DEVELOPMENT CONTROL AND REGULATION COMMITTEE

Minutes of a Meeting of the Development Control and Regulation Committee held on Tuesday, 13 August 2019 at 10.00 am at Council Chamber - County Offices, Kendal, LA9 4RQ

PRESENT:

Mr A McGuckin (Vice-Chair, in the Chair) Mr JS Holliday
Mr A Bowness Mr AJ Markley
Mrs HF Carrick Mr W McEwan
Mr F Cassidy Mr FI Morgan
Mr N Cotton Mr D Wilson
Mrs BC Gray Mr MH Worth
Mr D English Mr D Gawne
Mr LN Fisher Mr K Hitchen
Mr KR Hamilton Mrs S Sanderson

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 Countryside Management
David Hughes - Planning Officer
Edward Page - Planning Officer
Jayne Petersen - Planning Officer
Andy Sims - Countryside Access Officer
Jason Weatherill - Commons Officer

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

35 APOLOGIES FOR ABSENCE

Apologies for absence were received from Mr R Bingham, Mr C Cook and Mr P Turner.

36 CHANGES IN MEMBERSHIP
For this meeting only, membership was changed as follows:

Mr D Gawne replaced Mr P Turner
Mr K Hitchen replaced Mr R Bingham
Mrs S Sanderson replaced Mr G Cook

37 DISCLOSURES OF INTEREST

There were no disclosures of interest made.

38 EXCLUSION OF PRESS AND PUBLIC

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

39 MINUTES

At the meeting on 1 July 2019 both Mr M Wilson and Mr D Wilson were in attendance. Comments attributed to Mr Wilson at Minute number 29, were from Mr D Wilson.

RESOLVED that, the minutes of the meeting held on 1 July 2019 be confirmed as a correct record and signed by the Chairman.

40 CA10/41 - APPLICATION TO CORRECT UNIT CL495 OF THE REGISTER OF COMMON LAND - KITCHIN’S GROUND, THE HILL, MILLOM.

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding CA10/41 which was an application to correct unit No. CL495 of the Register of Common Land – Kitchin’s Ground, The Hill, Millom.

The report advised that an application had been received from Jaqueline Sayer to correct unit No. CL495 of the Register of Common Land – Kitchin’s Ground, The Hill, Millom. The purpose of the report was to request Members to make a decision as to whether the application should be granted and a correction made to the Council’s register of common land. A plan of the application land was presented to members. Clarification was provided on the application area.

It was moved by Mr Morgan and seconded by Mr Hitchen that the application be accepted and the common land register be corrected. Following a vote, unanimously in favour of the motion, it was

RESOLVED that, that the Committee accepts the application and corrects the common land register for the reasons contained within the report and on the specific grounds that Cumbria County Council as Commons Registration Authority made a mistake when producing the register map under the Commons Registration Act 1965 by including the land subject to this application within the boundary of CL495 Kitchin’s Ground.
A report was considered from the Acting Executive Director – Economy and Infrastructure which advised that an application had been received from Mr James Fowler on behalf of Cumrew Parish Council, to register an area of land at Cumrew as a new town or village green. The application had been made under section 15(2) of the Commons Act 2006. The purpose of the report was to request Members to make a decision as to whether the land should be added to the Council’s Register of Town and Village Greens.

A map of the application area and photographs showing the strips of land were presented to the Committee. Members were provided with the background to the application and the legal criteria for the registering of land which the Commons Officer considered had not been met. The Commons Officer highlighted that the land in question was more like a right of way in its configuration and he was of the opinion that the land could not be defined as a town or village green.

A member clarified that a site visit to the land had been undertaken by officers and not members. In referring to a photograph of the land which had been presented to the Committee, a member considered that the land was a grass verge rather than a town or village green. In accepting that the land did not fit the legal criteria and looked like a grass verge, a member suggested that the criteria was out of date for modern day usage and urged for this to be updated. The Chair highlighted that the Committee was bound by the current law in its decision making.

A member queried the status of a lonning, raised concerns about the adjacent landowners who wanted to adopt the land in question as their own and wanted to ascertain why the application had been made: whether it was to ensure maintenance of the land or to avoid development on the land. The Chair reminded the Committee that its responsibility was not to consider the motivations behind the application and summarised the position of the adjacent landowner but stressed that decisions were to be made using legal criteria only. He highlighted that the Parish Council could submit an application for the land to become a Right of Way. Members were informed by the Countryside Access Officer that the land in question was not currently a Right of Way.

It was moved by Mr Fisher and seconded by Mr Mc Ewan that the application be rejected. Following a unanimous vote in favour of the motion, it was

RESOLVED that, the Committee rejects the application, on the grounds that not all of the statutory criteria contained at section 15(2) of the Commons Act 2006 have been satisfied.
A report was considered from the Acting Executive Director – Economy and Infrastructure regarding an application to modify a section of the public footpath no 126016 near Low Plains in the parish of Nicholforest on the Definitive Map. The purpose of the report was to present Members with the evidence regarding the route, and for a decision to be made whether to proceed with the next stage of the process by making a legal order.

The Countryside Access Officer presented the background to the application, and an overhead photograph showing the linear route. He advised that the application asserted that the path was in the wrong location and that it had never passed through the curtilage of the property Low Plains. However, the applicant had been unable to provide any evidence that a mistake was made and that the definitive map was incorrect. He concluded that the applicant had failed to satisfy the strict burden of proof that the Definitive Map and Statement were incorrect and the application should be rejected.

A member commented that in the 1960’s, it was likely that the landowner had built over the footpath.

It was moved by Mr Morgan and seconded by Mr Mc Ewan that the application be rejected. Following a unanimous vote in favour of the motion, it was RESOLVED that, the application to modify the route of public footpath no 126016 in the parish of Nicholforest be rejected.

43 HIGHWAYS ACT 1980 SECTION 119 APPLICATION TO DIVERT PUBLIC FOOTPATH NO 126016 PARISH OF NICHOLFOREST: DISTRICT OF CARLISLE

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding an application that had been received to divert a section of public footpath no 126016 in the Parish of Nicholforest.

The Countryside Access Officer advised that a section of public footpath no 126016 in the Parish of Nicholforest was presently obstructed by a residential property. He presented a map showing the proposed diversion. The proposed diversion route would utilise a nearby field gate to access the rough pasture and take a direct line to the far field boundary crossing. This would make the proposed path more logical in its direction and easier to follow for the user. He concluded that the proposed diversion passed the relevant legal tests and therefore recommended that the order be approved.

It was moved by Mr Mc Ewan and seconded by Mrs Gray that the Order be made to divert the footpath as set out in the report. Following a vote, cast unanimously in favour of the motion, 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 126016 in the parish of Nicholforest as shown A-B to a new route C-B on the plan at Appendix A and that all necessary action be taken to confirm the order.

44 HIGHWAYS ACT 1980 SECTION 119A - APPLICATION TO DIVERT UNRECORDED PUBLIC FOOTPATH AT BAYLEY/BAILEY LANE GRANGE OVER SANDS: DISTRICT OF SOUTH LAKELAND

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding an application to divert a section of public footpath no 126016 in the Parish of Nicholforest.

The Countryside Access Officer reminded members that at its 11 July 2018 meeting, the Committee had rejected the officers’ recommendation to refuse an application to make an order to divert the unrecorded public footpath that passes over the railway at Bayley/Bailey Lane, Grange Over Sands to an alternative route that incorporated the nearby railway underpass. Members were presented with photographs of the current existing pedestrian crossing and the proposed route, the sea wall and retaining wall.

He advised members that they could not resolve to make an Order until a signed Section 119A (8) Agreement had been signed by Network Rail and Cumbria County Council. This Agreement, signed on 13 August 2019 was tabled at the meeting. This agreement meant that it was unlikely that Cumbria County Council would become responsible for the maintenance of the section of sea wall and that the County Council could now make a legal order to divert the unrecorded footpath that passed over the railway at Bayley/Bailey Lane.

A member queried whether drainage in the underpass had been reviewed as it was often impassable after heavy rain. The Countryside Access Officer advised that drainage facilities were already in place and it would be the responsibility of Network Rail to clear the water if the County Council received complaints.

Queries were raised as to whether an additional clause was needed to ensure that bicycles could use the route along the promenade and who had responsibility for the sea wall. The Countryside Access Officer confirmed that permission should be granted by Network Rail to allow bicycles to use the route as it would be a public footpath, however, the application was for the underpass not the promenade. He clarified that the District Council and Network rail would have responsibility for the retaining wall.

A member referred to the Site Visit to the location, commenting that it would be difficult for disabled people to use the route due to the width of the footpath. He asked that it be ensured that there was disabled access. The Countryside Access Officer advised that the footpath was wheelchair accessible and bollards would be removed to ensure access for all. He confirmed that there was a temporary closure.
order on the footpath.

It was moved by Mr Markley and seconded by Mr Barry that orders be made to divert the pedestrian level crossing as set out in the report and divert the unrecorded public footpath in Grange over Sands to a new route, as set out in the report. Following a unanimous vote in favour of the motion, it was

RESOLVED that,

1. The Committee approve the making of the legal order to divert Bayley/Bailey Lane pedestrian level crossing under Section 119A of the Highways Act 1980

2. 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 119A of the Highways Act 1980 to divert the unrecorded public footpath in the parish of Grange-Over-Sands as shown A-B to a new route C-D-E-F-G-H-I-J-K-L-M-N-O-P-Q-R-S-T-U-V-W-X-Y-B on the plan at Appendix A of the report and that all necessary action be taken to confirm the order.

45 1/19/9005 & 1/19/9006 SECTION 73 VARIATION OF CONDITION 4 PERMISSION REF 1/17/9018 & CONDITION 2 PERMISSION REF 1/17/9019 TO PERMANENTLY EXTEND THE HOURS OF OPERATION ON THE SITE (NOT INCLUDING OPERATING TIMES OF WASTE CARRYING VEHICLES). LOCATION: NORTH WEST RECYCLING LTD, UNIT A, UNIT B & SITE K, KINGMOOR PARK, ROCKCLIFFE ESTATE, ROCKCLIFFE, CARLISLE, CA6 4RW

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding Application 1/19/9005 and 1/19/9006 Section 73 Variation of Condition 4 Permission ref 1/17/9018 & Condition 2 Permission ref 1/17/9019 to permanently extend the hours of operation on the site (not including operating times of waste carrying vehicles). Location: North West Recycling Ltd, Unit A, Unit B & Site K, Kingmoor Park, Rockcliffe Estate, Rockcliffe, Carlisle, CA6 4RW.

The Planning Officer presented the background to the application which included the site description, site history, consultations and representations and planning assessment. He showed an aerial photograph of the site. He referred to planning permission granted by the Committee on 30 May 2018 which identified specific working times for a twelve month trial period and additional conditions relating to a complaints recording system and a noise monitoring scheme. No complaints had been received. He talked about whether extending operating hours would increase any negative impact on amenity caused by the site and whether a trial period would be an option. He advised on planning policy and material considerations. He concluded that the proposed development was in accordance with the development plan and that Planning Permission be granted subject to conditions.
It was moved by Mr Mc Ewan and seconded by Mr Fisher that Planning Permission be granted subject to conditions. Following a vote cast unanimously in favour of the motion, it was

RESOLVED that, Planning Permission be granted subject to the conditions set out in Appendix 1 and 2 of the report.

46 APPLICATION REFERENCE NO. 2/19/9005. PROPOSAL: CONSTRUCTION OF ONE FERRIC DOSING KIOSK AND ONE MOTOR CONTROL KIOSK - ONE TO REGULATE THE PH OF THE FINAL EFFLUENT AND ONE TO CONTROL THE DOSING REGIME. LOCATION: ASPATRIA WWTW, COMELY BANK, ASPATRIA, CUMBRIA, CA7 2BE

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding Application Reference No. 2/19/9005. Proposal: Construction of one ferric dosing kiosk and one motor control kiosk - one to regulate the PH of the final effluent and one to control the dosing regime. Location: Aspatria Wastewater Treatment Works, Comely Bank, Aspatria, Cumbria, CA7 2BE.

The Planning Officer presented the proposal and advised on the permitted development whilst showing photographs of the proposed kiosk site and access road to the works. She provided a site description and commented on the site history, consultations and representations and on Planning Policy. She commented in detail on Planning Assessment and advised that any concerns raised could be addressed by conditions. She recommended that planning permission be granted subject to the conditions set in Appendix 1 of the report.

It was moved by Mr Hitchen and seconded by Mr Markley that planning permission be granted subject to the conditions set out in Appendix 1 of the report. Following a vote cast unanimously in favour of the motion, it was

RESOLVED that, planning permission be granted subject to conditions set out in Appendix 1 to the report.

47 APPLICATION REFERENCE NO. 5/19/9007. PROPOSAL: DEMOLITION OF GOOSEHOLME FOOTBRIDGE. LOCATION: GOOSEHOLME BRIDGE, NEW ROAD, KENDAL (LA9 4BA)

Mr Cotton, Mrs Gray and Mrs Sanderson stated that they would abstain from voting on this application as they had previously taken part in discussions on Gooseholme Bridge at a meeting of South Lakeland Local Committee.

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding Application Reference No. 5/19/9007. Proposal: Demolition of Gooseholme footbridge. Location: Gooseholme Bridge, New Road, Kendal (LA9 4BA).

In presenting a map of the site and conservation area, a location plan showing the highway network and an aerial photograph from 2015/16 showing New Road car
park, the Planning Officer explained the proposal to members. He showed photographs of the bridge and the underside of the existing structure. He commented on the history of the bridge and showed a representation of structure to be demolished. He reported on a late representation which had been received that related to the design of the bridge but stated that these were not material to the application. He commented on the site history and background, noted rainfall and flooding statistics relating to Storm Desmond, commented on the consultation and representations, on planning legislation and policy and detailed the planning assessment. He recommended that planning permission be granted subject to the conditions set out in Appendix 1 of the report.

In response to the Chair asking about a replacement bridge, the Planning Officer advised that funding was in place and consultation was underway on the new bridge.

It was moved by Mr Mc Ewan and seconded by Mr Fisher that planning permission be granted subject to the conditions set out in Appendix 1 of the report. Following a vote cast as follows: in Favour: 15, Against: 0, Abstentions: Mr Cotton, Mrs Gray and Mrs Sanderson, it was

RESOLVED that, planning permission be granted subject to the conditions set out in Appendix 1 of the report

48 APPLICATION REFERENCE NO. 5/19/9008. PROPOSAL: REPLACEMENT OF EXISTING FIBRE GLASS WAVE EFFECT ROOF WITH A SHALLOW ProfileD INSULATED PANEL ROOF WITH PROTRUDING ROOF LIGHTS AND INSTALLATION OF ROOF MOUNTED SOLAR PANELS (PHOTOVOLTAIC AND THERMAL). LOCATION: SANDGATE HYDROTHERAPY POOL, SANDYLANDS ROAD, KENDAL, LA9 6JG

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding Application Reference No. 5/19/9008. Proposal: Replacement of existing fibre glass wave effect roof with a shallow profiled insulated panel roof with protruding roof lights and installation of roof mounted solar panels (photovoltaic and thermal). Location: Sandgate Hydrotherapy Pool, Sandylands Road, Kendal, LA9 6JG.

The Planning Officer presented an aerial photograph of the site, maps of the area on different scales and the location of the nearest property. Other photographs showed the existing roof and its condition inside and out. The proposed roof plan and pictures of its elevations were shown. The proposal was explained as well as the site location and description, the site planning history, consultations and representations and the planning assessment was outlined. He recommended that planning permission be granted subject to the conditions outlined in Appendix 1 to the report.

A member welcomed the application as the pool was a great community asset and had been supported in the past by both the County and District Councils. It was
moved by Mrs Sanderson and seconded by Mr Cotton that planning permission be
granted subject to the conditions outlined in Appendix 1 to the report. Following a 
unanimous vote cast in favour of the motion, it was

RESOLVED that, planning permission be granted subject to the conditions outlined in Appendix 1 to the report.

49 APPLICATIONS DETERMINED UNDER DELEGATED POWERS

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

50 APPLICATIONS PROPOSED TO BE DETERMINED UNDER DELEGATED POWERS

A member advised that he understood that Cleator Moor Parish Council had written to the County Council about the Whitehaven Skips and Services Ltd planning application. The Planning Officer clarified that the Parish Council had not objected but had requested strict conditions be imposed on any Planning Permission, therefore determination of the application would be taken under delegated powers.

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

51 FORWARD PLAN

RESOLVED that, the Forward Plan be noted.

52 DATE AND TIME OF NEXT MEETING

The next meeting of the Committee will be held on 18 September 2019 at 10.00am at County Offices, Kendal.

The meeting ended at 11.15 am