

APPEALS PANEL 3

TUESDAY 9 FEBRUARY 2015 AT 2.00PM

PRESENT: Councillors Bell, and Stothard (Chairman)

OFFICERS: Legal Services Manager
Development Manager
Planning Officer

ALSO

PRESENT: Appellants x 4.

1. APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Councillor Collier. As only two Members had been present at the commencement of the meeting, the appellants were given the opportunity to reconvene the Panel with three Members present before proceeding with the hearing. The appellants agreed to the meeting proceeding with two Members.

2. DECLARATIONS OF INTEREST

There were no declarations of interest in respect of the complaint.

3. PUBLIC AND PRESS

RESOLVED - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph Number 1 of Part 1 of Schedule 12A of the 1972 Local Government Act.

4. APPEAL AGAINST A DEVELOPMENT

The Chairman welcomed the four appellants and introduced the Panel.

The Chairman asked the appellants to summarise their appeal as clearly as possible and what outcome they hoped to achieve from the hearing.

Three appellants had prepared statements which they read out to the Panel.

Appellant A

The first appellant introduced himself and explained that the appellants in attendance at the Panel represented a group of complainants. He presented part one of the complaint which was an objection to outline and full planning permissions on the grounds of incorrect designation of the Black Lonning entrance to the proposed site.

On 10 February 2014 prior to the outline permission being granted, Planning Services were provided with a well researched case concluding that Black Lonning was not a 'private street' as Highways had suggested but was a public right of way which was as yet unrecorded on the Definitive Map. The research went back to 1840 not just the 20 years investigated by Cumbria County Council Highways Services.

The complainants had, through their City Councillor and Local MP, asked for a reply to their question: if their definition was wrong, why was it wrong. In an email to Planning Services in December 2014 the MP asked for the second time for additional information to be provided to ensure the residents felt part of a fully transparent process.

The same question had been submitted to the City Council's Town Clerk and Chief Executive as a formal complaint and an answer to the specific questions had not been forthcoming.

In January 2015 an application had been made to have Black Lonning recorded on the Definitive Map to bring the records up to date. 55 evidence forms had been completed all stating that they believed Black Lonning to be a public right of way, in addition historical evidence; maps and references were produced for the application.

Throughout the process Cumbria County Council Highways and Carlisle City Council Planning had persisted in using different definitions of Black Lonning without a detailed explanation of why the complainants' definition was incorrect. The Modification Order had been approved by the Cumbria County Council's Development Control and Regulation Committee in January 2016 and appeared to vindicate the complainants' position.

The full planning position had been granted on 1 May 2015 based on the incorrect premise that Black Lonning was a private street.

The first appellant summed up by stating that the petitioners felt that the matter could have been dealt with in a democratic, transparent manner in early 2014 and asked if the petitioners were missing something.

Appellant B

The second appellant introduced himself and reiterated that he had liaised closely with other complainants in composing his own and joint correspondence with the Council.

In February 2015 the applicant had submitted an application which implied a claim to ownership of the portion of Black Lonning connecting the site to the highway by enclosing it within the red line boundary on drawings submitted with the application and confirming ownership on certificate A. The drawings renamed the portion of Black Lonning and similar plans had been appended to the Panel's document pack.

The applicant's approach differed from that of his predecessor who had been the farmer/land owner under the outline application. The red line on that application correctly showed the boundary of the site with the Black Lonning and the Local Certificate A.

The appellant drew the Panel's attention to the document pack which appeared to show the County Highways Officer had been misled into accepting the red line and Certificate A as correctly describing the applicant's ownership. The red line was incorrect in that, to the complainants' knowledge, the applicant did not own the land connecting the site to the highway, therefore planning permission was granted incorrectly and should have been withdrawn.

The appellant summed up by noting that had Black Lonning been a private street as previously decreed by Highways Services the red lines contained with the applications would still be incorrect as no claim to ownership had been registered by the applicant nor had he formally notified this to the adjoining riparian land owners with historic rights to the use the Lonning.

Appellant C

The third appellant introduced himself and explained that the group of complainants had liaised closely at every stage over the previous 2 years and he had facilitated some of the joint correspondence of the group.

The appellant reported that the legal status of Black Lonning was pivotal to the planning approvals for the site. County Highways and City Planning had both stated that Black Lonning was a private street. The invalid claim formed the backbone of the outline and full planning applications and had been instrumental in their approval. The complainants had argued against the definition from the outset of the process, believing Black Lonning to be a public road/Public Right of Way (PROW) and on that basis both applications would have failed because of junction spacings and the legislative protection Black Lonning had as a PROW. The complaints fully referenced case which quoted from both Natural England and DEFRA Guidance, as well as full documented evidence, historical maps and their associated reference books provided the remainder of the hard evidence.

The City Planning Department had been unwilling to accept the documented evidence and the complainants had outlined their case in great detail. The complainants asked repeatedly for Highways and Planning to find fault with their argument but had consistently avoided answering the question.

Black Lonning had always been a public road recorded on the 1840's Tithe Map and record sheet and later on the 1865 Ordnance Survey map and reference book. All public rights of way were highways, meaning once a right of way existed it remained in existence unless and until it was lawfully closed or diverted. The complainants' application for a Modification Order for Black Lonning to be added as a Public Restricted Byway was made prior to the fully planning application and had been approved by Cumbria County Council. It was being processed and would be added to the Definitive Map and accompanying Statement bringing the historical record up to date.

PROW issues had resulted in volumes of legislation all of which was to protect the historical resources for present and future generations. To allow the laws to be ignored

or bypassed was surely not something that Carlisle City Council could wish for. The rights associated with PROW should reflect their historic origins.

Appellant D stated that the Definitive Maps held by Cumbria and Yorkshire Council were not wholly definitive. The Tithe Map described Black Lonning as a public highway, yet this was not recorded on the Definitive Map. Therefore County Highways reliance on its Definitive Map had led to it providing the City Council with incorrect information regarding the status of Black Lonning. Appellant D asked why the City Council's Planning department had not been more proactive in informing the County Council it had provided incorrect advice regarding the status of Black Lonning.

In response to questions from Members the appellants confirmed the following;

- United Utilities used Black Lonning to access their works site at the end of the Lonning. The appellants considered that the company's access rights over the lonning had been given by history and usage.
- The developer of the site claimed ownership of part of Black Lonning. The red line indicating the boundary on the maps submitted as part of the planning applications had changed from the Outline to the Full application. The red line marking submitted as part of the Outline application had correctly indicated the extent of the developers land ownership.
- Black Lonning was maintained to a reasonable standard by United Utilities as the company needed to ensure its vehicles were able to access its site.
- That the land adjacent to Black Lonning was owned by a number of local farmers and the Ballyedmond estate.

Appellant C informed Members that on the issue of riparian ownership, County Highways had advised the appellants that riparian owners would be responsible for the maintenance of the lonning; however, the City Council had not informed the riparian owners of the developer's plans for the site.

Appellant D asserted that the developer did not wish for the County Council to define Black Lonning as a "restricted by-way" as it would make using the Lonning as access to the proposed dwellings defective and may lead to future owners of the dwellings taking out an injunction against the developer.

The Chairman invited the appellants to make a final statement to the Panel.

The appellants stated that on all planning applications (Outline and Full), Black Lonning had not been defined correctly, and that consequently the Development Control Committee had been incorrectly advised by County Highways regarding the status of Black Lonning. The plans submitted as part of the full planning applications indicated that the developer owned land which was public.

The Chairman asked the appellants to detail what outcome they wished to come from the Panel

The appellants responded that they wished for a new application to be submitted and considered, based on correct information regarding the status of Black Lonning. The appellants also requested answers be provided to the questions which they had asked for the past twelve months, but as yet had not been addressed.

The Panel thanked the Appellant for his input and advised that he would be informed by letter within 20 working days of the Panel's decision. If the appellant was not happy with the decision his next course of action would be to take the complaint to the Local Government Ombudsman, details of which would be included in the letter.

The appellants left the hearing at 3.15pm

The Panel invited the Development Manager and the Planning Officer to the hearing.

The Chairman summarised the appellant's complaint and asked the Officers why Black Lonning was classed as a private street?

The Planning Officer replied that the definition was one provided by County Highways, who are the relevant Highways authority, and who are consulted on highways issues relating to a planning application. The Planning Officer acknowledged that the appellants had lodged an application with the County Council to have Black Lonning designated as a restricted by-way, which had been given agreement by Committee. He added that the Committee's agreement of the application, did not complete the process of designating Black Lonning as a restricted by-way a consultation would need to be conducted, and following that a decision would be taken regarding the designation of Black Lonning.

The Development Manager explained that until any redesignation of Black Lonning was agreed by Cumbria County Council, as the Highways Authority, Black Lonning's classification as a private street remained. Should the County Council decide to alter the designation to a restricted by-way, this amended classification would then be included on the Definitive Map, and would be dated with the time of redesignation. He added that the redesignation would not alter the access rights over the lonning; however planning permissions could affect the access rights as new rights of access would need to be created.

The Land Registry was the authority that maintained information in respect of landownership, and information could be sought from them on request. Due to the volume of applications received the Planning Department did not conduct searches with the Land Registry, Officers relied on the information provided by the applicant, on the application form, regarding ownership.

The Development Manager advised that the red line indicating the boundary of the site had been amended from the Outline application to the Full application, and that the amended boundary was needed for safe access to the site of the permitted development.

The Development Manager explained that a developer could apply for planning permission to develop land which they did not own; however, the developer would have to make attempts to trace the owner(s) of the land. If the developer received no response in their attempts to trace the owner(s) they could develop the site, but the risk of owner's of the land coming forward was an issue for the developer to address. The issue of site ownership was not a planning matter, but one that should be dealt with through the civil courts.

The Development Manager noted that the deadline for appealing against the Permission granted for the Full planning application, through a Judicial Review had passed at the end of 2015. He added that the granting of planning permission did not mean that the development would be commenced.

The Planning Officer noted that some objectors had requested that the determination of the planning applications be deferred to allow the outcome of the application for Public Right of Way status to be determined, however, the Planning department had stipulated timescales for determining applications, which had to be met.

In response to a Member's question regarding riparian rights, the Development Manager advised that the rights were particular to the site, and the Planning department were not aware who held those rights. In terms of consultation regarding planning applications, the proposed development had been advertised by means of site notice, press notice and neighbour notification.

The Planning Officer added that he felt the consultation relating to the application had been sufficient and had exceeded the minimum requirement which was to notify properties adjacent to the boundary of the site indicated by the red line shown on the submitted plans.

The Chairman referred to an email from Appellant B from 6th March 2015, which Appellant B asserted he had not received a response to, along with a letter to County Highways on October 2015, and asked why a response had not been provided.

The Planning Officer responded that he was unable to advise why the letter to Highways had not been responded to, however, he was aware the officer who had been involved in responding to the queries passed the City Council Planning department to County Highways, had left and been replaced.

Regarding the email of 6 March 2015, the Planning Officer explained that this had been treated as an objection due to its content and that due to the volume of objections received within the Planning department, Officers did not respond directly to them, however, the issues raised in the email were addressed in the Officer's report to Committee.

The Development Manager and the Planning Officer left the hearing at 16.20.

The Legal Services Manager was invited to attend the hearing

The Panel then gave detailed consideration to written and verbal evidence that had been presented to them, prior to and during the hearing. It was:

RESOLVED –That the Panel did not uphold the appeal on the basis that:

The Officers had followed the relevant guidelines and procedures relating to the determination of the planning application.

(the meeting ended at 5.07pm)