

MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday 2 November 2010 at 10.30 am

Present: Councillor JW Hope MBE (Chairman)
Councillor PGH Cutter (Vice Chairman)

Councillors: SPA Daniels, JHR Goodwin, RC Hunt, PJ McCaull, GA Powell and A Seldon

In attendance: Councillors KG Grumbley

62. APOLOGIES FOR ABSENCE

Apologies for absence were submitted by councillors CM Bartrum and Brigadier P Jones.

63. NAMED SUBSTITUTES (IF ANY)

There were no named substitutes present at the meeting.

64. DECLARATIONS OF INTEREST

15. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - REVIEW OF SUSPENSION NOTICE SERVED ON A DRIVER - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976.

Councillor GA Powell, Prejudicial, Knows the applicant.

65. MINUTES

RESOLVED: That the Minutes of the meeting held on 5th October, 2010 be approved as a correct record and signed by the Chairman.

66. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER, FOOTPATH SP9 (PART) IN THE PARISH OF STOKE PRIOR

The Parks, Countryside and Leisure Development Manager presented a report about an application for a Diversion Order under the provisions of Section 119 of the Highways Act 1980 in respect of part of Footpath SP9 in the parish of Stoke Prior. He outlined the process which had been followed and led to the application being submitted to the Committee. He advised that the owners of the land had made the application to enable the future use of adjacent field as disabled parking for village hall and to create a more level footpath into large field. The proposed diversion would also take the path out of their garden.

Councillor K Grumbley, the Local Ward Member, said that he was in favour of the application because of the benefits it would provide for the local community and the applicants. The Parks, Countryside and Leisure Development Manager said that the proposals fulfilled the necessary criteria for a diversion to be made under the council's fast tracking system and that the applicant had agreed to pay the costs incurred. The Committee agreed with the recommendation that the application should be granted.

RESOLVED:

That a Public Path Diversion Order be made under Section 119 of the Highways Act 1980, to divert footpath SP9 (part) at Cradley, as illustrated on drawing No D405/361-9.

67. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER, FOOTPATH MD16 (PART) IN THE PARISH OF MUCH DEWCHURCH

A report was presented by The Parks, Countryside and Leisure Development Manager about an application for a Diversion Order under the provisions of Section 119 of the Highways Act 1980 in respect of part of Footpath MD16 in the parish of Much Dewchurch. He outlined the process which had been followed and led to the application being submitted to the Committee. He advised that the landowner had made the application because the route of the footpath had at some stage been blocked by some agricultural buildings. He advised that following some objections an acceptable route had been found which met the necessary criteria for a diversion to be made and that the applicant had agreed to pay the costs incurred. The Committee agreed with the recommendation that the application should be granted.

RESOLVED:

That a Public Path Diversion Order be made under Section 119 of the Highways Act 1980, to divert footpath MD16 (part) at Much Dewchurch, as illustrated on drawing No D302/276-16(ii).

68. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER, FOOTPATH WC89 (PART) IN THE PARISH OF WHITCHURCH

The Parks, Countryside and Leisure Development Manager presented a report about an application for a Diversion Order under the provisions of Section 119 of the Highways Act 1980 in respect of part of Footpath WC89 in the parish of Whitchurch. He outlined the process which had been followed and led to the application being submitted to the Committee. He advised that the landowner had made the application to take the footpath out of an amusement park which was situated on land covering part of its route. The Local Ward Member was happy with the proposals and the objections which had been received during the consultation process had been resolved. The proposals fulfilled the necessary criteria for a diversion to be made and that the applicant had agreed to pay the costs incurred. The Committee agreed with the recommendation that the application should be granted.

RESOLVED:

That a Public Path Diversion Order be made under Section 119 of the Highways Act 1980, to divert footpath WC89 (part) at Whitchurch, as illustrated on drawing No D327/410-89.

69. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER, FOOTPATH CO1 & CO2 (PART) IN THE PARISH OF COLLINGTON

A report was presented by The Parks, Countryside and Leisure Development Manager about an application for a Diversion Order under the provisions of Section 119 of the Highways Act 1980 in respect of part of Bridleway C01 (part) and Footpath C02 (part) in the parish of Collington. He outlined the process which had been followed and led to the application being submitted to the Committee. He advised that the landowner had made the application because the route of the bridleway and footpath had at some stage been blocked by a lake and some agricultural buildings respectively. He advised that the

proposals would regularise the preferred routes that were being taken by walkers and riders at the moment and that there were no objections. The local Ward Member supported the changes which also met the necessary criteria for a diversion to be made and the applicant had agreed to pay the costs incurred. The Committee agreed with the recommendation that the application should be granted.

RESOLVED:

That a Public Path Diversion Order be made under Section 119 of the Highways Act 1980, to divert Bridleway C01 (part) and Footpath C02 (part) at Collington as illustrated on drawing No D301/94-01/02.

70. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER, FOOTPATH FWB6E (PART) IN THE PARISH OF FOWNHOPE

The Parks, Countryside and Leisure Development Manager presented a report about an application for a Diversion Order under the provisions of Section 119 of the Highways Act 1980 in respect of part of Footpath FWB6E in the parish of Fownhope. He outlined the process which had been followed and led to the application being submitted to the Committee. He advised that the landowner had made the application to regularise a route which had been used by the public for a number of years and take that part of the footpath out of a property. The Local Ward Member was happy with the proposals and the proposals fulfilled the necessary criteria for a diversion to be made. The applicant had agreed to pay the costs incurred. The Committee was in favour of the application being granted.

RESOLVED:

That a Public Path Diversion Order be made under Section 119 of the Highways Act 1980, to divert footpath FWB6E (part) at Fownhope, as illustrated on drawing No DWG: 355/149 6-E.

71. APPLICATION TO REGISTER LAND AT ARGYLL RISE, BELMONT, HEREFORD AS A TOWN GREEN

The Principal Lawyer (Corporate) introduced Mr Vivian Chapman Q.C. whose role would be to advise the Committee on the legal issues.

The background to the application was that land at Argyle Rise had been purchased in connection with housing development in 1959 by Hereford City Council and was subsequently laid out as open space as part of the surrounding housing development during the 1970s. In November 2002 it was included in the transfer of the Council's housing stock to (HHL). Local residents have applied for the land to be registered as a Town Green and if this is successful, the land will still be owned by HHL but continue to be used as open space, which would prevent any development of the land.

Mr Christopher Whitmey, an objector to the application requested that Councillor PGH Cutter should take no part in the decision making process at the meeting because he had been a director on HHL until recently. Miss Ellis QC on behalf of HHL and Mr Chapman QC endorsed this view. The Principal Lawyer (Corporate) said that Councillor Cutter did not have a personal or prejudicial interest in the matter because he had ceased to be a member of the board of HHL at the end of September. However, he advised that there could be a public perception of 'pre-determination' on the part of Cllr Cutter or that there may be a perception that he could be sympathetic towards the stance of HHL, even though he was clear in his own mind that this would not be the case. The QC's stressed that the situation in no way reflected on Councillor Cutter personally but that the fact that the Committee was acting in a judicial capacity to decide

something on strict legal grounds required that that justice had to be seen to be done. Anything that could hint at predetermination had to be avoided and that this meant that Cllr Cutter should not participate. Councillor Cutter confirmed that he had ceased to be a director of HHL but pointed out that the matter had never been discussed at any HHL meetings, he had no prior knowledge about the land and that he wished to hear both sides put their case and to be able to consider all the facts on the day.

The Committee then withdrew to consider the legal points that had been made. After some debate, the Committee decided that more time was needed to consider the complex legal arguments and that consideration of the application should be deferred to another day.

RESOLVED THAT: consideration of the application to register land at Argyll Rise Belmont as a Town Green be deferred.

72. PROCEDURAL ARRANGEMENTS

The Committee noted the procedural arrangement for appeals to be heard.

73. THE PROPOSED USE OF TUK TUK'S IN HEREFORDSHIRE

The Regulatory Services Manager presented his report about an application to licence a 'tuk tuk' as a hackney carriage vehicle. He explained that a Tuk Tuk was a 129cc three-wheeled vehicle which was extensively used in south-east Asia. More recently a number had been licensed by other local authorities and he outlined where these were and gave details about the licensing conditions which were appropriate to ensure public safety. The applicant, Mr Floyd, provided the Committee with further details about his application and answered questions about the type of customers who would use the vehicles and the likely operating times and area.

The Committee welcomed the proposal as a useful addition to tourism and approved the conditions, subject to any reasonable additional ones arising from the debate considered to be appropriate by the Regulatory Services Manager.

RESOLVED THAT:

- (a) the application from Mr AG Floyd to operate Tuk Tuk registered HY10 BPF within Herefordshire as a Hackney Carriage be approved;**
- (b) the conditions set out in the report to regulate the vehicle and any future Tuk Tuk's be approved, together with any reasonable additional conditions considered to be appropriate by the Regulatory Services Manager arising from the debate;**
- (c) the routes and operating area for Tuk Tuk registered HY10 BPF and any future ones be prescribed by the Regulatory Services Manager.**

74. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - TO DETERMINE WHETHER A DRIVER IS A FIT AND PROPER PERSON TO HOLD A DUAL DRIVER'S LICENCE. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Licensing Officer referred to agenda item No. 13 regarding the suspension of a dual hackney carriage/private hire licence following him receiving a police caution arising from a public order offence. She said that he was unable to attend the meeting but had asked for the matter to be determined by the Committee and she read out the contents of a letter which had been received from him. Mr Mooney of West Mercia Police provided the

Committee with details of the course of action that had been followed by the Police and confirmed the information provide in the letter.

Having considered all of the facts presented by the Licensing Officer and the police representative, the Committee decided that the licence holder had demonstrated that he was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and decided that his licence should be reinstated.

RESOLVED:

That the dual hackney carriage/private hire driver's licence be reinstated.

75. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - TO DETERMINE WHETHER A DRIVER IS A FIT AND PROPER PERSON TO HOLD A DUAL DRIVER'S LICENCE. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Licensing Officer referred to agenda item No. 14 regarding the holder of a dual hackney carriage/private hire licence who had been convicted of an offence. The licence holder provided the Committee with details of the offence and explained why he considered that he should still be allowed to hold the licence.

Having considered all of the facts presented by the Licensing Officer and licence holder, the Committee decided that he continued to be a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that no action was necessary.

RESOLVED:

That no further action be taken in respect of the holder of a dual hackney carriage/private hire driver's licence.

76. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - REVIEW OF SUSPENSION NOTICE SERVED ON A DRIVER - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Regulatory Services Manager referred to agenda item No. 15 regarding the suspension of a dual hackney carriage/private hire licence. Mr Mooney of West Mercia Police outlined the investigations which had been carried out by the police and that the driver had accepted a caution regarding certain matters. The licence holder and his representative provided the Committee with further details about those matters.

Having carefully considered all of the facts presented by the Regulatory Services Manager, the police representative, the licence holder and his representative, the Committee decided that further time was required to enable any additional information to be provided so that it could determine the matter.

RESOLVED THAT:

- (a) having heard the evidence from both sides the Committee requires sufficient time to come to a fair careful decision. The Committee will accept any further written submissions from the applicant or his representative or from representatives of the Council or the police; and**
- (b) the Committee wishes this matter to return to it for its decision before the same Committee Members as soon as possible and no later than the 7th of December 2010.**

The meeting ended at 3.40 pm

CHAIRMAN