

CYNGOR SIR POWYS COUNTY COUNCIL

PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE
18 August 2022

REPORT BY: HEAD OF HIGHWAYS, TRANSPORT AND RECYCLING

SUBJECT: Commons Act 2006, Section 15
Application for registration of a new Town or Village
Green on land at Hyssington

REPORT FOR: DECISION

Application to register a new Town or Village Green on land at Hyssington, Community of Churchstoke. (Application no. 21-001VG)

Background:

1. Powys County Council first received an application to register land at Hyssington as a Town or Village Green in 2011 but that was not in compliance with the relevant legislation.
2. An acceptable application (21-001VG) was received by the Council in 2021 to register a new Village Green on land at Hyssington, under section 15 of the Commons Act 2006.
3. In its role as the Commons Registration Authority (CRA), the Council has a statutory duty to consider and determine a duly made application to register a new Town or Village Green.
4. Powys County Council has a policy in respect of determining these applications. Under this policy, an unopposed application can be determined at a public Committee meeting on the basis of written evidence only. Application 21-001VG has been advertised in accordance with regulations and no objections have been received. Given this, it is reasonable to assume that the content of the user witness evidence is not being questioned hence no specialist legal advice has been sought and it is not considered necessary to hold a "non-statutory inquiry". Therefore the matter can be determined by members of the Planning, Taxi Licensing and Rights of Way Committee.
5. The Committee are reminded that their decision must be based solely on the evidence presented as to whether, on the balance of probabilities, the statutory criteria for registration of a new Town or Village Green are met or not. Any other issues, including those of desirability or community needs, are not legally relevant and cannot be taken into consideration. Acceptance means the land will be registered. Rejection means that no registration may take place. Under the current law, land can only have the legal status of a Town or Village Green upon registration.

The application:

6. A copy of the application form 44 and the accompanying exhibits, can be found at appendices 1 to 4. The valid date of receipt of the application was 10th March 2021. The applicant is Mr R K McLintock and the number allotted to the application by Powys County Council is 21-001VG.
7. The application was accompanied by supporting documentation, as follows:
 - a. Map A: A plan of the land that the applicant is seeking to register;
 - b. Map B: The locality or neighbourhood to which the alleged green relates;
 - c. Thirteen images/photographs;
 - d. User witness evidence, in the form of 17 supporting statements.
8. A Land Registry Search has been undertaken. There is no recorded freehold owner of the land, but the trustees of the Powis Castle Estate hold a qualified title to the mines and minerals in the ground.
9. The application form identifies the area in question as “Hyssington Village Green and Horsewell” and describes its location as “Centre of Hyssington Village, opposite Methodist Chapel and old Post Office”.
10. The boundaries of the land were delineated by way of a red outline on the exhibit marked ‘A’ accompanying the Form 44. It consists of a grassed area which is approximately 0.03 ha (.07 acres) in size. The site encompasses the village notice board, public telephone box, wrought iron bench and the horsewell. The site is bounded to the west by the county road C2056 and to the north by an access road and public footpath. The eastern boundary of the site is a combination of a low stone wall and heavy foliage. The application site is an irregular shape that is best described by reference to the plan produced by the Commons Registration Authority found at appendix 5.

Notice of application:

11. In accordance with statutory requirements, notice of the making of the application was served on Trustees of the Powis Castle Estate. Notices were displayed on site and a newspaper advert was placed in the Powys County Times. Notice was also published on the Council website. The Local Member and Community Council were also notified of the application. A period of 6 weeks from the date of advertising was allowed for receipt of any objections or representations, with the deadline being 22nd January 2022.
12. No responses to the consultation have been received.

The Statutory Requirements:

13. This application has been made under section 15(2) of the Commons Act 2006. The provisions of Section 15(2) apply in circumstances where:
 - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application.

14. The determination requires the straightforward application of law to the facts. The burden of proving that the Land has become a town or village green lies with the Applicant. The standard of proof is the balance of probabilities.

Locality and Neighbourhood

15. A 'Locality' must be an area recognised in law; it cannot be created by drawing a line on a map. A 'Neighbourhood' need not be a recognised administrative unit but the area chosen must have a degree of cohesiveness.
16. The application is based on long use of the application land by the inhabitants of the area marked on plan B at appendix 2. The applicant has chosen to identify the administrative area of Hyssington electoral ward as the locality.
17. The addresses of all the persons who have submitted a supporting statement have been checked, and apart from Mr Barry Llewellyn and Mr Bryan Llewellyn, it appears that they all reside within the Hyssington Ward. It is noted that the dates of use of the application site by Messrs Llewellyn are outside the 20-year qualifying period. The current residence of Mrs C Edwards is uncertain but the home she refers to in her statement is within the Hyssington electoral Ward.

The relevant 20-year period

18. Section 15 (2) of the 2006 Act applies where there has been use of the land as of right for a period of 20 years and that use was continuing at the time of the application.
19. Use must be continuous in the sense that it has not been interrupted for any significant period of time. However, any periods of statutory closure can be disregarded.
20. The application was signed and dated on the 23rd February 2021 and was received by the Registration Authority on the 10th March 2021. The relevant 20-year period of use for the purposes of this application is the 20 years immediately preceding the application date and would therefore run from 24th February 2001 to 23rd February 2021.
21. It is suggested from the user witness statements that the land has been in use throughout the relevant period of 20 years and indeed continues to be used. It is of no relevance that some statements support use over a much longer period.

Use of the land for lawful sports and pastimes

22. The Defra Guidance to pioneer authorities advises that:
"It was established in the *Sunningwell* case that lawful sports and pastimes is a composite class which includes any activity that can properly be called a sport or a pastime. There is no necessity for any organised sports or

communal activities to have taken place. Solitary and informal kinds of recreation, such as dog walking and children playing (by themselves or with adults), will satisfy the criterion.”

23. The activities need to have taken place on the land subject of the application.
24. Courts have interpreted ‘lawful’ as excluding all activities which would be illegal in the sense of amounting to criminal offences (whether or not they caused damage to the owner’s property.)
25. The evidence supplied implies that the land has been used for a variety of informal recreation activities such as children playing, picnicking, community get togethers and carol singing.

Use ‘as of right’

26. Use ‘as of right’ has a particular legal meaning and means that use is made openly – i.e. without force, without secrecy and without permission.
27. The use should be shown to have been of such a character, degree and frequency as to indicate an assertion by the claimant of a continuous right, and of a right of the measure of the right claimed.
28. Use is not ‘as of right’ if users already have a statutory or other legal right to use the land. Use is then ‘by right’ or ‘of right’.
29. There is no indication that use of the land was carried out by stealth as it was done openly and without secrecy. Likewise, there is no suggestion that the use of the land was by force as there is open access to the land and this use has not been challenged.

Use by a significant number of inhabitants of the locality

30. ‘Significant’ does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers. *McAlpine Homes [2002]*
31. ‘Significant’ implies a number of users relative to the size of the population of the relevant locality or neighbourhood.
32. The population of the Hyssington electoral ward administrative area was not provided specifically in the 2011 census information. The total population for the Churchstoke Community Council area was at that time 1691 and the Council’s Business Analytics and Research unit estimate the population of the Hyssington electoral ward to be in the region of 250 to 300 people.
33. The application is supported by user evidence statements from 18 residents, only 15 of whom lived in the locality at the time of the application or at some point during the qualifying twenty-year period. The evidence

from respondents from outside the locality does not carry as much weight as that of the inhabitants of the locality.

Options:

Following the presentation of evidence and the opportunity to examine the written evidence provided, the Committee is required to reach one of the following conclusions:

(1) On the basis that the land in question satisfies ALL the statutory requirements for registration as a village green:

That the application to register the parcel of land at Hyssington as shown hatched red on Notice Plan 21-001VG, be accepted and the land registered as a 'new' town or village green;

OR:

(2) On the basis that the land in question fails to satisfy one or more of the statutory requirements for registration as a village green:

That the application to register the parcel of land at Hyssington as shown hatched red on Notice Plan 21-001VG, be rejected.

Officers of Countryside Access and Legal Services have considered the evidence in the light of the statute and case law. Having done so it is considered that the legal criteria is met.

RECOMMENDATION: That the application to register the parcel of land at Hyssington as shown on Notice Plan (21-001VG), be accepted and that the land be formally registered as a Village Green.

Appendices:

Appendix 1	Application - Form 44
Appendix 2	Application - Plans A and B
Appendix 3	Application - Supporting images
Appendix 4	Application - Supporting statements
Appendix 5	Notice plan (21-001VG) produced by Powys County Council to identify application land