planting shall be replaced in the next planting season with a specimen of a similar species.

Reason In order to enhance the appearance of the development and minimise the visual impact of the site in accordance with policy DC18 of the CMWLP.

### **127 APPLICATIONS DETERMINED UNDER DELEGATED POWERS**

RESOLVED that, the list of applications determined under delegated powers be noted.

### **128 APPLICATIONS PROPOSED TO BE DETERMINED UNDER DELEGATED POWERS**

The Manager Development Control and Sustainable Development drew members' attention to planning application 4/19/9009 at Drigg Low Level Waste disposal site. He confirmed that the Parish Council had been consulted on this application and the response period had been extended. If a response highlighting concerns was received, this application would be determined by the Committee.

RESOLVED that, the list of applications proposed to be determined under delegated powers be noted.

### **129 FORWARD PLAN**

The Committee's Forward Plan was considered. Members were advised of a possible site visit to Land at the Celtic, Walney Island in May 2020.

RESOLVED that, the Forward Plan be noted

### **130 DATE AND TIME OF NEXT MEETING**

RESOLVED that, the list of future meeting dates be noted.

The meeting ended at 11.10 am